

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4534

**ORDINANCE AUTHORIZING AND APPROVING A SECOND
AMENDMENT TO THE LEASE WITH COOL PORT OAKLAND
DRE, LLC FOR THE OPERATIONS OF A TEMPERATURE
CONTROLLED LOGISTICS FACILITY TO MODIFY LAND
BOUNDARIES, TENANT ACCESS, AND OTHER TERMS.**

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item No. 2.1 dated September 26, 2019 ("Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, in or around November 2015, the Port and Cool Port Oakland, LLC entered into a Lease Agreement ("Lease") for development and operation of a temperature controlled logistics facility at the Port of Oakland; and

WHEREAS, in or around December of 2016, the Lease was modified to remove a small area housing an electrical substation and updating the delinquency charge provision; and

WHEREAS, in March of 2019, Cool Port Oakland, LLC assigned all of its right, title and interest in the Lease to affiliated entity Cool Port Oakland DRE, LLC ("Cool Port"); and

WHEREAS, the Port and Cool Port now wish to further amend the Lease to modify land boundaries, certain rent and definition terms, and address Cool Port's access to adjacent Port property;

NOW, THEREFORE BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

Section 2. The Board hereby finds and determines that:

A. The proposal to amend the Lease with Cool Port was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. Lease amendments are

categorically exempt from CEQA pursuant to Section 15301(p) of the Port CEQA Guidelines, which exempts renewals, extensions or amendments to leases or license and concession agreements or the execution of leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing;

B. Section 706 of the Oakland City Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote the development, construction, and operation of all water front properties including piers, wharves, sea walls, docks, and other improvements; and

C. The terms and conditions of the proposed second amendment to the Lease will be beneficial to the Port as well as to the interests of commerce and navigation consistent with the Port's duty to manage and administer the Premises in accordance with the purposes of the Tidelands Trust and of Section 706 of the City Charter.

Section 3. The Board hereby approves and authorizes the Executive Director of the Port ("Executive Director") to execute for and on behalf of the Board a Second Amendment to the Lease with Cool Port containing the following terms:

A. Reduction of the Leased premises by 0.07 acres to improve vehicular circulation for an adjacent tenant;

B. Alignment of the Lease terms "Lease Year" and "Contract Year" with the Port's fiscal year which runs from July 1 to June 30, including alignment of annual fixed rent for more efficient Lease administration;

C. Addition of a new section granting Cool Port a non-exclusive right to use the Port's roads for vehicular access to and from the Lease premises; and

D. Addition of a new section providing Cool Port with limited and non-exclusive rights to enter land directly outside its leasehold to use shared rail infrastructure leading to the Lease premises for the conduct of Lease-related rail operations.

Section 4. The Second Amendment to the Lease shall contain such other terms and conditions as are customary in Port leases and as the Executive Director and the Port Attorney may deem appropriate or advisable consistent with the intent of this ordinance.

Section 5. The Board hereby authorizes the Executive Director to approve and execute any documents that may be required to carry out the Second Amendment to the Lease as described in the Agenda Report, in consultation with and subject to the Port Attorney's approval as to form and legality.

Section 6. This ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. This ordinance approves and authorizes the execution of lease amendments in accordance with the terms of this ordinance. Unless and until a separate written Second Amendment to the Lease is duly executed on behalf of the Board as authorized by this ordinance, is signed and approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective amendment.

The Board of Port Commissioners, Oakland, California, September 26, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and President Butner - 7. Noes: 0.

Daria Edgerly

Secretary of the Board



Adopted at a Regular Meeting held October 10, 2019
by the following vote:

Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and
President Butner - 7
Noes: 0

Approved as to form and legality:


Interim Port Attorney

Attest:


President.

Secretary.

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4535

ORDINANCE APPROVING AND AUTHORIZING A
FOURTH AMENDMENT TO THE AGREEMENT FOR
PURCHASE AND SALE AND GROUND LEASE OF REAL
PROPERTY AND ESCROW INSTRUCTIONS TO
ESTABLISH A STANDARD FORM ASSIGNMENT AND
ASSUMPTION AGREEMENT FOR THE TRANSFER OF
PRIVATELY OWNED PARCELS LOCATION WITHIN THE
OAK TO NINTH DISTRICT PROJECT SITE.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item No. 2.2 (the "**Agenda Report**") of the September 26, 2019 regular meeting of the Board and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, in 2003, the Port executed an Agreement for Purchase and Sale and Ground Lease of Real Property and Escrow Instructions ("Purchase and Sale Agreement") for the Oak to Ninth District Property ("Oak to Ninth Project") with Zarsion-OHP 1, LLC, successors in interest to Oakland Harbor Partners, LLC ("Zarsion"); and

WHEREAS, in or around May of 2013, the Port closed escrow on an approximately 30-acre land sale, an approximately 30-acre ground lease, and a marina lease of adjacent water area for the Oak to Ninth Project; and

WHEREAS, the Oak to Ninth Project is now under construction with Zarsion retaining certain ongoing requirements and obligations that survived the close of escrow, including a requirement in Section 13.10 of the Purchase and Sale Agreement that the Port consent to transfer of the privately-owned parcels; and

WHEREAS, Zarsion approached the Port in July of 2019 to request Port consent to transfer one of the privately-owned parcels to a third party, Anton Brooklyn, LLC, an affiliate of Anton DevCo ("Anton"), along with transfer of surviving obligations; and

WHEREAS, the Port and Zarsion have negotiated a proposed fourth amendment to the Purchase and Sale Agreement which would include use of a standard form of assignment and assumption agreement for use in all future transfers; and

WHEREAS, in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received;

NOW, THEREFORE, BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

SECTION 1. The Board hereby finds and determines the following:

A. Section 706 of the Oakland City Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote the development, construction, and operation of all water front properties including piers, wharves, sea walls, docks, and other improvements; and

B. This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. Section 15061(b)(3) of the CEQA Guidelines states that CEQA only applies to projects that have the potential for causing a significant effect of the environment. Amending the Purchase and Sale Agreement as proposed will not have a significant effect on the environment and therefore it is not a project under CEQA. No further environmental review is required.

SECTION 2. The Board hereby approves a fourth amendment to the Purchase and Sale Agreement with Zarsion to establish a standard form Assignment and Assumption Agreement for the transfer of privately owned parcels within the Oak to Ninth Project site.

SECTION 3. The Board hereby authorizes the Executive Director to:

A. Execute on behalf of the Board the proposed fourth amendment to the Purchase and Sale Agreement to establish a standard form Assignment and Assumption Agreement for the transfer of privately owned parcels within the Oak to Ninth Project site.

B. Make such additions, modifications, or corrections as necessary to implement the amendment or to correct errors, subject to the limitations set forth herein and provided that any such addition, modification or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report.

SECTION 4. This Ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until separate written agreements are duly executed on behalf of the Board as authorized by this Ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

The Board of Port Commissioners, Oakland, California, September 26, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Leslie, Martinez, Story and President Butner - 5. Recused: Commissioners Cluver and Lee - 2. Noes: 0.

Daria Edgerly

Secretary of the Board

Adopted at a Regular Meeting held October 10, 2019
by the following vote:

Ayes: Commissioners Colbruno, Leslie, Martinez, Story and
President Butner - 5

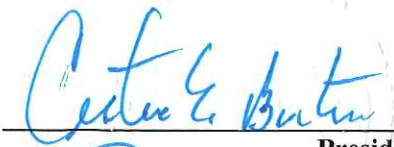

Recused: Commissioners Cluver and Lee - 2

Noes: 0

Approved as to form and legality:


Interim Port Attorney

Attest:


President.

Secretary.

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4536

**ORDINANCE APPROVING AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO ENTER INTO A
LEASE AMENDMENT WITH SEA-LOGIX, LLC FOR
APPROXIMATELY 5.5 ACRES OF COMBINED
WAREHOUSE, OFFICE AND YARD SPACE FOR A
TERM EXTENDING THROUGH JUNE 30, 2024.**

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.3, dated September 26, 2019 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

Section 2. The Board hereby finds and determines as follows:

A. The Port originally entered into a lease (the "Lease") for approximately 5.5 acres at 1425 Maritime Street (the "Premises") with Sea-Logix, LLC ("Sea-Logix") in April of 2016; and

B. The initial term of the Lease expired on June 30, 2019. Since then, Sea-Logix and the Port have been negotiating the terms of a Lease amendment. Sea-Logix has been leasing the Premises in holdover status since July 2019; and

C. The Port and Sea-Logix have reached agreement on the terms of an amendment to the Lease ("Lease Amendment") that includes the following material terms and as is further described in the Agenda Report:

1. Term: Effective November 1, 2019, and expiring on June 30, 2024. Contract Years are July 1 to June 30 of the following year.

2. Option to Extend: Sea-Logix will have one option to extend for up to five (5) years through June 30, 2029, subject to the Port's approval. Sea-Logix must provide the Port with a notice of intent to extend no less than twelve (12) months before expiration of the initial term.
3. Compensation: Fixed monthly compensation of approximately \$62,680. Annual rent will increase on July 1, 2020 and each year thereafter by ten percent (10%) of the prior contract year.
4. Compensation During Option Period: If the option is exercised and accepted by the Port, annual rent will increase on July 1, 2024, by an amount equal to the greatest of (a) the percentage increase in the Consumer Price Index over the preceding twelve-month period, (b) three percent (3%) of the annual and monthly rent as of June 30 of the immediately preceding contract year, and (c) the percentage increase in the Port Tariff 2-A rates for land that is paved, lit and fenced.
5. Maintenance: Sea-Logix is responsible for all repair and maintenance, including a detailed annual inspection program for asphalt maintenance and maintenance of landscaped areas.
6. Lighting/Utility Assessment: Starting on November 1, 2019, Sea-Logix will be subject to the Port's Common Area Electric Utility Assessment as set forth in the Port's Tariff 2-A.
7. Environmental Provisions: Sea-Logix has agreed to the Port's form of Environmental Exhibit, including compliance with the Port's environmental and storm water ordinances, the Maritime Air Quality Improvement Plan, the Comprehensive Truck Management Plan, and the Seaport Air Quality 2020 and Beyond Plan.
8. Surrender and Holdover: the Port has the right to fix monthly rent as deemed appropriate if the Lease enters holdover status.

D. The Board hereby finds and determines that the proposed action as described herein, was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port CEQA Guidelines. This action is categorically exempt from CEQA pursuant to the Port CEQA Guidelines, Section 15301(p), which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing.

Section 3. The Board hereby authorizes the Executive Director of the Port ("Executive Director") or his designee to execute the proposed Lease Amendment with Sea-Logix as described herein and as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

Section 4. This ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement.

The Board of Port Commissioners, Oakland, California, September 26, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and President Butner - 7. Noes: 0.

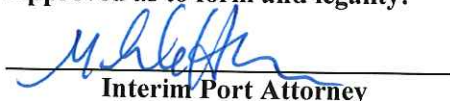
Daria Edgerly



Secretary of the Board

Adopted at a Regular Meeting held October 10, 2019
by the following vote:

Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and
President Butner - 7
Noes: 0

Approved as to form and legality:


Interim Port Attorney


President.
Attest: 
Secretary.