

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4626

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXTEND A NO-COST TEMPORARY LICENSE
AGREEMENT WITH ALAMEDA COUNTY TRANSPORTATION
COMMISSION FROM DECEMBER 31, 2021 TO DECEMBER 31,
2022, WITH A POSSIBLE EXTENSION THROUGH JUNE 30,
2023, FOR CONSTRUCTION-RELATED ACTIVITIES
ASSOCIATED WITH THE FREIGHT INTELLIGENT
TRANSPORTATION SYSTEM PROJECT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 2.1, dated November 18, 2021, ("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, the Port and the Alameda County Transportation Commission ("Alameda CTC") have been working together to develop and implement a suite of freight transportation projects known as the GoPort Program ("GoPort Program"). The GoPort Program consists of three distinct projects: The Freight Intelligent Transportation System Project ("FITS Project"); the 7th Street Grade Separation Project West ("7th Street West Project"); and the 7th Street Grade Separation East Project ("7th Street East Project"); and

WHEREAS, on November 29, 2018, the Board authorized the Executive Director of the Port ("Executive Director") to execute a no-cost temporary license agreement ("TLA") with Alameda CTC for construction-related activities associated with the FITS Project, with an expiration date of December 31, 2021; and

WHEREAS, for various reasons, construction-related activities on the FITS Project will extend beyond December 31, 2021, and Alameda CTC has requested an extension of the TLA for a term expiring no later than June 30, 2023; and

WHEREAS, that 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. Based upon the information contained in the Agenda Report and in testimony received, the Board finds and determines that the proposed actions were reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and no supplemental review is required under Section 15162 of the CEQA Guidelines. The 2002 Oakland Army Base Area ("OAB") Redevelopment Plan Environmental Impact Report ("2002 Redevelopment EIR") evaluated the potential impacts of redevelopment of the 1,800-acre redevelopment area, which included the Port locations for the FITS Project components. The EIR was certified by the lead agency, the City of Oakland, in June 2002. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and the mitigation program in the City's EIR (Resolution No. 02317). In 2012, the City of Oakland, in consultation with the Port, issued an Initial Study/Addendum to the Redevelopment EIR to evaluate proposed changes to the redevelopment plan. The Board approved the revised redevelopment plan and adopted the revised mitigation program on June 21, 2012 (Resolution No. 12-76). The OAB Redevelopment EIR, as addended, includes construction and installation of all supporting infrastructure, including Intelligent Transportation System elements consistent with those in the FITS Project. This action does not trigger any of the conditions set forth in Section 15162 of the CEQA Guidelines, and no further review is thus required.

Section 2. The Board hereby approves and authorizes the Executive Director to execute an amendment to the TLA ("Amendment") with Alameda CTC for the FITS Project for no cost and for an initial extended term through December 31, 2022, and subject to one (1) further six-month extension through June 30, 2023, and as further described in the Agenda Report and provided that the Amendment and all other necessary agreements are approved as to form and legality by the Port Attorney.

Section 3. 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 Port. This ordinance approves and authorizes the execution of a contract in accordance with the terms of this ordinance. Unless and until a separate written contract 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 other contracting party, there shall be no valid or effective contract.

Section 4. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, November 18, 2021. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story, and President Cluver - 7. Noes: 0.

Daria Edgerly


Secretary of the Board

Adopted at a Regular Meeting held December 2, 2021
by the following vote:

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

Attest:


President.


Secretary.

Approved as to form and legality:


Port Attorney

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4627

ORDINANCE APPROVING THE FOLLOWING AGREEMENTS WITH EVERPORT TERMINAL SERVICES, INC.: (1) A SECOND SUPPLEMENTAL AGREEMENT TO THE NON-EXCLUSIVE PREFERENTIAL ASSIGNMENT AGREEMENT ("NEPAA") FOR THE BERTH 34 BACKLANDS; AND (2) A SIXTH SUPPLEMENTAL AGREEMENT TO A SEPARATE NEPAA FOR BERTHS 35 THROUGH 38 TO EXTEND THE DEADLINE TO DEMOLISH CRANE X-437, CORRECT ERRORS IN COMPENSATION TERMS, AND ALLOW NOTICING BY ELECTRONIC COMMUNICATIONS.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item 6.1 dated November 18, 2021, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, Everport Terminal Services, Inc. ("Everport") operates Berths 35-38, commonly known as the Ben E. Nutter Container Terminal ("Nutter Terminal"), pursuant to a non-exclusive preferential assignment agreement ("Berths 35-38 NEPAA") that expires on June 30, 2023; and

WHEREAS, Everport also leases approximately fifteen (15) acres of adjacent backland at Berth 34 under a separate NEPAA that expires on June 30, 2023 ("Berth 34 NEPAA"); and

WHEREAS, the Port and Everport have negotiated a Sixth Supplemental Agreement to the Berths 35-38 NEPAA and a Second Supplemental Agreement to the Berth 34 NEPAA to extend the deadline to demolish Crane X-437, correct errors in compensation terms, and allow noticing by electronic communication, as further described in the Agenda Report; 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:

A. The proposed action to approve the Sixth Supplemental Agreement to the Berths 35-38 NEPAA and a Second Supplemental Agreement to the Berth 34 NEPAA was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"). This action is exempt from CEQA under Section 15301 of the CEQA Guidelines, which exempts the operation, leasing, licensing, and minor alteration of existing structures and facilities, involving negligible or no expansion of existing or former use; and

B. The respective premises for the Berths 35-38 NEPAA and Berth 34 NEPAA are each subject to the California Tidelands Trust doctrine as developed by common law, California legislative acts, and case law (collectively, the "**Tidelands Trust**") and are part of the "Port Area" as defined in Section 725 of the Charter of the City of Oakland ("City Charter"); and

C. Section 706 of the City Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City of Oakland ("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

D. The proposed amendments are consistent with the Port's duty to use and manage Port property in accordance with the Tidelands Trust, and the private use of Port property pursuant to these proposed supplemental agreements will not interfere with the Tidelands Trust.

SECTION 2. The Board hereby authorizes the Executive Director of the Port ("Executive Director") to:

A. Execute on behalf of the Board a Second Supplemental Agreement to the Berth 34 NEPAA to update notice requirements to allow for noticing by electronic communications.

B. Execute on behalf of the Board a Sixth Supplemental Agreement to the Berths 35-38 NEPAA to:

1. Extend the deadline for the Port to demolish Port-owned crane, Crane X-437, to April 30, 2022; and
2. Modify the compensation table (Table 4.2 in the Berths 35-38 NEPAA as amended) to correct the Local/All Cargo Breakpoint Level in Contract Years 16 through 20; and
3. Update notice requirements to allow for noticing by electronic communications.

C. Make such additions, modifications, or corrections as necessary to implement the proposed supplemental agreements 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 3. 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 Port. 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.

SECTION 4. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, November 18, 2021. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story, and President Cluver - 7. Noes: 0.

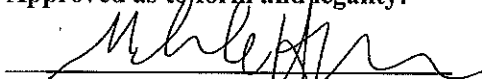
Daria Edgerly

Secretary of the Board

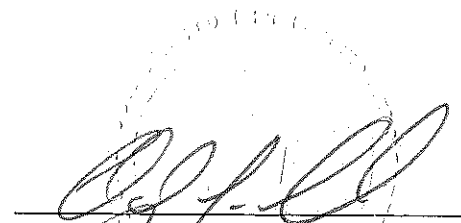

Adopted at a Regular Meeting held December 2, 2021
by the following vote:

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

Approved as to form and legality:


Port Attorney

Attest:


President.

Secretary.

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4628

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE AN EIGHTH SUPPLEMENTAL
AGREEMENT OF LEASE WITH SCOTT'S JACK LONDON
SEAFOOD, INC. FOR PREMISES LOCATED AT 2 BROADWAY,
OAKLAND, TO ABATE THE DEFERRED RENT IN FISCAL YEAR
2021 UNDER THE COMMERCIAL REAL ESTATE TEMPORARY
RESTAURANT RENT ABATEMENT AND DEFERRAL PROGRAM IN
AN AMOUNT TOTALING \$183,902.03.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.2, dated November 18, 2021, ("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, Section 706 of the City of 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 waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

WHEREAS, the proposed action will provide service for members of the public who use the waterfront, and is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the requested approval will not interfere with the Tidelands Trust; 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 that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, which exempts, among other things, the leasing of existing premises involving negligible or no expansion of an existing or former use.

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

A. Scott's Jack London Seafood, Inc. ("Scott's") is a participant in the Commercial Real Estate Temporary Restaurant Rent Abatement and Deferral Program ("Rent Relief Program") approved by the Board; and

B. Despite the benefits offered under the Rent Relief Program, Scott's suffered significant revenue loss due to governmental shelter in place orders and other effects of the COVID-19 pandemic; and

C. Scott's has requested abatement of certain deferred rent owed under the Rent Relief Program to allow it to return to full operations and financial stability.

Section 3. The Board hereby approves and authorizes the Executive Director or his designee to:

A. Execute the proposed Eighth Supplemental Agreement of Lease ("Agreement") with **Scott's Jack London Seafood, Inc.** to abate the deferred rent from Fiscal Year 2021 under the Rent Relief Program in an amount totaling \$183,902.03, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the Agreement is not fully executed within thirty (30) days after the effective date of the Board's approval, the approval shall be null and void unless extended at the sole and absolute discretion of the Executive Director or his designee.

B. Make any additions, modifications, or corrections as necessary to implement the Agreement, 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, 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 Port. 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.

Section 5. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

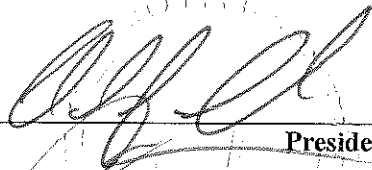
The Board of Port Commissioners, Oakland, California, November 18, 2021. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story, and President Cluver - 7. Noes: 0.


Daria Edgerly

Secretary of the Board

Adopted at a Regular Meeting held December 2, 2021
by the following vote:

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



President.
Attest: 

Secretary.

Approved as to form and legality:



Port Attorney

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4629

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE LEASE AMENDMENT NO. 7 WITH
YOSHI'S JAPANESE RESTAURANT, INC. FOR PREMISES
LOCATED AT 510 EMBARCADERO WEST, OAKLAND, TO
ABATE THE DEFERRED RENT IN FISCAL YEAR 2021 UNDER
THE COMMERCIAL REAL ESTATE TEMPORARY RESTAURANT
RENT ABATEMENT AND DEFERRAL PROGRAM IN AN AMOUNT
TOTALING \$455,416.67.

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 November 18, 2021, ("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, Section 706 of the City of 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 waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

WHEREAS, the proposed action will provide service for members of the public who use the waterfront, and is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the requested approval will not interfere with the Tidelands Trust; 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 that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, which exempts, among other things, the leasing of existing premises involving negligible or no expansion of an existing or former use.

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

A. Yoshi's Japanese Restaurant, Inc. ("Yoshi's") is a participant in the Commercial Real Estate Temporary Restaurant Rent Abatement and Deferral Program ("Rent Relief Program") approved by the Board; and

B. Despite the benefits offered under the Rent Relief Program, Yoshi's suffered significant revenue loss due to governmental shelter in place orders and other effects of the COVID-19 pandemic; and

C. Yoshi's has requested abatement of certain deferred rent owed under the Rent Relief Program to allow it to return to full operations and financial stability.

Section 3. The Board hereby approves and authorizes the Executive Director or his designee to:

A. Execute the proposed Lease Amendment No. 7 ("Agreement") with **Yoshi's Japanese Restaurant, Inc.** to abate the deferred rent from Fiscal Year 2021 under the Rent Relief Program in an amount totaling \$455,416.67, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the Agreement is not fully executed within thirty (30) days after the effective date of the Board's approval, the approval shall be null and void unless extended at the sole and absolute discretion of the Executive Director or his designee.

B. Make any additions, modifications, or corrections as necessary to implement the Agreement, 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, 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 Port. 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.

Section 5. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

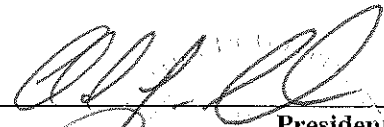
The Board of Port Commissioners, Oakland, California, November 18, 2021. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story, and President Cluver - 7. Noes: 0.

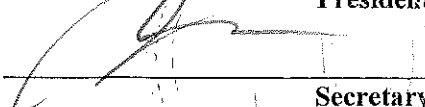
Daria Edgerly

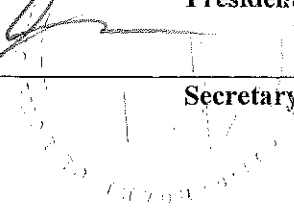
Secretary of the Board

Adopted at a Regular Meeting held December 2, 2021
by the following vote:

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



President.
Attest: 

Secretary.


Approved as to form and legality:



Port Attorney