

PORT ORDINANCE NO. 4663

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SPACE/USE PERMIT WITH HG OAK F&B CONCESSIONAIRES JV FOR A FOOD & BEVERAGE CONCESSION FOR TWO UNITS AT OAKLAND INTERNATIONAL AIRPORT FOR A TERM EXPIRING AT THE LATEST ON MARCH 31, 2035 WITH ANTICIPATED \$19.4 MILLION TOTAL RENT PAYABLE TO THE PORT THROUGHOUT THE TERM AND WITH POTENTIAL TOTAL CAPITAL CONTRIBUTION BY THE PORT NOT TO EXCEED \$1.2 MILLION.

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.1, dated September 15, 2022 (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.** The Board hereby finds and determines that the proposed action is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 of the CEQA Guidelines because the proposed action consists of activities that involve negligible or no expansion of an existing use.

**Section 2.** 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 3.** The Board hereby approves the terms and conditions set forth in the Agenda Report for the Space/Use Permit ("SUP") with **HG OAK F&B Concessionaires JV** ("HG OAK") for a Food & Beverage Concession for Two Units at Oakland International Airport for a term expiring at the latest on March 31, 2035, for the Minimum Annual Guarantee ("MAG") and percentage rent as described in the Agenda Report, and for potential total capital contribution by the Port not to exceed \$1.2 Million.

**Section 4.** The Board hereby authorizes the Executive Director of the Port to execute the SUP with HG OAK, subject to approval as to form and legality by the Port Attorney, and make any additions, modifications, or corrections as necessary to implement the SUP, 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 5.** This Ordinance is not evidence of and does not create or constitute (a) a contract(s), 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 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 6.** 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, September 15, 2022. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Cluver, Colbruno, Lee, Martinez, Story, and President Leslie - 7.

Daria Edgerly

Secretary of the Board