

PORT ORDINANCE NO. 4683

**ORDINANCE AUTHORIZING AND APPROVING THE EXECUTIVE DIRECTOR TO EXECUTE A LEASE WITH CENTRAL VALLEY AG GRINDING, LLC, FOR APPROXIMATELY 7.1 ACRES OF LAND ON THE FORMER OAKLAND ARMY BASE WITH A FIVE-YEAR TERM BEGINNING ON JANUARY 1, 2023 THROUGH DECEMBER 31, 2027, RESULTING IN AVERAGE ANNUAL RENT OF APPROXIMATELY \$854,000.**

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item No. 6.1 dated December 15, 2022, 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**, 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; and

**WHEREAS**, the proposed action will provide important services for customers of the Port, 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 in the form of a lease will not interfere with the Tidelands Trust; and

**WHEREAS**, the Port currently leases land to Central Valley Ag Grinding, LLC ("CVAG") for the operation of a rail-to-container transload facility in the Seaport Logistics Complex ("Existing Operations"); and

**WHEREAS**, CVAG and the Port have negotiated the terms of a five-year lease to continue Existing Operations on Port property ("Lease"); 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 Lease with CVAG is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

**SECTION 2.** The Board further finds and determines that Port staff have negotiated and recommend entering into a Lease with CVAG, on the following terms:

1. **Premises.** Approximately 310,929 square feet of yard space and approximately 1,215 linear feet of rail track in the area commonly referred to as is within the area commonly referred to as the Seaport Logistics Complex.
  2. **Use of Premises.** CVAG Operations are those related to the transloading of soda ash and livestock feed from rail to container, container to rail, rail to truck, and truck to rail. CVAG must get advance approval from the Port's Director of Maritime to handle any commodity other than soda ash and livestock feed.
  3. **Term.** The Term of the lease commences on January 1, 2023, and extends through December 31, 2027 with no options to extend. Lease Years will run concurrent with Port fiscal years.
  4. **Termination.** Neither the Port nor CVAG have a right to early termination of the Lease, except in cases of default.
  5. **Rent.** Fixed monthly rent for yard space and rail track. There are no variable rent provisions. Rent increases 5% annually effective Lease Year 2 as follows:
    - i. Lease Year 1: \$62,808/month (half fiscal year);
    - ii. Lease Year 2: \$65,948/month;
    - iii. Lease Year 3: \$69,245/month;
    - iv. Lease Year 4: \$72,708/month;
    - v. Lease Year 5: \$76,343/month;
    - vi. Lease Year 6: \$80,160/month (half fiscal year)
- During the 5-year term, the total rent would be \$4.3 million, with an average annual rent of approximately \$854,000.

6. **Security Deposit.** Equal to three months' rent with increases commensurate with rent increases.
7. **Maintenance and Utilities.** CVAG is responsible for the cost of maintenance of the Premises. CVAG is also responsible to pay for all utility costs.

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

- A. Execute on behalf of the Board the Lease with CVAG under the Terms outlined in Section 2 above and as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney.
- B. Make such additions, modifications, or corrections as necessary to implement the Lease 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 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 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, December 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