

PORT ORDINANCE NO. 4684

ORDINANCE AUTHORIZING AND APPROVING (A) THE EXECUTIVE DIRECTOR TO EXECUTE FIVE-YEAR LEASE AGREEMENTS WITH THREE TENANTS ON THE FORMER OAKLAND ARMY BASE THROUGH DECEMBER 31, 2027, AS FOLLOWS (1) IMPACT TRANSPORTATION, LLC, FOR APPROXIMATELY 18 ACRES OF WAREHOUSE AND YARD SPACE, RESULTING IN AVERAGE ANNUAL RENT OF APPROXIMATELY \$3.1 MILLION; (2) PACIFIC COAST CONTAINER, INC., DBA PCC LOGISTICS, FOR APPROXIMATELY 19 ACRES OF WAREHOUSE AND YARD SPACE, RESULTING IN AVERAGE ANNUAL RENT OF \$3.3 MILLION; AND, (3) PORT TRANSFER, INC., FOR APPROXIMATELY 14 ACRES OF WAREHOUSE AND YARD SPACE, RESULTING IN AVERAGE ANNUAL RENT OF APPROXIMATELY \$2.4 MILLION; AND, (B) APPROXIMATELY \$1.96 MILLION OF PORT FUNDS TO REIMBURSE TENANTS FOR CERTAIN IMPROVEMENTS AND/OR DEFERRED MAINTENANCE DURING THE TERM OF THE LEASES, AS FOLLOWS: \$991,000 FOR IMPACT TRANSPORTATION, LLC; \$502,000 FOR PCC LOGISTICS; AND, \$464,000 FOR PORT TRANSFER, INC.

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item No. 6.2 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 warehouse and directly adjacent yard space in the Seaport Logistics Complex to Impact Transportation, LLC ("Impact") in Buildings 805, 806, and 807; Pacific Coast Container, Inc., DBA PCC Logistics ("PCC") in Building 803; and Port Transfer, Inc ("PTI") in Building 804 (collectively, "Existing Operations"); and

**WHEREAS**, Port staff have negotiated the terms of new five-year leases to continue Existing Operations on Port property with Impact, PCC, and PTI ("Leases"); 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 Leases with Impact, PCC, and PTI are 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 new Leases with Impact, PCC, and PTI on the following terms:

1. **Effective Date.** January 1, 2023.
2. **Premises.** The leases are for warehouse and yard space as follows:
  - i. Impact: 270,646 square feet warehouse space (Buildings 805, 806, and 807); and 513,781 square feet of yard space
  - ii. PCC: 266,052 square feet of warehouse space (Building 803); and 568,590 square feet of yard space
  - iii. PTI: 265,009 square feet of warehouse space (Building 804); 330,524 square feet of yard space

Combined, the leases comprise approximately 51 acres of warehouse and yard space in the area commonly referred to as the Seaport Logistics Complex.

3. **Use of Premises.** The Permitted Uses under the proposed Leases are as follows:
  - i. Impact: Warehousing/storage, assembly, distribution, and handling of cargo or merchandise prior to or subsequent to carriage by water and movement through the maritime terminals.
  - ii. PCC: Warehousing/storage, assembly, distribution, and handling of cargo or merchandise prior to or subsequent to carriage by water and movement through the maritime terminals.
  - iii. PTI: Transloading and warehousing of agricultural commodities prior to or subsequent to carriage by water and movement through the maritime terminals.
4. **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.

5. **Termination.** The early termination rights under the proposed Leases are as follows:
  - i. Impact: Port may terminate Impact's lease with 120 days' advance notice subject to conditions; and
  - ii. PCC: Neither the Port nor PCC has an early lease termination right for the PCC lease, except in cases of default; and,
  - iii. PTI: The Port or PTI may terminate the PTI lease with 120 days' advance notice.
6. **Rent.** Fixed monthly rent for warehouse and yard space. There are no variable rent provisions. During the term of the proposed Leases only (i.e., January 1, 2023 (Effective Date) through December 31, 2027, the average annual net revenue is \$8.5 million.
7. **Security Deposit.** Equal to three months' rent with increases commensurate with rent increases.
8. **Maintenance and Utilities.** All maintenance is the responsibility of the tenants. Where applicable due to sanitary sewer limitations, Port would provide and pay for portable bathrooms. Each tenant is also responsible to pay for all utility costs.
9. **Deferred Maintenance, Repairs, and Improvements.** The Port will reimburse each tenant for certain deferred maintenance, repairs, and improvements related to facility access, pavement, and basic warehouse repairs. The Port's aggregate maximum reimbursement obligation is \$1.96 million.

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

- A. Execute on behalf of the Board the Leases with Impact, PCC, and PTI 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