

**PORT ORDINANCE NO. 4705
ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE A LICENSE AND CONCESSION
AGREEMENT WITH MOUSSA GROUP LLC FOR THE PREMISES
LOCATED AT 7717 OAKPORT STREET, OAKLAND, FOR A TERM
OF SEVEN (7) YEARS, FOR AN INITIAL MONTHLY RENT OF
\$7,669.00, AND FINDING THAT THE PROPOSED ACTION IS
EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY
ACT.**

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.3, dated May 11, 2023, 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, 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 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 action is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15332 of the CEQA Guidelines because the proposed action: (a) is consistent with applicable general plan and zoning designation and policies; (b) occurs within city limits, the site is no more than five acres, and is substantially surrounded by urban uses; (c) the site has no value as habitat for endangered, rare, or threatened species; (d) approval of the proposed action would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.

Section 2. The Board hereby approves and authorizes the Executive Director or his designee to:

A. Execute the proposed License and Concession Agreement ("Agreement") with **Moussa Group LLC**, for the premises located at 7717 Oakport Street, Oakland, for a term of seven (7) years, for an initial monthly rent of \$7,669.00, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed 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 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 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 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, May 11, 2023.
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