

PORT ORDINANCE NO. 4724
ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDMENT TO THE TEMPORARY RENTAL AGREEMENT WITH PACIFIC GAS & ELECTRIC COMPANY TO EXTEND THE TERM THROUGH DECEMBER 31, 2024, AND INCREASE THE INITIAL MONTHLY RENTAL RATE TO \$7,872.76, FOR A CONSTRUCTION STAGING AREA ON THE PREMISES LOCATED AT LIVINGSTON STREET AND EMBARCADERO ROAD, OAKLAND.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.2, dated November 9, 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 not subject to the California Environmental Quality Act ("CEQA") because the proposed action does not involve an activity that may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment as further defined in Section 21065 of the Public Resources Code.

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

A. Execute the proposed Second Amendment to the Temporary Rental Agreement ("Agreement") with **Pacific Gas & Electric Company** for the premises located at Livingston Street and Embarcadero Road, Oakland, to extend the term through December 31, 2024, and increase the initial Monthly Rental Rate to \$7,872.76, 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, November 9, 2023. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Colbruno, Dominguez Walton, Lee, Martinez, Myres, and President Leslie - 7. Noes: 0.

Daria Edgerly,

Secretary of the Board