

PORT ORDINANCE NO. 4726

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A FIRST AMENDMENT (FIRST SUPPLEMENTAL AGREEMENT) TO THE LEASE WITH PORT TRANSFER, INC. TO DEFER A SCHEDULED RENT INCREASE AND TO MODIFY TENANT OBLIGATIONS TO COMPLETE CERTAIN MAINTENANCE RESPONSIBILITIES RESULTING IN A TOTAL REVENUE LOSS OF APPROXIMATELY \$488,172 IN FISCAL YEAR (FY) 2024; A TOTAL EXPENSE SAVINGS OF UP TO \$464,000 IN FY 2024; 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 6.3, dated November 9, 2023, (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; 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 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 has an existing lease ("Lease") dated January 1, 2023 with Port Transfer, Inc., a Nevada Corporation ("PTI") for PTI to use a certain portion of Port-owned property located on Port property formerly known as the Oakland Army Base ("OAB") property, consisting of approximately 6.08 acres of warehouse space and approximately 7.59 acres of yard space; and

WHEREAS, PTI provides transloading and warehousing services to the Port's Maritime operations, and requested a rent deferral (to be paid by December 31, 2027) due to its reported significant decline in business resulting from the drop in TEU volume; and

WHEREAS, Port staff reviewed PTI's business operations, financial performance and financial statement;

NOW, THEREFORE, BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. 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 2. The Board hereby finds and determines as follows:

A. The proposed First Supplemental Agreement to amend to the Lease with PTI is exempt from the requirements of the California Environmental Quality Act ("CEQA") because the proposed action consists of leasing of existing structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, as further defined in Section 15301 of the CEQA Guidelines.

B. Port staff have negotiated and recommend entering into the First Supplemental Agreement, which modifies the monthly rent by postponing the July 1, 2023 rent increase to January 1, 2024, with payment of that deferred rental amount to be paid by December 31, 2027, postponing PTI's deadline to perform certain maintenance, and providing that the Port may step in and perform fire sprinkler maintenance, at the Port's own option, with other terms and conditions of the Lease remaining unchanged.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the First Supplemental Agreement with PTI, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

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 the 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, 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