

PORT ORDINANCE NO. 4403

**ORDINANCE AUTHORIZING THE EXECUTIVE DIRECTOR TO
EXTEND THE TERM OF A TEMPORARY RENTAL AGREEMENT WITH
THE CITY OF OAKLAND FOR EMERGENCY VEHICLE ACCESS
RELATED TO THE RECONSTRUCTION OF THE EMBARCADERO
BRIDGE.**

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.1, dated December 15, 2016 (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; 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. In May, 2013, the Port entered into a Temporary Right of Entry and Construction Access Agreement ("Temporary Easement") with the City of Oakland ("City") to reconstruct the Embarcadero Bridge (the "Embarcadero Bridge") across Lake Merritt Channel. On September 22, 2016, the Board authorized an extension to that Temporary Easement, extending the term thereof to December 31, 2018; and

B. In connection with the reconstruction of the Embarcadero Bridge, on November 6, 2015, the Port entered into a Temporary Rental Agreement ("TRA") with the City to provide an emergency vehicle access route through a parcel of land parallel to and south of Middle Harbor Road during the reconstruction of the Embarcadero Bridge. The TRA has since been amended twice to extend the term of the TRA to April 16, 2017; and

C. The current proposed extension of the TRA will make the TRA co-terminus with the Temporary Easement; and

D. The proposal to authorize the Executive Director to execute an amendment to extend the term of the TRA with the City for an emergency vehicle access route to properties south of Embarcadero West and west for the reconstruction of the Embarcadero Bridge through to December 31, 2018 was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port CEQA Guidelines. The TRA is categorically exempt from CEQA pursuant to Section 15301(p) of the Port CEQA Guidelines, which exempts the execution of leases or license agreements where the premises or

licensed activity was previously leased or licensed to the same or another person, involving negligible or no expansion of use beyond that previously existing. Extending the term of the TRA to allow emergency vehicle access meets the criteria for this exemption.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute an amendment to the TRA with the City to extend the term of the TRA through to December 31, 2018, 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 Board. 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.

The Board of Port Commissioners, Oakland, California, December 15, 2016. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Cluver, Hamlin, Martinez, Story, Yee and President Colbruno - 7. Noes: 0.

John T. Betterton
Secretary of the Board