

PORT ORDINANCE NO. 4449

**ORDINANCE AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE
TWO-YEAR EXTENSIONS OF SPACE ASSIGNMENT AGREEMENTS AT THE
FORMER OAKLAND ARMY BASE WITH (i) IMPACT TRANSPORTATION,
(ii) PACIFIC COAST CONTAINER, AND (iii) PORT TRANSFER,
INC.**

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Item 6.1, dated November 9, 2017 (the "Agenda Report") and related materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, the Port has entered into separate Space Assignments with Impact Transportation ("Impact") to occupy Buildings 805, 806, & 807, Pacific Coast Container, Inc. ("PCC") to occupy Building 803, and Port Transfer, Inc. ("PTI") to occupy Building 804, all buildings located at the former Oakland Army Base ("OAB"); and

WHEREAS, Port staff propose to extend each of the named Space Assignments for two years with three (3) 1-year options to extend in the Port's sole discretion; and 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 proposal to authorize the Executive Director to modify and extend Space Assignments with Impact, PCC and PTI was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines; and

B. This action has been determined to be categorically exempt from requirements of the CEQA Guidelines pursuant to Section 15301, Existing Facilities, 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 use beyond that existing at the time of the lead agency's determination. No changes to the premises or use are proposed other than the renewal of existing leases and repairs to existing structures. All repair work will be conducted within the footprints of the existing structures, with no expansion of the premises. There will be no significant environmental impact as a result of this action.

Section 3. The Board approves the terms and conditions of and authorizes the Executive Director or his designee to amend the Space Assignment agreements with Impact, PCC and PTI to extend the terms of such Space Assignments, subject to the following terms and conditions:

A. The term of such 2-year extensions shall expire on or before December 31, 2019, subject to three (3) one-year options to extend the term which may be exercised by the Port in the Port's sole discretion, for a maximum lease term expiring on or before December 31, 2022; and

B. The rent shall be at the current Space Assignment rates set forth in Port Tariff 2-A, as the same may be amended from time-to-time. If such rates are subsequently amended by the Board, the amended rates will apply from the effective date of the amendment; and

C. Those tenants with Space Assignments for warehouse space will be given the right to perform certain minor repairs to their Space Assigned premises on condition that each such Space Assignee (i) first prepare and submit to the Port's Chief Wharfinger a detailed written description of the proposed repairs to the premises together with such Space Assignee's estimate of the cost of such work and any other information that the Chief Wharfinger may request, (ii) the Port will reimburse the Space Assignee for the cost of such repair work via rent credits against such Space Assignee's monthly rent, (iii) the total amount of the Port's obligation to reimburse any Space Assignee shall not exceed \$30,000 per warehouse building bay as set forth in the Agenda Report, which cap shall not exceed the amount of rent the Port would receive from such Space Assignee over the life of the extended term, and (iv) the Port's Director of Maritime approves such proposed repair work in writing and specifying the maximum amount of rent credits that the Port will grant for such repairs and such other conditions that the Port may require.

Section 4. The Board hereby authorizes the Executive Director or his designee to approve and execute any documents that may be required to carry out the extension of the subject Space Assignments as described in the Agenda Report, in consultation with and subject to the Port Attorney's approval as to form and legality, and subject to the condition that the approvals set forth in this Ordinance be valid for no longer than 30 days, and that if the subject documents are not fully executed by that date such approval shall be null and void unless further extended at the sole and absolute discretion of the Executive Director or his designee.

Section 5. This Ordinance is not evidence of and does not create or constitute (a) a contract or lease, 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 separate written agreements are duly executed on behalf of the Board as authorized by this Ordinance, are signed and approved as to form and legality by the Port Attorney, and are delivered to each of the other contracting parties, there shall be no valid or effective agreements.

The Board of Port Commissioners, Oakland, California, November 9, 2017. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Cluver, Colbruno, Hamlin, Martinez, Yee and President Story - 7. Noes: 0.

Daria Edgerly

Secretary of the Board