

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

6/14/18
Item 2.3
MH/MSR
for MA

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AGREEMENT TO EXTEND THE RIGHT-OF-ENTRY AND INDEMNITY AGREEMENT WITH EXXONMOBIL OIL CORPORATION TO UNDERTAKE CERTAIN REMEDIAL ACTIVITIES AT BERTHS 23 AND 24 THROUGH JUNE 30, 2023.

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 June 14, 2018 (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, the Port and ExxonMobil Oil Corporation ("Exxon") entered into a Right-of-Entry and Indemnity Agreement ("Original Agreement") covering Exxon's access to Berths 23 and 24 for Exxon to conduct remedial activities, with said Original Agreement having a current expiration date of June 30, 2018; 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 that the proposed Second Agreement to Extend the Original Agreement ("2nd Extension") is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, Section 15301(p), which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person and involving negligible or no expansion of use beyond that previously existing. Approval of the proposed 2nd Extension with ExxonMobil Oil Corporation falls within this class of exemptions. Furthermore, ExxonMobil Oil Corporation's clean-up activities on the premises were previously reviewed under CEQA. On June 17, 2003, the Board adopted an "Initial Study/Mitigated Negative Declaration for Soil and

Groundwater Investigation and Vapor Extraction and Air Sparging Pilot Testing/Interim Remediation at Berths 23 and 24" (Resolution No. 03167). Accordingly, no additional environmental review is required to take the action recommended in the Agenda Report.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute with **Exxon** the proposed 2nd Extension to extend the term of the Original Agreement through June 30, 2023, subject to the terms and conditions described in the Agenda Report and 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.

DRAFT

President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney