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**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

**AUTHORIZING THE EXECUTIVE DIRECTOR TO
ENTER INTO A MEMORANDUM OF UNDERSTANDING
WITH THE EAST BAY MUNICIPAL UTILITY
DISTRICT FOR THE PROVISION OF FIRE AND
DOMESTIC WATER SERVICE WITHIN THE SEAPORT
AREA.**

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item 2.1 dated June 28, 2018, 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, 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;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

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

- a. Domestic water service is currently provided to various end-users on various portions of land within the Seaport Area by way of an existing system of water infrastructure within the Seaport Area (collectively, the "Existing Water Infrastructure"), and certain portions of such Existing Water Infrastructure are owned, operated and maintained by EBMUD (the "EBMUD's Water Infrastructure").

- b. The Port also owns and operates certain existing private fire water delivery and distribution infrastructure within the Seaport Area (the "Port Fire Water Infrastructure"), and both EBMUD's Water Infrastructure and the Port Fire Water Infrastructure currently cross and serve Leasehold Properties across multiple Alameda County (County) Assessor Parcel Numbers (APNs) within the Seaport Area.
- c. EBMUD's Regulations Governing Water Service to Customers ("Regulations") requires certain structures within a premise to be separately metered for fire and domestic water service, and EBMUD's Regulations grants to EBMUD a certain amount of discretion to determine what constitutes a "premise."
- d. EBMUD and the Port wish to enter into a Memorandum of Understanding for purposes of providing domestic water and fire water service to the Leasehold Properties and other Port-owned lands within the Seaport Area in a consistent manner that complies with the District's Regulations, while at the same time recognizing the uniqueness of the property rights within the Seaport Area.

Section 2. The Board further finds and declares that the approval of the proposed Memorandum of Understanding was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that a Memorandum of Understanding agreeing to a standard method for EBMUD to determine what constitutes a single "Premises" for purposes of providing domestic water and fire water service will result in a physical change in the environment. Projects to build domestic water or fire water infrastructure would be subject to environmental review when they are proposed for implementation. Therefore, this action is not subject to CEQA and no further environmental review is required.

Section 3. The Board hereby authorizes the Executive Director to enter into a Memorandum of Understanding with EBMUD as described in the Agenda Report and containing the following major provisions:

- a. EBMUD will treat the property within the boundaries of any leasehold premises within the Seaport Area as a single

"premise" for purposes of applying EBMUD's Regulations to new or expanded domestic or fire water service.

- b. The Port will be the applicant for service for fire water services when the fire water service serves more than one Leasehold Property and the District agrees to treat the services provided as being in a single Premise.
- c. Each new structure that requires domestic water service will be individually metered as determined by the EBMUD.
- d. Any structures (new or existing) that do not require water service under local or state laws or regulations governing the occupancy of such structures (each an "Exempt Structure") will not be required to be individually metered.
- e. Any existing structure built before 2010 that is modified or expanded such that there is no net increase in domestic water demand and any structure that is a temporary, non-permanent portable structure will not be required to be individually metered.
- f. The Port must notify EBMUD prior to the issuance of a Port development permit of any new construction or renovation, and EBMUD must determine within 60 days of such notice whether a new meter or modified meter will be required.
- g. In the unlikely event the Port sells or transfers land to a third-party, the Port will be required to notify the EBMUD of the sale and the New Owner that it would be required to comply with EBMUD's regulation which may involve applying for a new connection, disconnecting from other existing Port connections, or paying EBMUD's water connection fees.
- h. The Port agrees to indemnify, defend, and hold EBMUD harmless from claims where (A) the Port sells or transfers land within the Seaport Area that received domestic water or fire service as a result of EBMUD's waiver of its Regulations pursuant to this MOU, and (B) EBMUD's refusal or termination of service is based on the new owner's failure or refusal to obtain water service from EBMUD in compliance with the Regulations.
- i. The term of this MOU is 10 years.

Section 4. This resolution 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 resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

Section 5. This resolution shall be effective immediately upon adoption by the Board.

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