

**PORT ORDINANCE NO. 4534**

**ORDINANCE AUTHORIZING AND APPROVING A SECOND AMENDMENT TO THE LEASE WITH COOL PORT OAKLAND DRE, LLC FOR THE OPERATIONS OF A TEMPERATURE CONTROLLED LOGISTICS FACILITY TO MODIFY LAND BOUNDARIES, TENANT ACCESS, AND OTHER TERMS.**

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item No. 2.1 dated September 26, 2019 ("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**, in or around November 2015, the Port and Cool Port Oakland, LLC entered into a Lease Agreement ("Lease") for development and operation of a temperature controlled logistics facility at the Port of Oakland; and

**WHEREAS**, in or around December of 2016, the Lease was modified to remove a small area housing an electrical substation and updating the delinquency charge provision; and

**WHEREAS**, in March of 2019, Cool Port Oakland, LLC assigned all of its right, title and interest in the Lease to affiliated entity Cool Port Oakland DRE, LLC ("Cool Port"); and

**WHEREAS**, the Port and Cool Port now wish to further amend the Lease to modify land boundaries, certain rent and definition terms, and address Cool Port's access to adjacent Port property;

**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:

A. The proposal to amend the Lease with Cool Port was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. Lease amendments are categorically exempt from CEQA pursuant to Section 15301(p) of the Port CEQA Guidelines, which exempts renewals, extensions or amendments to leases or license and concession agreements or the execution of 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;

B. Section 706 of the 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 water front properties including piers, wharves, sea walls, docks, and other improvements; and

C. The terms and conditions of the proposed second amendment to the Lease will be beneficial to the Port as well as to the interests of commerce and navigation consistent with the Port's duty to manage and administer the Premises in accordance with the purposes of the Tidelands Trust and of Section 706 of the City Charter.

**Section 3.** The Board hereby approves and authorizes the Executive Director of the Port ("Executive Director") to execute for and on behalf of the Board a Second Amendment to the Lease with Cool Port containing the following terms:

A. Reduction of the Leased premises by 0.07 acres to improve vehicular circulation for an adjacent tenant;

B. Alignment of the Lease terms "Lease Year" and "Contract Year" with the Port's fiscal year which runs from July 1 to June 30, including alignment of annual fixed rent for more efficient Lease administration;

C. Addition of a new section granting Cool Port a non-exclusive right to use the Port's roads for vehicular access to and from the Lease premises; and

D. Addition of a new section providing Cool Port with limited and non-exclusive rights to enter land directly outside its leasehold to use shared rail infrastructure leading to the Lease premises for the conduct of Lease-related rail operations.

**Section 4.** The Second Amendment to the Lease shall contain such other terms and conditions as are customary in Port leases and as the Executive Director and the Port Attorney may deem appropriate or advisable consistent with the intent of this ordinance.

**Section 5.** The Board hereby authorizes the Executive Director to approve and execute any documents that may be required to carry out the Second Amendment to the Lease as described in the Agenda Report, in consultation with and subject to the Port Attorney's approval as to form and legality.

**Section 6.** 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. This ordinance approves and authorizes the execution of lease amendments in accordance with the terms of this ordinance. Unless and until a separate written Second Amendment to the Lease is duly executed on behalf of the Board as authorized by this ordinance, is signed and 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 amendment.

The Board of Port Commissioners, Oakland, California, September 26, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and President Butner - 7. Noes: 0.

Daria Edgerly

Secretary of the Board