

PORT ORDINANCE NO. 4535

ORDINANCE APPROVING AND AUTHORIZING A FOURTH AMENDMENT TO THE AGREEMENT FOR PURCHASE AND SALE AND GROUND LEASE OF REAL PROPERTY AND ESCROW INSTRUCTIONS TO ESTABLISH A STANDARD FORM ASSIGNMENT AND ASSUMPTION AGREEMENT FOR THE TRANSFER OF PRIVATELY OWNED PARCELS LOCATION WITHIN THE OAK TO NINTH DISTRICT PROJECT SITE.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item No. 2.2 (the "**Agenda Report**") of the September 26, 2019 regular meeting of the Board 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 2003, the Port executed an Agreement for Purchase and Sale and Ground Lease of Real Property and Escrow Instructions ("Purchase and Sale Agreement") for the Oak to Ninth District Property ("Oak to Ninth Project") with Zarsion-OHP 1, LLC, successors in interest to Oakland Harbor Partners, LLC ("Zarsion"); and

WHEREAS, in or around May of 2013, the Port closed escrow on an approximately 30-acre land sale, an approximately 30-acre ground lease, and a marina lease of adjacent water area for the Oak to Ninth Project; and

WHEREAS, the Oak to Ninth Project is now under construction with Zarsion retaining certain ongoing requirements and obligations that survived the close of escrow, including a requirement in Section 13.10 of the Purchase and Sale Agreement that the Port consent to transfer of the privately-owned parcels; and

WHEREAS, Zarsion approached the Port in July of 2019 to request Port consent to transfer one of the privately-owned parcels to a third party, Anton Brooklyn, LLC, an affiliate of Anton DevCo ("Anton"), along with transfer of surviving obligations; and

WHEREAS, the Port and Zarsion have negotiated a proposed fourth amendment to the Purchase and Sale Agreement which would include use of a standard form of assignment and assumption agreement for use in all future transfers; 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 ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

SECTION 1. The Board hereby finds and determines the following:

A. 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

B. This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. Section 15061(b)(3) of the CEQA Guidelines states that CEQA only applies to projects that have the potential for causing a significant effect of the environment. Amending the Purchase and Sale Agreement as proposed will not have a significant effect on the environment and therefore it is not a project under CEQA. No further environmental review is required.

SECTION 2. The Board hereby approves a fourth amendment to the Purchase and Sale Agreement with Zarsion to establish a standard form Assignment and Assumption Agreement for the transfer of privately owned parcels within the Oak to Ninth Project site.

SECTION 3. The Board hereby authorizes the Executive Director to:

A. Execute on behalf of the Board the proposed fourth amendment to the Purchase and Sale Agreement to establish a standard form Assignment and Assumption Agreement for the transfer of privately owned parcels within the Oak to Ninth Project site.

B. Make such additions, modifications, or corrections as necessary to implement the amendment or to correct errors, subject to the limitations set forth herein and provided that any such addition, modification or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report.

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 separate written agreements are 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 other contracting party, there shall be no valid or effective agreement.

The Board of Port Commissioners, Oakland, California, September 26, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Leslie, Martinez, Story and President Butner - 5. Recused: Commissioners Cluver and Lee - 2. Noes: 0.

Daria Edgerly

Secretary of the Board