

AGENDA REPORT

Resolution: Adoption of a Resolution Necessary to Authorize Modification of Section 4.1 of the Employment Agreement with Danny W. Wan. **(Finance & Admin.)**

MEETING DATE: 12/12/19

AMOUNT: \$31,000 (estimated cost savings including compensation incentive and benefits over three year term)
Operating Expense

PARTIES INVOLVED: Danny Wan

SUBMITTED BY: Sara Lee, Chief Financial Officer

APPROVED BY: Michele Heffes, Interim Port Attorney

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

It is recommended that the Board of Port Commissioners ("Board") adopt the resolution necessary to modify the Employment Agreement ("Agreement") with Danny W. Wan ("Employee") to eliminate 3% base salary increases effective the first pay period containing January 1, 2020; January 1, 2021; and, January 1, 2022, and to instead provide for 3% base salary increases effective the pay period containing November 14, 2020 and the pay period containing November 14, 2021. The resolution should also authorize the Board President to execute a modification in writing consistent with such terms as described in this agenda report and that such modification be subject to the Port Attorney's approval as to form and legality.

BACKGROUND

On November 14, 2019, the Board adopted a resolution appointing the Employee as the Executive Director for a term of three years and authorizing the Board President to execute an "Employment Agreement" with the Employee. Section 4 of the Agreement concerns "Salary, Benefits, Bonus & Severance" for the Employee, and Section 4.1 provides for "base salary." Section 4.1 specifically establishes an annual base salary of \$365,000 with 3% increases to base salary effective the first pay period containing January 1, 2020; January 1, 2021; and, January 1, 2022.

Subsequent to the execution of the Agreement, the Board and the Employee (collectively, the "Parties") now wish to modify the Agreement and in particular Section 4.1 and change

the schedule for the annual 3% salary increases. As required by the Agreement, any modifications to it must be in writing and authorized by a resolution of the Board.

ANALYSIS

The Board and Mr. Wan executed a three (3) year Employment Agreement commencing November 14, 2019 through November 14, 2022; among the items of compensation and benefits set forth in the Agreement, Section 4.1 provides for a 3% increase to base salary effective the first pay period containing January 1, 2020; January 1, 2021; and January 1, 2022. Subsequent to the execution of the Agreement, the Parties now wish to modify the Agreement and change the schedule of the base salary increases as currently set forth in Section 4.1.

Specifically, to establish a pattern of base salary increases consistent with the principles applied to other direct reports of the Board, the Parties wish to modify Section 4.1 to provide for annual 3% salary increases based on the Employee's anniversary date of his appointment as Executive Director, rather than the first pay period for each calendar year of the Agreement.

Section 4.1 currently provides for a base salary of \$365,000; however, instead of 3% base salary increases effective the first pay period containing January 1, 2020; January 1, 2021; and, January 1, 2022, the change to Section 4.1 would provide for 3% base salary increases effective the pay period containing November 14, 2020 (to \$375,950) and then a 3% increase effective the pay period containing November 14, 2021 (to \$387,228.50), resulting in the following annual base salaries:

	Effective November 14, 2019	Effective the Pay Period Containing November 14, 2020	Effective the Pay Period Containing November 14, 2021
Annual Base Salary	\$365,000.00	\$375,950.00	\$387,228.50

In order to modify the Agreement, Section 7.10 specifically provides that “[a]ll modifications to the Agreement must be in writing, signed by each of the Parties hereto, authorized by a resolution of the Board, and approved as to form and legality by the Port Attorney.”

To accomplish the desired change, current Section 4.1 of the Agreement must be deleted in its entirety and replaced with new language that changes the schedule of base salary increases so that they occur on the Employee's anniversary date of employment as Executive Director for the 2020 and 2021 years. Consistent with the proposed changes and with the modification requirements set forth in Section 7.10, an unexecuted “Modification to the Employment Agreement with Danny W. Wan” is attached as Exhibit A.

Accordingly, it is recommended that the Board adopt a resolution authorizing the modification to Section 4.1 of the Employee's Employment Agreement to eliminate the 3% base salary increases effective the first pay period containing January 1, 2020; January 1, 2021; and, January 1, 2022, and to instead provide for 3% base salary increases effective the pay period containing November 14, 2020 and the pay period containing November 14, 2021. The resolution should also authorize the Board President to execute a modification in writing consistent with the terms described in this Agenda Report and that such modification be subject to the Port Attorney's approval as to form and legality.

BUDGET & STAFFING

The proposed modification to the Employment Agreement between the Board of Port Commissioners and Mr. Wan is estimated to save \$31,000 (including compensation incentive and benefits) over the three year term.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022). <https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

Goal: Pursue Employee Excellence

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

SUSTAINABILITY

Port staff have reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that presents sustainability opportunities.

ENVIRONMENTAL

The matters contained in this Agenda Report were reviewed in conjunction with the requirements of the California Environmental Quality Act (CEQA) and the Port's CEQA Guidelines. The requested Board actions are not projects pursuant to CEQA Guidelines, Sections 15060(c)(3) and 15378(b)(2), and no environmental review is required.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction or design projects.

OPTIONS

1. The Board adopt the Resolution necessary to: (1) authorize the modification to Section 4.1 of the Employee's Employment Agreement to eliminate the 3% base salary increases effective the first pay period containing January 1, 2020; January 1, 2021; and, January 1, 2022, and to instead provide for 3% base salary increases effective the pay period containing November 14, 2020 and the pay period containing November 14, 2021; and, (2) authorize the Board President to execute in writing a modification consistent with the terms described in this Agenda Report and that such modification be subject to the Port Attorney's approval as to form and legality.
2. The Board not adopt the Resolution necessary to: (1) authorize the modification to Section 4.1 of the Employee's Employment Agreement to eliminate the 3% base salary increases effective the first pay period containing January 1, 2020; January 1, 2021; and, January 1, 2022, and to instead provide for 3% base salary increases effective the pay period containing November 14, 2020 and the pay period containing November 14, 2021; and, (2) authorize the Board President to execute in writing a modification consistent with the terms described in this Agenda Report and that such modification be subject to the Port Attorney's approval as to form and legality.

RECOMMENDATION

It is recommended that the Board adopt the Resolution necessary to: (1) authorize the modification to Section 4.1 of the Employee's Employment Agreement to eliminate the 3% base salary increases effective the first pay period containing January 1, 2020; January 1, 2021; and, January 1, 2022, and to instead provide for

3% base salary increases effective the pay period containing November 14, 2020 and the pay period containing November 14, 2021; and, (2) authorize the Board President to execute in writing a modification consistent with the terms described in this Agenda Report and that such modification be subject to the Port Attorney's approval as to form and legality.