

PORT ORDINANCE NO. 4582

**ORDINANCE APPROVING AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO EXECUTE A LEASE WITH
PACIFIC LAYBERTHING SOUTH, LLC FOR WATER AND
LAND AREA AT BERTH 9, FOR A MAXIMUM TERM OF
10.5 YEARS, RESULTING IN AVERAGE ANNUAL
REVENUE OF APPROXIMATELY \$521,288.**

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.2, dated December 17, 2020, (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, Section 706 of the City of 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 waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

WHEREAS, the proposed action will provide important container depot services for both the shipping lines and shipping customers of the Port, and is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property in the form of a lease ("Lease") will not interfere with the Tidelands Trust;

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 as follows:

A. The proposed lease ("Lease") with Pacific Layberthing South, LLC ("PLS") is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301 of the CEQA Guidelines, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The dredging activity associated with the proposed Lease to -29 feet mean lower low water is part of the Port's maintenance dredging program, which is exempt from CEQA pursuant to Section 15304(g), which exempts maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.

B. Port staff have negotiated and recommend entering into a Lease with PLS, on the following terms:

1. **Premises.** Approximately 120,700 square feet of water area and 47,175 square feet of adjacent backlands at Berth 9;
2. **Use of Premises.** Layberthing of the Vessels Keystone State and Gem State ("Vessels"). PLS may, from time to time, swap out the Vessels with other MARAD vessels that are the same size or smaller. There shall never be more than two vessels in the Premises at any one time;
3. **Term and Term Extensions.** The Initial Term shall be effective when at least one of the Vessels arrives to the Premises. PLS must occupy the Premises between March 1, 2021, and February 28, 2022, or the Lease will automatically terminate. The Initial Term is one year and PLS shall have up to four (4) one-year options to extend the term at PLS's sole discretion followed by a single option to extend the term for five years and 6 months with such option requiring approval by both PLS and the Executive Director of the Port ("Executive Director"), such that PLS may have a maximum term of 10.5 years after occupancy;
4. **Dredging.** PLS has advised the Port it needs a berth depth of -29 feet mean lower low water. The Port will perform the initial dredging of the berth at an estimated cost of \$370,000. PLS will reimburse the Port for this work but PLS will be granted a \$100,000 credit to use toward such reimbursement (i.e., net PLS expenditure is expected to be approximately \$270,000). If the Port cannot complete the initial dredging of the Premises by December 31, 2022, the Lease will terminate. PLS will be responsible to pay and perform any subsequent dredging during the Term at PLS's sole cost;
5. **Delayed Initial Occupancy Due to Dredging.** PLS' requirement to occupy the Premises may be extended through February 28, 2023 if the Port is unable to complete the initial dredging in 2021.
6. **Initial Improvements and Occupancy.** PLS must complete initial improvements to plug the Vessel into the Port's shore power infrastructure before commencing its occupancy of the Premises;

7. **Termination.** PLS retains the right, in its sole discretion, to terminate the Lease with no less than 30 days advance written notice to the Port if the MARAD terminates its agreement with PLS. The Port does not have an early termination right;
8. **Rent.** Fixed Monthly Rent will be \$1,400/day (\$511,000 annualized) during the Initial Term through Contract Year 5 if the Initial Term is extended. Fixed Monthly rent increases 2% each year starting in Contract Year 6, except for the last six months of the maximum Term (if extended), in which rent is held flat from the prior year. Rent commences upon occupancy;
9. **Performance Deposit.** Shall be equal to three (3) months' rent, or \$126,000, and increase commensurate with rent increases;
10. **Port Relocation Right.** The Port has the right to permanently relocate PLS within the Seaport one time during the term, at the Port's sole cost;
11. **Improvements, Maintenance, and Utilities.** PLS is responsible for the cost, installation, and maintenance of any improvements, including but not limited to, fencing, bollards, fenders, electrical, water, pavement, and sanitation infrastructure. PLS must remove its improvements at PLS's sole cost at the end of the Lease term. PLS is also responsible to pay for all utility costs including shore power; and
12. **Rent Credit.** Upon arrival at the Seaport, the Port may direct the Vessels to berth at an alternate berth. The Vessels would berth at this alternate location for no more than thirty (30) days under a month-to-month Space Assignment Agreement at Tariff No. 2A rates. The Port would provide PLS with a credit in the amount of \$2,179 for one vessel per day, or \$5,758 for two vessels per day, each day from the effective date of the Space Assignment and the date PLS occupies Berth 9. Based on the 30-day maximum duration, the total amount of the credit shall not exceed \$172,740.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the Lease with PLS (and such additional documents as may be necessary to consummate the transaction), as further described in the Agenda Report, 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 Port. 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.

Section 5. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, December 17, 2020. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story and President Cluver - 7. Noes: 0.

Daria Edgerly

Secretary of the Board