

**PORT ORDINANCE NO. 4611**

**ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A FIFTH SUPPLEMENTAL AGREEMENT TO A LEASE WITH DASL, LLC FOR PREMISES LOCATED AT THE COST PLUS PARKING LOT LOCATED AT 101 CLAY STREET TO EXTEND THE TERM THROUGH OCTOBER 31, 2022, AT A MONTHLY RENTAL RATE OF \$9,880.**

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.1, dated September 16, 2021, ("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 service for members of the public who use the waterfront, 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 pursuant to the requested approval will not interfere with the Tidelands Trust; 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 that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, which exempts, among other things, the execution of leases or agreements where the premises were previously leased to the same or another person, and involving negligible or no expansion of use beyond that previously existing.

**Section 2.** The Board further finds and determines as follows:

A. The Port owns land located at 101 Clay Street, Oakland, consisting of an approximately 29,950 square foot parking lot at the corner of Clay and Second Streets (the "Premises"); and

B. DASL, LLC currently leases the Premises to provide parking for the Cost Plus building adjacent to the Premises under a lease ("Lease") that, as amended, expires on October 31, 2021; and

C. Port staff have negotiated and recommend entering into the proposed Fifth Supplemental Agreement to the Lease under the terms further described in the Agenda Report.

**Section 3.** The Board hereby approves and authorizes the Executive Director or his designee to:

A. Execute the proposed Fifth Supplemental Agreement to a Lease ("Agreement") with **DASL, LLC** for the Premises, as further described above and in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed Agreement is not fully executed within thirty (30) days after the effective date of the Board's approval, the approval shall be null and void unless extended at the sole and absolute discretion of the Executive Director or his designee.

B. Make any additions, modifications, or corrections as necessary to implement the Agreement, 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, 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, September 16, 2021.  
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

