

PORT ORDINANCE NO. 4616

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDMENT RIDER TO AN EXISTING RIGHT OF WAY CONTRACT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION AND THE EAST BAY MUNICIPAL UTILITY DISTRICT FOR THE PREMISES LOCATED AT EMBARCADERO NEAR 5TH AVENUE IN OAKLAND TO EXTEND THE TERM FOR EIGHTEEN (18) MONTHS COMMENCING ON JULY 14, 2022, FOR A FEE OF \$9,900.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.2, dated September 30, 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 approximately 51,950 square feet of paved and fenced land near 5th Avenue and Embarcadero Road, which is currently leased to the East Bay Municipal Utility District ("EBMUD") and

approximately 1,908 square feet of which is subject of a short-term Right of Way Contract ("Right of Way Contract") among the Port, the State of California Department of Transportation ("Caltrans"), and EBMUD; and

B. Caltrans has requested approval of an extension to the Right of Way Contract through an Amendment Rider ("Amendment Rider") that will, among other things, extend the Right of Way Contract for an additional eighteen months commencing on July 14, 2022, for an additional fee of \$9,900; and

C. Port staff have negotiated and recommend entering into the proposed Amendment Rider 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 Amendment Rider with **Caltrans** and **EBMUD**, 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 Amendment Rider is not fully executed within sixty (60) 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 Amendment Rider, 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 30, 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