

PORT ORDINANCE NO. 4619

**ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LEASE WITH UNICOLD CORPORATION FOR APPROXIMATELY 3.6 ACRES OF COMBINED WAREHOUSE, OFFICE, AND YARD SPACE FOR A TERM EXPIRING ON JUNE 30, 2039, RESULTING IN AVERAGE ANNUAL REVENUE OF APPROXIMATELY \$1,100,000, WITH ONE FIVE-YEAR OPTION TO EXTEND THE TERM OF THE LEASE.**

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.6, dated September 30, 2021, (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 maritime support 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 with Unicold Corporation ("Unicold") was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines. The proposed Lease would continue the existing operations at the site and is therefore categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301, which exempts 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. Unicold will continue to engage in the same type of maritime-related cargo handling and services as it has since 2002 in the same location. Therefore, the

proposed Lease with Unicolld meets the criteria for the exemption and no further CEQA review is required.

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

1. **Premises.** Approximately 3.6 acres of land located in the Maritime Support Center ("MSC") area of the Seaport. The facility is comprised of a rail-served building/warehouse known as D-516, office space and a yard. The Premises also includes adjacent land previously leased to Unicolld on a month-to-month space assignment ("Space Assignment").
2. **Term and Termination.** The effective date of this Lease is December 1, 2021 ("Effective Date"). The term expires on June 30, 2039. Contract years are July 1 to June 30. Upon the Effective Date, the current lease with Unicolld and the Space Assignment will terminate.
3. **Option to Extend Term.** There is one (1) option to extend the term of the Lease by five (5) years to June 30, 2044. Unicolld must provide the Port with a notice of its intent to exercise the option and extend the term no less than twelve (12) months before expiration of the initial term.
4. **Rent.** Unicolld will pay annual rent ranging from \$821,294 to \$1,469,438 during the initial term. Annual rent during the extended term, if any, is subject to negotiation.
5. **Security Deposit.** Unicolld will provide a security deposit equal to the average of three (3) months' rent during the initial term. During the extended term, if any, the security deposit shall increase to equal the average of three (3) months' rent for the extended term.
6. **Maintenance and Utilities.** Unicolld is responsible for maintenance of the premises, according to a general plan of maintenance, as well as five (5) year plans of maintenance subject to Port review and approval. The Port retains limited maintenance responsibilities for foundations and structural frame for a portion of Building D-516 built by the Port, common utilities, pavement only if due to defect or deficiency of the sub-grade, and damage caused by negligence of the Port.
7. **Title to Improvements.** Unicolld retains title to a portion of Building D-516 that Unicolld constructed and continues to insure at Unicolld's sole cost. Upon expiration of the Lease, title for this portion of Building D-516 vests in the Port.
8. **Transfer.** Unicolld must obtain the Port's approval for any desired sublet or transfer of the proposed Lease,

except for a transfer of ownership within the Ishiyama family ("Family Transfer"). A Family Transfer shall be granted upon Unicol (1) showing the Ishiyama family has ownership interest equal or greater than fifty percent (50%) and (2) confirming transferee's intent to continue the business operations consistent with the terms of the proposed Lease.

9. **Environmental Provisions.** The Port's standard Environmental Exhibit is included as an exhibit to the proposed Lease. Unicol has committed to using zero-emission cargo handling equipment inside Building D-516, replacing two (2) yard hostlers with hybrid or electric equipment upon the earlier of 2025 or upon need to replace or substantially repair, and ensuring that any new yard hostler purchase is zero-emission or the then-cleanest available technology, if zero-emission is not commercially available.
10. **Surrender and Holdover.** During holdover, if any, the Port has the right to fix monthly rent from time to time in its sole discretion. Handback provisions require Unicol to restore the Premises to a "Minimum Condition", defined as a condition suitable for the same operations that were conducted by Unicol in the five (5) years prior to expiration of the Lease. The Port retains the right to demolish the improvements on the Premises, in which case Unicol shall reimburse the Port up to twenty-five percent (25%) of demolition costs. The Port also retains the right to require Unicol to demolish the improvements at Unicol's sole cost if Unicol fails or refuses to meet the Minimum Condition.

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the Lease with Unicol (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, 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