

*RD Miller*  
Deputy City Attorney

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 NOV 20 PM 2:58

# OAKLAND CITY COUNCIL

ORDINANCE NO. 13284 C.M.S.

**ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE, WITHOUT RETURNING TO THE CITY COUNCIL, AN AMENDMENT TO THE LEASE BETWEEN THE CITY AND PORT OF OAKLAND FOR BERTH 9 DATED JUNE 28, 2013 TO EXTEND THE TERM UP TO MARCH 2020, EXPAND THE USE AND LEASE PREMISES, AND INCLUDE ADDITIONAL RELATED AMENDMENTS**

**WHEREAS**, on June 28, 2013, the City and Port of Oakland (“Port”) entered into a lease for approximately 3.7-acres of Port-owned property located at Berth 9 (the “Berth 9 Lease”). The consideration for the Berth 9 Lease was the concurrent execution by the City of a no-cost lease by and between the City and the Port for the City-owned property on the former Oakland Army Base commonly referred to as the Notch (the “Notch Lease”); and

**WHEREAS**, Caltrans has a temporary construction easement (TCE) for use of the West Gateway Area property on the City-owned portion of the former Oakland Army Base to support the construction of the new eastern span of the Bay Bridge and the deconstruction of the old eastern span, which includes use of the wharf structures at the West Gateway Area property commonly referred to as Berth 7 or Pier 7; and

**WHEREAS**, the City and Caltrans have agreed that Caltrans will move from the West Gateway Area to property within the Central Gateway Area of the City-owned land on the former Oakland Army Base commonly referred to as MH-1 to facilitate the development of the West Gateway Area; and

**WHEREAS**, the deconstruction of the old eastern span of the Bay Bridge requires Caltrans, its contractors and its project have access to a wharf immediately adjacent to the new Caltrans facility within the Central Gateway Area at the MH-1 property; and

**WHEREAS**, the City and Caltrans have agreed that use of Berth 9 is acceptable for Caltrans’ project requirements, and the City plans to sublease Berth 9 for Caltrans’ use; and

**WHEREAS**, the Port has agreed to: (1) extend the term of the Berth 9 Lease to March 2020; (2) expand the permitted uses; (3) increase the size of the leased premises; and (4) allow the City to sublease for Caltrans’ uses; in return for which the City will administratively extend the term of the Notch Lease to March 2020; now therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Administrator is authorized to negotiate and execute an amendment to the Berth 9 Lease with the Port to: (1) extend the term to March 2020; (2) expand the permitted uses; (3) increase the size of the leased premises (paying any rent therefor from rent paid by Caltrans or any other third party); and (4) obtain the Port’s consent to the City’s sublease

for Caltrans' use.

**Section 2.** In return for the Port's execution of the Berth 9 amendment, the City will administratively extend the term of the Notch Lease to March 2020.

**Section 3.** The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. Thus, prior to approving the amendment to the Berth 9 Lease, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in the June 12, 2012, May 28, 2013, and December 2, 2014 City Council Agenda Reports and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013 City Council hearing (Mitigation Measure 4.4-3b, West Gateway Rail and Maritime Emissions Reductions Program) and in the Agenda Report for the July 2, 2013 City Council meeting (Mitigation Measure 4.3-10, Parking Demand Study), and the revisions discussed at the July 2, 2013 City Council meeting (Mitigation Measure PO-1, Stakeholder Review of Air Quality and Trucking Plans).

**Section 4.** The City Council finds and determines that this action complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

**Section 5.** The City Administrator or his or her designee is hereby authorized, without returning to City Council, to take any and all steps necessary to implement and/or effectuate this Ordinance, which are consistent with the basic purpose and intent of this Ordinance; provided, however, any legal agreements shall be subject to the review and approval of the Office of the City Attorney; such steps may include, without limitation, negotiation and execution of such other additions, amendments or other modifications to the Berth 9 Lease (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) or of other documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions which the proposed Berth 9 Lease amendment contemplates.

DEC 16 2014

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

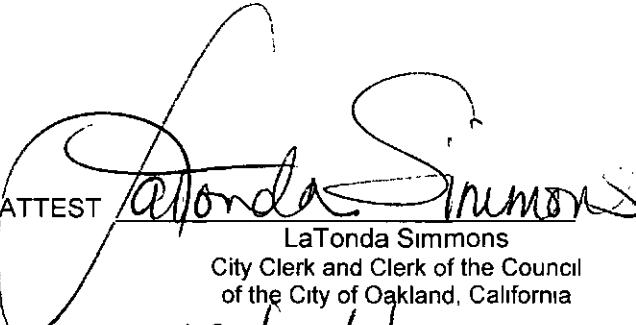
**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAP, and PRESIDENT KERNIGHAN - 7

NOES- 0

ABSENT- 0

ABSTENTION- Brooks-1

ATTEST   
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Introduction Date  
DEC 09 2014

DATE OF ATTESTATION 12/16/14

## NOTICE AND DIGEST

### **ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE, WITHOUT RETURNING TO THE CITY COUNCIL, AN AMENDMENT TO THE LEASE BY AND BETWEEN THE CITY AND PORT OF OAKLAND FOR BERTH 9 DATED JUNE 28, 2013 TO EXTEND THE TERM UP TO MARCH 2020, EXPAND THE USE AND LEASE PREMISES, AND INCLUDE ADDITIONAL RELATED AMENDMENTS**

The City currently has an interim lease with the Port of Oakland for Berth 9. This ordinance authorizes the City Administrator to negotiate and execute an amendment to the lease for the Berth 9 premises, and if necessary include additional related amendments, to enable the following actions:

- (1) Extension of the lease term to March 2020
- (2) Expansion of the lease premises
- (3) Expansion of the allowable uses on the lease premises