

PORT ORDINANCE NO. 4858

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDED AND RESTATED NON-EXCLUSIVE PREFERENTIAL ASSIGNMENT AGREEMENT WITH EAGLE ROCK AGGREGATES, INC., FOR A BULK MARINE TERMINAL OF APPROXIMATELY 18 ACRES OF LAND AND 3 ACRES OF WATER AT BERTHS 20-22, WHICH (A) EXTENDS EACH OF THE INITIAL AND MAXIMUM TERMS BY TWO YEARS TO A MAXIMUM OF 29 YEARS; (B) RESULTS IN PRESENT VALUE FIXED REVENUE OF APPROXIMATELY \$37.2 MILLION AND TOTAL REVENUE OF APPROXIMATELY \$54.6 MILLION DURING THE INITIAL TERM; AND (C) COMPARED TO THE CURRENT AGREEMENT, RESULTS IN (I) PRESENT VALUE REVENUE LOSS OF \$7.7 MILLION DURING THE INITIAL TERM COMPARED TO THE CURRENT AGREEMENT, AND (II) ADDITIONAL CAPITAL EXPENDITURE OF \$2.6 MILLION TO IMPLEMENT CERTAIN IMPROVEMENTS DURING THE INITIAL TERM; AND FINDING THAT THE PROPOSED ACTION COMPLIES WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AS ANALYZED IN THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT TO THE 2002 OAKLAND ARMY BASE AREA REDEVELOPMENT PLAN ENVIRONMENTAL IMPACT REPORT.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item No. 6.2 dated July 9, 2026, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, on February 24, 2022, the Board approved a Non-Exclusive Preferential Assignment Agreement ("NEPAA") with Eagle Rock Aggregates, Inc. ("ERA"), effective July 1, 2022, which provided for ERA's development and operation of a new 18-acre bulk marine terminal at Berths 20-22 (the Project); and

WHEREAS, subsequently, the West Oakland Environmental Indicators Project ("WOEIP") filed suit against the Port and ERA regarding the adequacy of the environmental review for the Project, a suit that the People of the State of California ("People") later joined; and

WHEREAS, the Port, WOEIP, the People, and ERA agreed to enter into a settlement agreement to resolve the litigation ("Settlement"). In accordance with the terms of the Settlement, the Port approved an Amended and Restated NEPAA, which revised various terms, including re-setting the start of the term to July 1, 2023; and

WHEREAS, since 2022 ERA has diligently worked to obtain the necessary regulatory permits to take possession and begin operations and still awaits issues of the permit from the Bay Area Air District, which lengthy delay has increased the costs for the project; and

WHEREAS, the Port and ERA have negotiated terms to address the delay and account for the increased costs incurred and expected to be incurred by both the Port and ERA which terms need to be memorialized in a Second Amended and Restated NEPAA ("Second A&R NEPAA"); 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 as follows:

SECTION 1. The Board hereby finds and determines the proposal to authorize the Executive Director to finalize and execute a Second A&R NEPAA for Berths 20-22 with ERA was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"); the proposed Second A&R NEPAA is consistent with the Supplemental Environmental Impact Report ("SEIR") for the ERA, Oakland Terminal Project, State Clearing House No. 2001082058, certified by the Board on December 16, 2021.

SECTION 2. The Board further finds and determines as follows:

A. The Premises were part of tide and submerged State lands granted in trust to the City of Oakland ("City") by the California Legislature pursuant to Chapter 654 of the Statutes of 1911 ("1911 Act"); and

B. The 1911 Act entrusts such lands to the City for the express trust purpose of managing, administering, developing, and operating wharves, docks, piers, slips, quays, and other utilities, structures, and appliances necessary or convenient for the promotion of commerce and navigation and authorized the City to lease such lands for purposes consistent therewith. The lands granted in the 1911 Act were part of the original as well as the current "Port Area" as defined in Section 725 of the City Charter; and

C. Section 706 of the 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 manage, administer, operate, and promote the development and construction of all water front properties including piers, wharves, sea walls, docks, and other improvements; and

D. With the departure of Outer Harbor Terminal, LLC ("OHT") from Berths 20-26 in the spring of 2016, portions of the Premises were being under-utilized; and

E. The proposed Second A&R NEPAA will (i) provide for the development and operation of a bulk aggregate terminal consistent with the Port's duty to manage and administer the Premises in accordance with purposes of the 1911 Act and of Section 706 of the City Charter, (ii) maximize the use of the Port's existing "facilities" (as used in Section 717(1) of the City Charter), (iii) increase revenue, job creation, and small business growth, and (iv) price Port services to provide highly competitive value; and

F. The proposed Second A&R NEPAA is an opportunity for the Port with respect to revenue generation and portfolio diversification. Further, the proposed NEPAA would result in much-needed construction materials coming through the Port, all of which will be used for local and regional

construction projects that support housing, the local economy, and local jobs, while also eliminating lightering activities at anchorage sites within the San Francisco Bay.

SECTION 3. The Board hereby approves and authorizes the Executive Director to:

A. Execute on behalf of the Board the Second A&R NEPAA with ERA to use and occupy the Premises as a bulk aggregate terminal in accordance with the following key terms and conditions as further described in the Agenda Report:

- Term: The initial term of the NEPAA to be extended by two years with a commensurate shift of each option to maintain the same extended terms; where the initial term would expire on June 30, 2037, and the extended terms would expire on June 30, 2047, and June 30, 2052;
- Rent Abatements: The Second A&R NEPAA would shift rent abatements, minimum annual guarantee, and fixed rent payments by two years, with the credit for rent paid by ERA in Fiscal Years (July 1 through June 30) ("FY") 2025 and 2026 to the fixed rent owed to the Port in FY's 2027 and 2028, respectively with variable revenue anticipated in in FY 2028;
- Port Reimbursement: Increase the Port's reimbursement to ERA for its shore power improvements, from \$7.2 million to \$8.75 million, which improvements the Port will own following installation;
- Security Deposit: FY 2027 and FY 2028 security deposit will stay flat to the FY 2026 amount and will then increase to be equal to three month's rent thereafter;
- Relocation Analysis: The Port's deadline to complete a Relocation Analysis to evaluate the potential relocation of ERA's berth (to Berths 20-21 from Berth 22) and shift the Port's earliest right to relocate the berth by two years, to July 1, 2037.

B. Make such additions, modifications, or corrections as necessary to implement the Second A&R NEPAA or to correct errors, subject to the limitations set forth herein and 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.

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 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, July 9, 2026.
Passed to print for one day by the following vote: Ayes: Commissioners Dominguez Walton, Leslie, Martinez, Muhammad, Myres, Wong, and President Cluver - 7. Noes: 0.

Daria Edgerly,

Secretary of the Board