

PORT ORDINANCE NO. 4769
ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE A THIRD SUPPLEMENT TO THE NON-
EXCLUSIVE PREFERENTIAL ASSIGNMENT AGREEMENT WITH
TRAPAC, LLC FOR THE BERTHS 25-33 MARINE TERMINAL
TO EXTEND TRAPAC'S DEADLINE TO DEPLOY CERTAIN
DIESEL-ELECTRIC HYBRID RETROFITTED EQUIPMENT AND
FINDING THE PROPOSED ACTION IS EXEMPT UNDER THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 6.2, dated September 26, 2024, 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, 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; and

WHEREAS, in October 2016, the Board approved a Non-Exclusive Preferential Assignment Agreement ("NEPAA" or "Lease") with TraPac, LLC ("TraPac") for a 14-year initial term, pursuant to which TraPac expanded its then-existing terminal at Berths 30-32 into Berths 25, 26, and portions of Berths 24 and 33; and

WHEREAS, in September 2017, the Board approved the First Supplement to the Lease to modify compensation to reflect a higher investment deduction and make various other changes to capital improvement deadlines and maintenance obligations. The initial term of the Lease expires June 30, 2030; and

WHEREAS, in April 2023, the Board approved the Second Supplement to the Lease, which among other things outlined the terms by which TraPac is required to deploy seven hybrid rubber tire gantry cranes (RTGs), of which three are retrofits from diesel to diesel-electric by June 30, 2024, and also provided the Executive Director limited authority to extend the June 30, 2024 deadline; and

WHEREAS, the Executive Director exercised his limited authority to extend the June 30, 2024, deadline until December 31, 2024; and

WHEREAS, TraPac and the Port have been discussing an extension beyond December 31, 2024, deadline due to ongoing procurement related delays; and

WHEREAS, TraPac and the Port have negotiated terms of the proposed second supplement to the NEPAA to address the foregoing issues;

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 the following:

A. This action was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the CEQA Guidelines. This project is categorically exempt pursuant to Section 15301, Existing Facilities, which exempts from CEQA the leasing of existing facilities involving negligible or no expansion of existing or former use. No further review is required under CEQA.

B. The respective premises for the NEPAA is subject to the California tidelands trust doctrine as developed by common law, California legislative acts, and case law (collectively, the "Tidelands Trust") and are part of the "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 promote the development, construction, and operation of all waterfront properties including piers, wharves, sea walls, docks, and other improvements; and

D. The proposed amendments are consistent with the Port's duty to use and manage Port property in accordance with the Tidelands Trust, and the private use of Port property pursuant to these amendments will not interfere with the Tidelands Trust.

SECTION 2. The Board hereby authorizes the Executive Director of the Port ("Executive Director") to:

A. Execute on behalf of the Board the proposed third supplement to the NEPAA in accordance with the following terms and conditions, as further set forth in the Agenda Report:

1. Trapac must place into service three (3) retrofitted rubber-tired gantry cranes (RTGs) from diesel to hybrid diesel-electric ("Retrofit RTGs") by March 31, 2025; and

2. The Port's reimbursement obligation is extended commensurate with the deadline by which TraPac must place into service the Retrofit RTGs.

B. Make such additions, modifications, or corrections as necessary to implement the amendments 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 and is approved as to form and legality by the Port Attorney.

SECTION 3. 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 separate written agreements are 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 4. 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 26, 2024. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Dominguez Walton, Leslie, Martinez, Myres, and President Colbruno - 6. Noes: 0.

Daria Edgerly,

Secretary of the Board