

PORT ORDINANCE NO. 4727

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AMENDMENTS TO THE NON-EXCLUSIVE PREFERENTIAL ASSIGNMENT AGREEMENTS WITH SSA TERMINALS (OAKLAND), LLC FOR OAKLAND INTERNATIONAL CONTAINER TERMINAL (BERTHS 55-60) TO (A) EXTEND THE DEADLINE BY WHICH THEY MUST COMPLETE CERTAIN DEFERRED PAVEMENT MAINTENANCE; (B) CORRECT AN ERROR IN THE AGREEMENTS REGARDING THE PORT'S REIMBURSEMENT FOR CRANE REMOVAL WORK; AND FINDING THAT 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. 6.4, dated November 9, 2023, 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, the Non-Exclusive Preferential Assignment Agreements with SSA Terminals (Oakland), LLC for Oakland International Container Terminal (Berths 55-60) were last amended as of October 1, 2021 ("Prior Amendments"); and

WHEREAS, those Prior Amendments required SSAT to perform certain pavement maintenance by June 30, 2025, work that was delayed due to congestion on the marine terminals from 2020-2022; and

WHEREAS, SSA requested, and staff does not object to a two-year extension of the time to perform the pavement maintenance; and

WHEREAS, in the course of discussing the proposed extension of the pavement maintenance work, Port staff identified an error regarding reimbursement as between the parties; and

WHEREAS, to effectuate the proposed extension and typographical errors all of the following agreements must be executed: (a) 11th Supplemental to the Lease for B55-56, (b) 7th Supplement to the Lease for B57-59 (which, since 2018, also includes Berth 60), and (c) 1st Supplement to the Second Amended and Restated Agreement Regarding Combined Compensation at the OICT (ARCC);

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 (a) 11th Supplemental to the Lease for B55-56, (b) 7th Supplement to the Lease for B57-59 (which, since 2018, also includes Berth 60), and (c) 1st Supplement to the Second Amended and Restated Agreement Regarding Combined Compensation at the OICT (ARCC) in accordance with the following terms and conditions, as further set forth in the Agenda Report:

1. SSA shall have until June 30, 2027 to perform pavement maintenance as set forth in the Lease for B55-56 and the Lease for B57-59.

2. Phases of completion in the ARCC shall be as set forth in the 1st Supplement to the Second Amended and Restated ARCC.

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, November 9, 2023. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Colbruno, Dominguez Walton, Lee, Martinez, Myres, and President Leslie - 7. Noes: 0.

Daria Edgerly,

Secretary of the Board