

PORT ORDINANCE NO. 4422

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE  
DIRECTOR TO ENTER INTO AN APPROXIMATELY 13-MONTH  
SPACE ASSIGNMENT WITH TRAPAC, LLC FOR APPROXIMATELY  
24-ACRES AT BERTH 24 FOR A MONTHLY RENT OF  
\$0.205/SF/MONTH AND \$0.010/SF/MONTH LIGHTING-  
RELATED CHARGES.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.4, dated May 18, 2017 (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; 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. In October, 2016, the Port and TraPac, LLC ("TraPac") entered into a Non-Exclusive Preferential Assignment Agreement (the "Lease") for an expanded marine terminal referred to as Berths 25-33; and

B. The Lease obligates TraPac to design and construct certain improvements within the first 12 to 48 months of the Lease; and

C. In order to continue terminal operations during construction, TraPac has requested to lease approximately 24 acres of the adjacent uplands at Berth 24 through June 30, 2018, TraPac's anticipated completion date for its construction work; and

D. In connection with the 24 acres at Berth 24, TraPac also requested that the Port agree to modify its standard form of environmental conditions to be consistent with the principles the Port agreed to in the environmental exhibit to the Lease and that the Port waive its requirement for a security deposit; and

E. Port staff have negotiated an agreement with TraPac based upon the Port's form of Space Assignment whereby TraPac will pay rent of \$0.205/square foot per month plus an additional \$0.010 per square foot per month for lighting-related charges for a fixed term from June 1, 2017 to June 30, 2018. TraPac shall have no right to terminate the Space Assignment early and shall pay rent as stated in this Subsection E for the entire term of the Space Assignment without regard to an early surrender and vacation of such 24 acre premise. However, TraPac may elect to vacate the entire premises prior to June 30, 2018 if it provides the Port with 30-days' prior written notice of vacation and TraPac surrenders

and completely vacates the premises on or before the expiration of such 30-days' written notice. In the event TraPac vacates the premises as stated herein, TraPac shall continue to pay the Port rent for the remainder of the term, but TraPac would not have to pay the lighting-related charges for those months between the expiration of the 30-days' notice and June 30, 2018; and

F. Port staff are also willing to modify Section 7 (Limitation of Liability and Indemnity) and Section 8 (Responsibility for Toxic Materials) of the standard form of environmental exhibit to be consistent with the Lease provided that TraPac expressly agrees not to (i) conduct any excavation on the proposed premises that would breach the surface and expose underlying soil, and (ii) otherwise excavate any soil from the premises; and

G. TraPac's current circumstance is unique, and the proposed changes to the environmental exhibit to the Space Assignment would result in a minimal increase to the Port's exposure to claims for pre-existing contamination because TraPac would be prohibited from performing any excavation or similar work that could cause a breach or disturbance to the soil unless the Port explicitly agrees to such work, and if TraPac performs such prohibited activities, TraPac would be directly responsible for any environmental costs resulting from such prohibited activities; and

H. For the reasons stated in this ordinance, the Agenda Report, and other information received by the Board, the Board hereby finds and determines that the proposed approximately 13-month Space Assignment with TraPac is in the Port's best interest; and

I. The Board further finds and determines that the proposed 13-month Space Assignment with TraPac for approximately 24 acres of uplands at Berth 24 was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. The proposed Space Assignment is categorically exempt from CEQA pursuant to Section 15301 Existing Facilities, which includes the operation of existing facilities. The proposed modification to the Space Assignment environmental provisions to conform with the environmental terms of the Lease will not result in a physical change to the environment and thus this action is also exempt from CEQA pursuant to Section 15061(b)(3).

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the proposed 13-month Space Assignment with TraPac subject to the following key terms:

- Term: Approximately thirteen (13) months, from June 1, 2017 to June 30, 2018, and TraPac shall have no right to terminate the Space Assignment early;
- Premises: approximately twenty-four (24) acres uplands at Berth 24;

- Rent: \$0.205/sf/month, plus an additional \$0.010/sf/month for lighting-related charges. TraPac shall pay rent for the entire term of the Space Assignment without regard to any early surrender or vacation of the premises by TraPac, but if TraPac gives the Port 30-days' written notice of its intent to vacate the premises early and thereafter completely vacates the premises, TraPac will not be required to pay lighting-related charges for those months following the expiration of the 30-days' notice and ending on June 30, 2018 that TraPac does not use and occupy the premises;
- Security Deposit: waived;
- Environmental Exhibit: Section 7 and Section 8 to the environmental exhibit may be modified to be consistent with the Lease as described in this Ordinance and the Agenda Report.
- No Disturbance of Soil: TraPac will be prohibited from performing any excavation or similar work that could cause a breach or disturbance to the soil on the premises unless the Port explicitly agrees to such work in writing.

The Executive Director is further authorized to make minor amendments to the Space Assignment consistent with the intent of this ordinance and 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 Board. 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.

The Board of Port Commissioners, Oakland, California, May 18, 2017.  
Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Hamlin, Martinez, Story, Yee and President Colbruno - 6.  
Excused: Commissioner Butner - 1. Noes: 0.

John T. Betterton  
Secretary of the Board