

PORT ORDINANCE NO. 4455

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A THIRD AMENDMENT TO TEMPORARY RENTAL AGREEMENT WITH O.C. JONES AND SONS, INC. TO EXTEND THE TERM THROUGH JUNE 30, 2018 FOR APPROXIMATELY 6 ACRES OF VACANT LAND BY 7TH STREET AND OLD NAVY ROAD, OAKLAND, CALIFORNIA.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.5, dated November 30, 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. O.C. Jones and Sons, Inc. ("OC Jones") has been using and occupying long, narrow strip of approximately 6 acres (the "TRA Area") of vacant land located between northwesterly boundary of the 7th Street and old Navy Road rights of way and the easterly boundary of the Berths 25-33 premises used by TraPac, LLC ("TraPac") pursuant to a Non-Exclusive Preferential Assignment Agreement ("NEPAA") entered into with the Port in October, 2016 ("Premises").

B. The TraPac NEPAA requires TraPac to design and construct certain improvements to portions of TraPac's Premises, and OC Jones is TraPac's general contractor for such construction work.

C. Due to the location of the TRA Area, the TRA Area has limited utility or revenue generation potential associated with alternative purposes, and in consideration of the terms and conditions of the NEPAA, the Port entered into a temporary rental agreement ("TRA") with OC Jones granting OC Jones a temporary right to use the TRA Area for a laydown site in connection with Phase 1 of TraPac's improvements; and

D. The Port and OC Jones have amended the TRA two separate times to slightly expand the TRA Area and extend the term of the TRA; and

E. The Port and OC Jones now wish to further amend the TRA to reduce the TRA Area back to its original approximately 6 acres, extend

the term of the TRA to June 30, 2018, and modify other terms and conditions of the TRA for OC Jones to perform Phase 2 of TraPac's improvements; and

F. The proposed amendment to the TRA with OC Jones (the "Third Amendment") will therefore include the following terms:

- i. Premises: the original TRA Area consisting of approximately 6 acres of a long, narrow strip of vacant land located between northwesterly boundary of the 7th Street and old Navy Road rights of way and the easterly boundary of the TraPac Premises;
- ii. Extension Term: December 28, 2017 to June 30, 2018;
- iii. Monthly Rent: no charge in consideration of the terms and conditions of the TraPac NEPAA;
- iv. Proposed Use of the Premises: construction laydown, subject to Port rules, including, without limitation, the Port's soil management and environmental protocols;

G. The Board further finds and determines that the proposed Third Amendment to the TRA with OC Jones is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, Article 19, Section 15301, Existing Facilities, which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that existing.

H. 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 water front properties including piers, wharves, sea walls, docks, and other improvements.

I. The proposed Third Amendment is consistent with the terms and conditions of the TraPac NEPAA and will facilitate TraPac's construction and completion of valuable improvements pursuant to the NEPAA; and

J. The proposed Third Amendment is consistent with the Port's duty to use and manage Port property in trust for the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the First Amendment will not interfere with the Tidelands Trust.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the proposed Third Amendment with OC Jones and to make minor amendments thereto consistent with the intent of the Board as

described in the Agenda Report and this ordinance, 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, November 30, 2017. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Cluver, Colbruno, Hamlin, Martinez, Yee and President Story - 7. Noes: 0.

Daria Edgerly
Secretary of the Board