

PORT ORDINANCE NO. 4478

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO AMEND (1) THE NON-EXCLUSIVE PREFERENTIAL ASSIGNMENT AGREEMENTS ("NEPAAs") WITH SSA TERMINALS (OAKLAND), LLC FOR THE OAKLAND INTERNATIONAL CONTAINER TERMINAL, BERTHS 55-59; (2) THE NEPAA WITH SSA TERMINALS, LLC FOR THE MATSON TERMINAL, BERTHS 60-63; AND (3) THE AGREEMENT REGARDING COMBINED COMPENSATION AT BERTHS 55-56 AND BERTHS 57-59 MARINE TERMINALS WITH SSA TERMINALS (OAKLAND), LLC.

WHEREAS, SSA Terminals (Oakland), LLC ("SSAT Oakland") operates Berths 55-56 and Berths 57-59 for international cargo as a single terminal (called the "Oakland International Container Terminal" or "OICT") pursuant to two separate non-exclusive preferential assignment agreements (each a "NEPAA") that both expire on June 30, 2022 and that certain Agreement Regarding Combined Compensation ("ARCC") dated for reference purposes as of January 1, 2015; and

WHEREAS, SSA Terminals, LLC also operates Berths 60-63 (the "Matson Terminal") for domestic cargo (including automobiles) under a third NEPAA that will also expire on June 30, 2022; and

WHEREAS, the Port and SSAT Oakland and SSA Terminals, LLC (together with SSA Terminals, LLC, referred to collectively as "SSAT") have negotiated certain amendments to the NEPAA in connection with compensation, capital improvements, and other provisions as described in the Agenda Report; and

WHEREAS, the Board has reviewed and evaluated Agenda Report Item No. 6.8 (the "Agenda Report") to the Agenda of the May 24, 2018 regular meeting of the Board of Port Commissioners (the "Board") and related agenda materials, has received the expert testimony of 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.

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. The respective premises for the two NEPAAs for OICT and for the NEPAA for the Matson Terminal are each 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

B. 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; and

C. The terms and conditions of the proposed amendments to the NEPAAs for OICT, the NEPAA for the Matson Terminal, and to the ARCC are summarized in Exhibit A, attached to this Ordinance, but include the following highlights:

- The effective date of each of the amendments will be July 1, 2018, and the term of each amendment will be extended to June 30, 2027 with an automatic further extension to June 30, 2032 if the Port removes the tax-exempt debt restrictions currently encumbering those premises. There is a single 10-year right to further extend the term of each agreement to June 30, 2042 upon mutual agreement of the parties and approval by the Board;

- The 19-acre area currently assigned to OICT from the Matson Terminal on a temporary basis will be fully incorporated into the OICT premises for the remaining term of the OICT NEPAAs, thereby expanding the combined OICT premises to approximately 290 acres;

- 14-acres in the Roundhouse area that the Port currently rents to the Matson Terminal on a short-term basis will be fully incorporated into the Matson Terminal NEPAA for the remaining term of that NEPAA;

- For the OICT premises only, the Port will waive its right to a January 2017 Fair Market Value adjustment, but the compensation rates will increase by 7% in 2022 and 8% in 2027. The compensation rates for the Matson Terminal will increase in the same years as OICT's rates increase but will be based on a combination of valuation factors, including, without limitation, the Consumer Price Index;

- SSAT will take over the performance and payment of all pavement maintenance during the remaining term of each NEPAA, and the Port will reimburse SSAT up to a combined total of \$8.7 million through June 2025 for certain deferred maintenance expenses;

- SSAT's pay-back schedule for raising four Port-owned cranes at OICT would be extended from 2022 through 2027, with no interest. The interest that would be foregone is estimated at approximately \$2.8 million (about \$700,000 per crane);

- Whenever the Port removes an excess Port-owned crane from the OICT premises, SSAT's compensation rates will decrease based on a valuation factor described in the OICT NEPAAs;

- The Port will grant SSAT a right of first negotiation for Berths 20-24 for a 4-year period beginning in 2019, following the expiration of another tenant's first right of negotiation for that same area. The key terms and conditions of SSAT's right of first negotiation are substantially the same as and consistent with those of the other tenant;

- SSAT is required to undertake certain environmental initiatives to promote, in particular but not limited to, improvements to air quality at OICT and the Matson Terminal. Exhibit B, attached to this Ordinance, summarizes the air quality section of the Environmental Exhibit to each of the NEPAAs. Also, SSAT has applied for a \$5 million grant from the Bay Area Air Quality Management District ("**BAAQMD**") to retrofit 13 rubber tired gantry cranes at OICT with hybrid electric technology, which would result in significant emissions reductions. Staff believes the likelihood of SSAT being awarded the grant is high; however, BAAQMD is not expected to vote on the award until after the Board's consideration of this Ordinance.

D. The terms and conditions of the proposed amendments to the NEPAAs for OICT, the NEPAA for the Matson Terminal, and to the ARCC will benefit the Port by, among other things: (i) locking in at competitive rates a minimum of five additional years at OICT and the Matson Terminal, with an additional ten years to be locked in after the Port resolves certain debt constraints; (ii) provide further revenue certainty to the Port by locking in rate increases in 2022 and 2027, respectively; (iii) increasing fixed rent at OICT; (iv) providing for investments in raising existing Port-owned cranes as well as investments in new cranes; (v) providing for equal sharing of the cost of removing any excess Port-owned cranes; (vi) transferring to SSAT the responsibility to pay for and perform pavement maintenance at an estimated \$1.5 million saving to the Port per year; (vi) facilitating the development and upgrade of certain Port improvements at the OICT premises which will be beneficial to the Port as well as to the interests of commerce and navigation, and (vii) providing the Port with greater assurances for the development and operation of a more modern and maritime container terminal at OICT consistent with the Port's duty to manage and administer the Premises in accordance with the purposes of the Tidelands Trust and of Section 706 of the City Charter; and

E. 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 further finds and determines as follows:

A. The proposed amendments to the NEPAAs for OICT, the NEPAA for the Matson Terminal, and to the ARCC were reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines.

B. The proposed amendments to the NEPAAs for OICT, the NEPAA for the Matson Terminal, and to the ARCC are categorically exempt from CEQA pursuant to Section 15301(p) of the Port CEQA Guidelines, which exempts

renewals, extensions or amendments to leases or license and concession agreements or the execution of 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 previously existing. Therefore, this action is not subject to CEQA and no environmental review is required.

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

A. Execute on behalf of the Board the proposed amendments to the NEPAAs for OICT, the NEPAA for the Matson Terminal, and to the ARCC in accordance with the key terms and conditions highlighted in Section 1.C and further described in Exhibit A to this Ordinance and with the air quality provisions described in Exhibit B to this Ordinance.

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.

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 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.

The Board of Port Commissioners, Oakland, California, May 24, 2018.
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

Exhibit A

Terms and Conditions of the Proposed Amendments to the NEPAAs for OICT, the NEPAA for the Matson Terminal, and the ARCC

Oakland International Container Terminal Berths 55-59

	Description
Effective Date of Amendment	<ul style="list-style-type: none">7/1/2018
Lease Term & Options to Extend	<ul style="list-style-type: none">Extension from 6/30/22 through 6/30/27 upon execution of amendment.Automatic 5-year extension thru 6/30/32 if/when Port resolves debt-related matters.Then, one 10-yr option to extend thru 6/30/42 if parties reach mutual agreement on compensation and related terms. To exercise option, SSAT must notify the Port no less than 18 months in advance of 6/30/32. Negotiations must be completed (terms agreed upon) by 12/31/31 (i.e., 6 months prior to expiration) or option to extend becomes null and void.
Rent Escalations	<ul style="list-style-type: none">Port to waive 1/1/17 FMV.7% increase to All-Inclusive Throughput Rate and the Overage All-Inclusive Throughput Rate on 1/1/22.8% increase to All-Inclusive Throughput Rate and the Overage All-Inclusive Throughput Rate on 1/1/27.Breakpoint (BP) for variable rent increases to 696,663 full TEUs because of acreage change.
Maintenance	<ul style="list-style-type: none">SSAT takes over payment and performance of all pavement/paver/runway maintenance effective 7/1/18.However, Port provides SSAT with \$8m maximum reimbursement for certain pavement work. Reimbursement is “use it or lose it,” capped at \$1.5m/year AND \$8m over 8 years. No reimbursement after 6/30/25. Reimbursement based on receipt of invoices/documentation of costs incurred by SSAT and will be made within 90 days of Port’s receipt of a complete invoice with supporting documentation.Port has step-in rights to complete the work at SSAT’s cost if the pavement work is not completed by SSAT by 6/30/25.

Crane Raising	<ul style="list-style-type: none"> • Terms of Third Amendment are in effect for SSAT to raise 4 Port-owned cranes, but further clarified as follows: <ul style="list-style-type: none"> ○ Any balance on crane payback will be re-amortized through 6/30/27. ○ SSAT pays 0% interest to Port. ○ SSAT can pre-pay w/o penalty at any time.
Crane Purchase	<ul style="list-style-type: none"> • SSA commits to buying and placing 3 new cranes into service at OICT by 12/31/2020, at its sole cost. • SSAT to pay for and perform all maintenance on cranes it purchases ("New SSAT Cranes"). • Port has right of first offer if SSAT intends to remove New SSAT Cranes from premises, which SSAT is not obligated to accept. If Port does not purchase any New SSAT Cranes, then SSAT must remove New SSAT Cranes from premises at its sole cost unless parties agree otherwise. • If any New SSAT Crane is removed as a result of lease termination (as opposed to during term of the lease), then SSAT will remove New SSAT Crane no later than 90 days after lease termination date. • Prior to purchase of New SSAT Cranes, SSAT shall notify the Port whether or SSAT wants to designate a Port-owned crane(s) as excess (Excess Port Crane(s)). SSAT may designate up to 3 Excess Port Cranes when SSAT places the order for New SSAT Cranes: <ul style="list-style-type: none"> ○ Port must relocate and/or demolish a Port Excess Crane(s) from the premises by 12/31/2021. ○ SSAT shall reimburse Port the 50% of the Port's costs to relocate/demolish the Excess Port Crane(s), up to \$425k/crane; SSAT can pay its share over time at an interest rate of 5%. ○ When the New SSAT Cranes are fully operational and placed into routine service: <ul style="list-style-type: none"> ▪ Port to reduce All-Inclusive Throughput Rates by 1.1% for each crane (up to 3) designated as an Excess Port Crane(s) by SSAT. ▪ Until Excess Port Crane(s) is removed, SSAT has the right to use an Excess Port Crane(s) at no cost to SSAT, if SSAT performs and pays for all maintenance on such cranes.
Temporary Assignment of "Auto Lot" from Matson Terminal to OICT B57-59	<ul style="list-style-type: none"> • Acreage to be incorporated into OICT lease with BP/ MAG adjusted to reflect the expanded area as of the Effective Date, through the lease term with no reversion rights. • Acreage of this auto lot is approx. 19 acres.

Use of Matson Terminal for “Overflow” Vessels	<ul style="list-style-type: none"> Any cargo on a non-Matson vessel (vessel not operated, owned, or leased by Matson) that is served at Matson terminal shall be counted toward OICT.
Berths 20-24	<ul style="list-style-type: none"> SSAT has right of first negotiation from 7/1/19 through 6/30/23 (4 years after another tenant’s right of first negotiation expires).
Truck RFID Data	<ul style="list-style-type: none"> SSA to provide Port with in-gate and out-gate RFID data for all gate complexes through term of lease.
Bunkering	<ul style="list-style-type: none"> Bunkering revenues are exempt from the 50% sharing provisions of secondary use.
Handback	<ul style="list-style-type: none"> Addition of “handback” provision to require Port and SSAT to perform a joint inspection no less than one year prior to end of lease term, or termination of lease, to determine condition of the premises and deferred maintenance. Any repairs and/or deferred maintenance identified, which is the responsibility of SSAT, must be completed 90 days prior to the end of the lease term or date of termination.
Lease Guarantee	<ul style="list-style-type: none"> SSAT to provide Port with an Irrevocable Letter of Credit (the “LOC”) in the amount of 5 months’ rent. LOC shall be adjusted to reflect any increases to rent.
Air Quality	<ul style="list-style-type: none"> The “Environmental Responsibilities” Exhibit has been updated to include updated Air Quality requirements for OICT. The new provisions require OICT to comply with current and future Federal and State laws. OICT shall also adhere to current and future Port requirements including the Maritime Air Quality Improvement Plan (MAQIP). Lastly, OICT is committed to use best efforts to apply for grants to reduce emissions from yard equipment, work with the Port to test new technologies to enhance efficiency and emission reduction, and continue to work closely with the Port to inventory emissions from existing equipment and develop strategies for low to zero emission implementation.

Matson Terminal Berths 60-63

	Description
Effective Date of Amendment	<ul style="list-style-type: none"> • 7/1/2018
Lease Term & Options to Extend	<ul style="list-style-type: none"> • Extension from 6/30/22 through 6/30/27 upon execution of amendment. • Automatic 5-year extension thru 6/30/32 if/when Port resolves debt-related matters. • Then, one 10-yr option to extend thru 6/30/42 if parties reach mutual agreement on compensation and related terms. To exercise option, SSAT must notify the Port no less than 18 months in advance of 6/30/32. Negotiations must be completed (terms agreed upon) by 12/31/31 or option to extend becomes null and void.
Rent Escalations	<ul style="list-style-type: none"> • "Land value" increases every 5 years starting; starting with 1/1/22 FMV adjustment, new methodology is in effect. • "Improvement value" increases 7% on 1/1/22 and 8% on 1/1/27, consistent with OICT increases. • Breakpoint (BP) for variable rent increases to 203,463 full TEUs because of acreage change. • All-Inclusive Throughput Rate of \$48.69 increases 7% on 1/1/22 and 8% on 1/1/27 for cargo above the BP.
Roundhouse Space Assignment	<ul style="list-style-type: none"> • Approximately 13 acres of the Roundhouse property to be incorporated into terminal. • BP/MAG adjusted to reflect the reduced acreage effective 7/1/18, through the effective lease term with no reversion rights. • Net terminal acreage change is approximately 5 acres.
Removal of "Auto Lot" from Matson Terminal Premises	<ul style="list-style-type: none"> • Acreage of subject area is 19 acres. • See above for OICT; auto lot removed from Berth 60-63 and incorporated into OICT leasehold.
Use of Matson Terminal for "Overflow" Vessels	<ul style="list-style-type: none"> • Any cargo on a non-Matson vessel (vessel not operated, owned, or leased by Matson) that is served at Matson terminal shall be counted toward OICT.

Maintenance	<ul style="list-style-type: none"> • SSAT takes over payment and performance of pavement/paver/runway maintenance effective 1/1/18. • However, Port provides SSAT with \$650k maximum reimbursement for certain pavement repairs. Reimbursement is “use it or lose it,” capped at \$200k/year and up to \$650k over 8 years. No reimbursement after 6/30/25. • Port has step in rights and will complete the work at SSAT’s cost if the pavement repairs are not completed by 6/30/25.
Truck RFID Data	<ul style="list-style-type: none"> • SSA to provide Port with in-gate and out-gate RFID data for all gate complexes through term of lease.
Bunkering	<ul style="list-style-type: none"> • Bunkering revenues are exempt from the 50% sharing provisions of secondary use.
Handback	<ul style="list-style-type: none"> • Addition of “handback” provision to require Port and SSAT to perform a joint inspection no less than 1 year prior to end of lease term, or termination of lease, to determine condition of the premises and deferred maintenance. • Any repairs and/or deferred maintenance identified, which is the responsibility of SSAT, must be completed 90 days prior to the end of the lease term or date of termination.
Lease Guarantee	<ul style="list-style-type: none"> • SSAT to provide Port with an Irrevocable Letter of Credit (the “LOC”) in the amount of 5 months’ rent. The LOC shall be adjusted to reflect any increases to rent.
Air Quality	<ul style="list-style-type: none"> • The “Environmental Responsibilities” Exhibit has been updated to include updated Air Quality requirements for Matson Terminal. The new provisions require Matson Terminal to comply with current and future Federal and State laws. Matson Terminal shall also adhere to current and future Port requirements including the Maritime Air Quality Improvement Plan (MAQIP). Lastly, Matson Terminal is committed to use best efforts to apply for grants to reduce emissions from yard equipment, work with the Port to test new technologies to enhance efficiency and emission reduction, and continue to work closely with the Port to inventory emissions from existing equipment and develop strategies for low to no emission implementation.

Exhibit B

Summary of Air Quality Provisions

Oakland International Container Terminal Berths 55-59

(a) Air Quality Policy, Maritime Air Quality Improvement Plan (“MAQIP”), and Comprehensive Truck Management Plan (“CTMP”).

By its Resolution No. 08057, the Board adopted its Air Quality Policy and by Resolution No. 09038, the Board approved the MAQIP that guides the Port’s plans and actions with respect to air quality improvements and reduction of health risks. One of the programs described in the MAQIP is the CTMP, which the Board adopted on June 16, 2009, by Resolution No. 09082. The full text of the Air Quality Policy, as stated in Resolution No. 08057, is as follows:

The Board of Port Commissioners affirms that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support and^[1] rights of community, local businesses and workers to clean air and fair working conditions. Therefore, the Board is committed to improving air quality, safety and quality of life for neighboring residents and workers by reducing environmental impacts of Port operations, while fulfilling the Port’s basic obligations to maximize commerce and to provide economic and job opportunities. To these ends, the Board hereby adopts the following policy principles that shall guide the Port’s plans and actions, including the adoption of the Port’s Maritime Air Quality Improvement Plan (“MAQIP”), Comprehensive Truck Management Plan (CTMP) and Early Actions (as defined below).

1. The Port adopts the goal of reducing the health risks to our neighboring communities (expressed as increase in cancer risk) related to exposure of people to diesel particulate matter emissions from Port sources by 85% by the year 2020 through all practicable and feasible means. Reduction will be calculated based on the Port’s 2005 Seaport Emissions Inventory baseline.
2. The Board commits to adopting funding mechanisms, including imposition of fees, to fund air emissions reduction measures. To the maximum extent possible, Port fee revenues shall leverage matching federal, state and private funds. Fees for the purpose of funding the measures shall be evaluated for legality and be enacted to the extent that they do not damage the Port’s or its customers’ market competitiveness.
3. The Port will implement certain air emissions reduction measures prior to the dates that such measures are required by state or federal regulations,

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in order to reduce the duration of people's exposure to emissions that may cause health risks ("Early Actions"). The Port shall implement, beginning in 2008, Early Action measures for the purpose of immediately reducing the impacts of Port-serving trucks and other Port operations on West Oakland and surrounding communities. These measures shall include (a) incentives for Early Action replacement or retrofit of older polluting truck engines, (b) mechanisms for enforcing the prohibitive of Port truck parking or operation on neighborhood streets, including truck registration and tracking and (c) feasible and cost-effective means of reducing ship idling emissions. In order to fund these Early Action measures, the Board will adopt truck or containers fees and apply for matching state and federal funds.

(b) MAQIP 2020 and Beyond Plan.

Tenant acknowledges that the Port is in the process of updating the MAQIP as further described in the Board Agenda Report dated December 14, 2017, entitled "Maritime Air Quality Improvement Plan ('MAQIP') Status Report" which update is expected to be approved by the Board ("MAQIP 2020 and Beyond Plan").

(c) Compliance with Laws.

Tenant shall comply with, and shall require Tenant Representatives, to comply with, at their sole cost and expense, all applicable Environmental Laws, which said Environmental Laws (as defined in the Environmental Ordinance) specifically include the MAQIP and the MAQIP 2020 and Beyond Plan (once adopted by the Board). To the extent that Tenant has a written contract with Tenant Representatives or other Third Parties regarding Tenant Operations, Tenant shall require in such contract that the Representatives or other Third Parties comply with all applicable Environmental Laws regarding air quality and shall notify the Port if Tenant becomes aware of non-compliance with such requirements by Tenant Representatives and shall use best efforts to enforce the requirements. Notwithstanding anything contained herein to the contrary, if an existing Environmental Law (including specifically the MAQIP) or an Environmental Law adopted after the effective date of this Agreement (including specifically the MAQIP 2020 and Beyond Plan once adopted by the Board) contain more stringent air quality requirements than are set forth in this Exhibit, Tenant shall comply with the more stringent requirements in said existing or future Environmental Laws.

(d) Compliance with Port Air Quality Requirements.

To the extent that Tenant operates locomotives, vehicles, vessels, off-road diesel-fuel equipment, cargo handling equipment, or drayage trucks ("Emission Sources"), Tenant shall comply with requirements adopted by the Board (including any maritime tariff requirements) related to these Emission Sources, including any requirement under the MAQIP, MAQIP 2020 and Beyond Plan (once adopted by the Board), and CTMP.

(e) Air Emissions Monitoring and Facilities.

The Port reserves the right to, at any time: 1) install and operate air emissions

monitoring equipment on the Premises; 2) sample and analyze air emissions; and 3) install feasible and practicable air emissions filter facilities or other devices or technologies. The Port shall fully fund and operate any monitoring equipment it chooses to install on the Premises.

(f) Annual Equipment Inventory and Use.

On December 31 of each calendar year during the Term of the Agreement (except for month to- month agreements) starting with December 31, 2018, Tenant shall provide the Port with a written inventory of all equipment used by Tenant on the Premises including, without limitation, cargo-handling equipment, switcher engines, and locomotive engines ("Equipment Inventory"). Tenant shall include in the Equipment Inventory information related to equipment used by Third Parties on the Premises to the extent Tenant has or can practically obtain the information. The Equipment Inventory shall include the estimated hours of use, truck gate counts, lift counts, and fuel usage associated with the equipment.

(g) Annual Meeting Regarding Equipment Inventory and Near Zero and Zero-Emissions Equipment.

Within thirty (30) days of receipt of each of the annual Equipment Inventories (if one is provided pursuant to Section 3(f) above) by the Port, the Port and the Tenant shall meet in good faith to discuss the Equipment Inventory, and evaluate the feasibility and cost-effectiveness of Tenant using near zero and zero-emissions equipment on the Premises.

(h) Least Polluting Emission Sources.

Tenant shall use commercially reasonable efforts to use the least polluting Emission Sources on the Premises, taking into consideration the feasibility and cost-effectiveness of using the least polluting Emission Sources. Upon the Port's request, Tenant shall negotiate in good faith with the Port during the Term to implement new air quality control measures when new technologies or other opportunities arise.

In addition, Tenant shall use commercially reasonable efforts to implement procedures and practices to relieve congestion associated with activities on the Premises, including, but not limited to, extended gate hours, appointment system for gate transactions, and virtual container yards.

(i) Application for Air Quality-Related Grants.

Tenant shall use best efforts to apply for and obtain air quality-related grants to secure funding to: 1) obtain zero-emission Emission Sources for use on the Premises; and 2) construct infrastructure on the Premises to support zero-emission Emission Sources. Port staff shall assist the Tenant with air quality-related grant applications concerning the Premises, as reasonably requested by the Tenant.

In addition, if awarded grant funding from the Bay Area Air Quality Management District to convert rubber tire gantry cranes ("RTGs") on the Combined Premises to hybrid or zero-emission equipment, Tenant shall comply with the terms of any resulting grant

funding agreements and provide the Port with written reports describing Tenant's efforts and progress toward converting the RTGs.

(j) Shore-Power.

Tenant shall fully comply with the California Air Resources Board's "Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in California" regulation, commonly referred to as the At-Berth Regulation. In addition, Tenant shall cooperate with the Port and shall use commercially reasonable efforts to plug in 100% of the shore-power ready vessels to the extent practicable (e.g., to the extent the ship positioning allows it).

(k) Pilot Projects.

Tenant shall use commercially reasonable efforts to participate in pilot projects of new zero-emission marine terminal technologies upon the request of the Port, subject to feasibility.

Matson Terminal Berths 60-63

(a) Air Quality Policy, Maritime Air Quality Improvement Plan ("MAQIP"), and Comprehensive Truck Management Plan ("CTMP").

By its Resolution No. 08057, the Board adopted its Air Quality Policy and by Resolution No. 09038, the Board approved the MAQIP that guides the Port's plans and actions with respect to air quality improvements and reduction of health risks. One of the programs described in the MAQIP is the CTMP, which the Board adopted on June 16, 2009, by Resolution No. 09082. The full text of the Air Quality Policy, as stated in Resolution No. 08057, is as follows:

The Board of Port Commissioners affirms that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support and^[1] rights of community, local businesses and workers to clean air and fair working conditions. Therefore, the Board is committed to improving air quality, safety and quality of life for neighboring residents and workers by reducing environmental impacts of Port operations, while fulfilling the Port's basic obligations to maximize commerce and to provide economic and job opportunities. To these ends, the Board hereby adopts the following policy principles that shall guide the Port's plans and actions, including the adoption of the Port's Maritime Air Quality Improvement Plan ("MAQIP"), Comprehensive Truck Management Plan

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(CTMP) and Early Actions (as defined below).

1. The Port adopts the goal of reducing the health risks to our neighboring communities (expressed as increase in cancer risk) related to exposure of people to diesel particulate matter emissions from Port sources by 85% by the year 2020 through all practicable and feasible means. Reduction will be calculated based on the Port's 2005 Seaport Emissions Inventory baseline.
2. The Board commits to adopting funding mechanisms, including imposition of fees, to fund air emissions reduction measures. To the maximum extent possible, Port fee revenues shall leverage matching federal, state and private funds. Fees for the purpose of funding the measures shall be evaluated for legality and be enacted to the extent that they do not damage the Port's or its customers' market competitiveness.
3. The Port will implement certain air emissions reduction measures prior to the dates that such measures are required by state or federal regulations, in order to reduce the duration of people's exposure to emissions that may cause health risks ("Early Actions"). The Port shall implement, beginning in 2008, Early Action measures for the purpose of immediately reducing the impacts of Port-serving trucks and other Port operations on West Oakland and surrounding communities. These measures shall include (a) incentives for Early Action replacement or retrofit of older polluting truck engines, (b) mechanisms for enforcing the prohibitive of Port truck parking or operation on neighborhood streets, including truck registration and tracking and (c) feasible and cost-effective means of reducing ship idling emissions. In order to fund these Early Action measures, the Board will adopt truck or containers fees and apply for matching state and federal funds.

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Tenant acknowledges that the Port is in the process of updating the MAQIP as further described in the Board Agenda Report dated December 14, 2017, entitled "Maritime Air Quality Improvement Plan ('MAQIP') Status Report" which update is expected to be approved by the Board ("MAQIP 2020 and Beyond Plan").

(c) Compliance with Laws.

Tenant shall comply with, and shall require Tenant Representatives, to comply with, at their sole cost and expense, all applicable Environmental Laws, which said Environmental Laws (as defined in the Environmental Ordinance) specifically include the MAQIP and the MAQIP 2020 and Beyond Plan (once adopted by the Board). To the extent that Tenant has a written contract with Tenant Representatives or other Third Parties regarding Tenant Operations, Tenant shall require in such contract that the Representatives or other Third Parties comply with all applicable Environmental Laws regarding air quality and shall notify the Port if Tenant becomes aware of non-compliance with such requirements by Tenant Representatives and shall use best efforts to enforce the requirements. Notwithstanding anything contained herein to the contrary, if an

existing Environmental Law (including specifically the MAQIP) or an Environmental Law adopted after the effective date of this Agreement (including specifically the MAQIP 2020 and Beyond Plan once adopted by the Board) contain more stringent air quality requirements than are set forth in this Exhibit, Tenant shall comply with the more stringent requirements in said existing or future Environmental Laws.

(d) Compliance with Port Air Quality Requirements.

To the extent that Tenant operates locomotives, vehicles, vessels, off-road diesel-fuel equipment, cargo handling equipment, or drayage trucks ("Emission Sources"), Tenant shall comply with requirements adopted by the Board (including any maritime tariff requirements) related to these Emission Sources, including any requirement under the MAQIP, MAQIP 2020 and Beyond Plan (once adopted by the Board), and CTMP.

(e) Air Emissions Monitoring and Facilities.

The Port reserves the right to, at any time: 1) install and operate air emissions monitoring equipment on the Premises; 2) sample and analyze air emissions; and 3) install feasible and practicable air emissions filter facilities or other devices or technologies. The Port shall fully fund and operate any monitoring equipment it chooses to install on the Premises.

(f) Annual Equipment Inventory and Use.

On December 31 of each calendar year during the Term of the Agreement (except for month to- month agreements) starting with December 31, 2018, Tenant shall provide the Port with a written inventory of all equipment used by Tenant on the Premises including, without limitation, cargo-handling equipment, switcher engines, and locomotive engines ("Equipment Inventory"). Tenant shall include in the Equipment Inventory information related to equipment used by Third Parties on the Premises to the extent Tenant has or can practically obtain the information. The Equipment Inventory shall include the estimated hours of use, truck gate counts, lift counts, and fuel usage associated with the equipment.

(g) Annual Meeting Regarding Equipment Inventory and Near Zero and Zero-Emissions Equipment.

Within thirty (30) days of receipt of each of the annual Equipment Inventories (if one is provided pursuant to Section 3(f) above) by the Port, the Port and the Tenant shall meet in good faith to discuss the Equipment Inventory, and evaluate the feasibility and cost-effectiveness of Tenant using near zero and zero-emissions equipment on the Premises.

(h) Least Polluting Emission Sources.

Tenant shall use commercially reasonable efforts to use the least polluting Emission Sources on the Premises, taking into consideration the feasibility and cost-effectiveness of using the least polluting Emission Sources. Upon the Port's request, Tenant shall negotiate in good faith with the Port during the Term to implement new air

quality control measures when new technologies or other opportunities arise.

In addition, Tenant shall use commercially reasonable efforts to implement procedures and practices to relieve congestion associated with activities on the Premises, including, but not limited to, extended gate hours, appointment system for gate transactions, and virtual container yards.

(i) Application for Air Quality-Related Grants.

Tenant shall use best efforts to apply for and obtain air quality-related grants to secure funding to: 1) obtain zero-emission Emission Sources for use on the Premises; and 2) construct infrastructure on the Premises to support zero-emission Emission Sources. Port staff shall assist the Tenant with air quality-related grant applications concerning the Premises, as reasonably requested by the Tenant.

If the Port secures grant funding to convert Tenant's yard cargo handling equipment fleet to electrically-powered equipment, then the Tenant and the Port shall enter into a subgrant agreement setting forth, among other matters: a) Tenant's obligations to: i) undertake the work required by the grant agreement; ii) comply with the terms of the grant agreement; and iii) provide the Port with written reports describing Tenant's efforts and progress toward converting the yard cargo handling equipment; and b) the Port's obligations to reimburse Tenant for certain of its costs associated with completing the work covered by the grant agreement.

(j) Shore-Power.

Tenant shall fully comply with the California Air Resources Board's "Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in California" regulation, commonly referred to as the At-Berth Regulation. In addition, Tenant shall cooperate with the Port and shall use commercially reasonable efforts to plug in 100% of the shore-power ready vessels to the extent practicable (e.g., to the extent the ship positioning allows it).

(k) Pilot Projects.

Tenant shall use commercially reasonable efforts to participate in pilot projects of new zero-emission marine terminal technologies upon the request of the Port, subject to feasibility.