

PORT ORDINANCE NO. 4485

ORDINANCE AUTHORIZING THE EXTENSION OF (1) A SPACE ASSIGNMENT AGREEMENT WITH TRAPAC, LLC FOR APPROXIMATELY TWENTY-FOUR ACRES, AND (2) A TEMPORARY RENTAL AGREEMENT WITH O.C. JONES AND SONS, INC., FOR APPROXIMATELY SIX ACRES TO SUPPORT TRAPAC'S TERMINAL REDEVELOPMENT, BOTH WITHIN THE OUTER HARBOR TERMINAL, FOR UP TO AN ADDITIONAL NINE MONTHS BEYOND THE CURRENT EXPIRATION OF JUNE 30, 2018, AND RESULTING IN MINIMUM NET REVENUE OF \$788,000.

WHEREAS, the Port and TraPac, LLC ("TraPac") are parties to that certain Berths 25-33 Non-Exclusive Preferential Assignment Agreement dated for reference purposes as of October 27, 2016, as amended by that First Supplemental Agreement (Berths 25-33) dated for reference purposes as of October 13, 2017 (and together referred to herein collectively as the "**NEPAA**"). The NEPAA granted to TraPac a non-exclusive preferential assignment to use approximately 123 acres of land area behind Berths 25-33 and approximately 12.94 acres of water area, together with four Port-owned cranes (collectively the "**Premises**"). The NEPAA will expire on June 30, 2030 unless extended pursuant to the terms of the NEPAA; and

WHEREAS, the NEPAA requires TraPac to develop certain improvements (set forth in Exhibit F of the NEPAA and referred to as the "**Improvements**") on various portions of the Premises, and the NEPAA requires the Port to grant TraPac and its contractors certain rights of entry and use of Port lands in connection with TraPac's actual construction of such Improvements. Accordingly, the Port entered into a no-cost temporary rental agreement ("**TRA**") with O.C. Jones, TraPac's general contractor, to use approximately 6 acres of land outside of the Premises for temporary stockpiling of equipment and excavated materials and as a laydown site for construction; and

WHEREAS, the Port and TraPac also entered into a Space Assignment to allow TraPac to use approximately 24 acres of land adjacent to Berth 24 to minimize disruptions to TraPac's operations (the "**Space Assignment**"); and

WHEREAS, both the TRA and the Space Assignment have been previously approved by the Board, and both agreements are scheduled to expire on June 30, 2018; and

WHEREAS, for various reasons set forth in the Agenda Report, the Port and TraPac desire to extend the term of both the TRA and the Space Assignment, respectively, to and including March 31, 2019; and

WHEREAS, the Board has reviewed and evaluated Agenda Report Item No. 6.3 (the "**Agenda Report**") to the Agenda of the June 28, 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. All the lands subject to the NEPAA, the Space Assignment, and the TRA are 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. If extended to March 31, 2019, all of the terms and conditions of each of the TRA and the Space Assignment would remain in full force and effect except that:

- Starting July 1, 2018, TraPac's monthly rent will increase from \$225,000 per month to \$231,000 per month; and

- The Port will reimburse TraPac the amount of \$136,365 for the cost of performing certain emergency pavement repairs as described in the Agenda Report.

D. Under the terms and conditions of the TRA, once extended, O.C. Jones must continue to follow the Port's soil management and environmental protocols as it relates to material stockpiling, as well as all the other terms and conditions of the TRA. Additionally, if TraPac desires to use the TRA area after October 31, 2018, TraPac will pay the Port Tariff rates (currently approximately \$52,000 per month for 6 acres); and

E. Under the terms and conditions of the current Space Assignment, in addition to the increased monthly rent, TraPac will also

continue to pay the Port a \$0.01 per square foot per month lighting assessment; and

F. The proposed extensions to the TRA and to the Space Assignment 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 that the proposed extensions of each of the Space Assignment and the TRA are categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to the Port CEQA Guidelines, Section 15301(p), 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 previously existing. Extending the Space Assignment and the TRA for TraPac to continue its current operations and activities at each location meets the criteria for this exemption.

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

A. Execute on behalf of the Board amendments to the Space Assignment and to the TRA, respectively, to extend the term of each to March 31, 2019 in accordance with the intent and purpose of this Ordinance.

B. Make such additions, modifications, or corrections as necessary to implement the amendments or to correct errors in either the Space Assignment or the TRA, 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.