

AGENDA REPORT

Ordinance: Approve and Authorize the Executive Director to Amend the Non-Exclusive Preferential Assignment Agreements, Including Specifically the Amended and Fully Restated Agreement Regarding Combined Compensation at Berths 55-56 and Berths 57-59 Marine Terminals with SSA Terminals (Oakland), LLC, to Modify Reimbursement Terms Associated with Excess Crane Removal Work, Including an Early Reimbursement Not to Exceed \$200,000. **(Maritime)**

<u>MEETING DATE:</u>	12/13/2018
<u>AMOUNT:</u>	\$200,000 Non-Operating Expense
<u>PARTIES INVOLVED:</u>	SSA Terminals (Oakland), LLC Ed DeNike, Chief Operating Officer
<u>SUBMITTED BY:</u>	John C. Driscoll, Director of Maritime
<u>APPROVED BY:</u>	Danny Wan, Acting Executive Director
<u>ACTION TYPE:</u>	Ordinance

EXECUTIVE SUMMARY

SSA Terminals, LLC and its subassignee, SSA Terminals (Oakland), LLC, (collectively, SSAT) operates a marine terminal facility commonly referred to as Oakland International Container Terminal (OICT) at Berths 55 through 59, pursuant to lease agreements most recently amended in July 2018. Pursuant to the existing leases, the Port and SSAT agreed to share equally the relocation, removal, and/or demolition costs of three cranes, estimated at up to \$850,000 per crane, following such time that SSAT purchases and places into service three new cranes. The current agreement contemplates that SSAT would reimburse the Port for these costs. However, SSAT recently incurred cost to relocate two cranes, as an early action intended to facilitate the Port's future work. SSAT has requested the Port to reimburse 50% of the cost SSAT incurred, in an amount not to exceed \$200,000. The proposed amendments would provide the necessary authorization to reimburse SSAT.

BACKGROUND

SSAT operates Berths 55-56 and Berths 57-59, located contiguously in the Port's Middle Harbor Area, for international cargo as a single terminal (the Oakland International Container Terminal, or OICT) pursuant to two separate Non-Exclusive Preferential Assignment Agreements (NEPAAs), herein also referred to as Leases. The NEPAAs were amended as of July 1, 2018, extending their terms through June 2027 (with limited options to extend), and

implementing other various Lease-related matters including, but not limited to, compensation adjustments, adjustments to the premises, and the purchase of new cranes. As part of the July 1, 2018 Lease amendments, to facilitate SSAT's operation of the two terminals as a single, integrated container terminal, the Port and SSAT also entered into the Amended and Fully Restated Agreement Regarding Combined Compensation at B55-56 and B57-59 (referred to herein collectively as the "ARCC"). The ARCC is an exhibit to the Leases, and is an integral component of the operation of OICT as a single, integrated container terminal.

In its current form, the ARCC contains several provisions regarding container cranes including, in particular, the following requirements:

- SSAT must purchase and place into service three (3) new container cranes by December 31, 2020.
- SSAT must submit a Crane Purchase Notice to the Port that identifies any excess Port-owned cranes for removal (which are deemed "Excess Cranes"), among other requirements.
- The Port must pay all costs and perform all work to remove, relocate, demolish, or otherwise dispose of Excess Cranes (Excess Crane Removal Work) not later than December 31, 2021 (FY 2022).
- SSAT must reimburse the Port for an amount equal to fifty percent (50%) of each dollar the Port spends to complete Excess Crane Removal Work, up to an amount not to exceed \$425,000 per crane, or \$1,275,000 for three cranes, whichever is greater.

Recently, SSAT relocated Port-owned cranes XC18 and XC19 for a variety of reasons, including to facilitate the Port's ultimate Excess Crane Removal Work. SSAT represented that the cost of such relocation of XC18 and XC19 was \$400,000. SSAT has requested reimbursement from the Port of up to fifty percent (50%) of the costs incurred for the relocation of XC18 and XC19, not to exceed \$200,000 total.

ANALYSIS

The location of the container cranes on the OICT prior to, and after, the relocation of cranes XC18 and XC19 is provided as Attachment 1 to this Report. With SSAT's recent completion of the raising of Cranes XC14 through XC17, and the anticipated arrival of three (3) new, SSAT-owned container cranes in the next 18 to 24 months (deadline is 12/31/2020), SSAT determined it was necessary to relocate XC18 and XC19 to the eastern end of their premises (near Berth 59). More specifically, in consultation with the Port, SSAT determined having XC18 and XC19 relocated to the eastern end of the premises would facilitate the Port's future Excess Crane Removal Work by placing the Cranes in an area that minimizes interference with SSAT's terminal operations. The Port would likely have had to relocate XC18 and XC19 at a future date as a first step of its Excess Crane Removal Work.

Although not contemplated in the ARCC, the Port's reimbursement to SSAT for 50% of the recent relocation work performed by SSAT is consistent with the intent of the Leases. However, it accelerates the Port's expenditure (in part) by about two (2) years. Further, the ARCC anticipates a payment from SSAT to the Port, but not the other way around. To

address this project sequencing issue, Staff proposes an amendment to the ARCC that would:

- Reimburse SSAT for fifty percent (50%) for each dollar of SSAT's costs of repositioning XC18 and XC19, up to a maximum combined total of \$200,000. The final amount remains to be determined, verified, and approved upon Staff's final review of the invoices submitted by SSAT.
- Credit the same amount (i.e., credit = reimbursement) against SSAT's future obligation to reimburse the Port for SSAT's share of the total Excess Crane Removal Work.

To summarize:

- Based on the terms of the existing ARCC, the Port and SSAT have agreed to share equally in the Excess Crane Removal Work, estimated at up to \$850,000 per crane, or up to \$2,550,000 for three cranes. SSAT would reimburse up to \$1,275,000 of that \$2,550,000 to the Port. This remains unchanged.
- With the proposed amendment:
 - The Port would reimburse SSAT up to \$200,000 in FY 2019, after receipt of the Crane Purchase Notice (specifically identifying XC18 and XC19 as Excess Cranes) and after Staff's review and approval of SSAT's invoice/documentation of costs incurred.
 - An amount equal to the reimbursement then would be credited against SSAT's obligation to contribute up to \$1,275,000.
 - So, the balance of SSAT's obligated contribution for the Excess Crane Removal Work would be \$1,075,000 (assuming a \$200,000 reimbursement in FY 2019).

Since the ARCC is an exhibit to each NEPAA, an ARCC amendment requires that each NEPAA be amended. Thus, Staff is proposing to amend the Lease amendments and execute:

- Ninth Supplemental Agreement to Berths 55-56 Non-Exclusive Preferential Assignment Agreement.
- Fifth Amendment to Berths 57-59 Amended and Restated Non-Exclusive Preferential Assignment Agreement.
- First Amendment to the Amended and Fully Restated Agreement Regarding Combined Compensation at Berths 55-56 and Berths 57-59 Marine Terminals.

BUDGET & STAFFING

The costs associated with Excess Crane Removal Work was forecasted in FY 2021. The proposed amendments would result in a one-time payment of up to \$200,000 in FY 2019, which was not anticipated or budgeted in the current fiscal year. However, there are certain one-time expense items that will not be performed or will be performed at a lower cost in FY 2019, based on Staff's latest assessment. This will allow Staff to redirect monies and remain within Maritime's budget for FY 2019.

The proposed amendments will have no impact on staffing.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The action to enter into the proposed Lease amendments does not fall within the scope of the Port of Oakland Maritime and Aviation Project labor Agreement (“MAPLA”) and the provisions of the MAPLA do not apply as the Excess Crane Removal performed by SSAT is not part of the Port’s Capital Improvement Program, and the work is being performed on behalf of the Port.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port’s Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

Goal: Modernize and Maintain Infrastructure

LIVING WAGE

Living wage requirements, in accordance with the Port’s Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the “Living Wage Regulations”), do not apply to the action of seeking approval for the proposed amendment to the ARCC. For future construction under these contracts, construction prevailing wage requirements shall apply.

SUSTAINABILITY

No development is proposed as pursuant to the proposed Lease amendments. If the tenant decides to develop the site in the future, the tenant must comply with the 2000 Sustainability Policy and complete the Sustainability Opportunities Assessment Form.

ENVIRONMENTAL

CEQA Determination: This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port’s CEQA Guidelines. Per Section 15301(p) of the Port’s CEQA Guidelines, the Port has determined that renewals, extensions or amendments to leases or to 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, are categorically exempt from CEQA. Therefore, this action is not subject to CEQA and no environmental review is required.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this report, as they are not capital improvement construction projects.

OPTIONS

Staff has identified the following issues for the Board:

1. Authorize the Executive Director to enter into amendments to the NEPAAs, including the ARCC, for the OICT, in order to reimburse SSAT up to \$200,000 for Excess Crane Removal Work in FY 2019. **This is the recommended action.**
2. Authorize the Executive Director to enter into amendments to the NEPAAs, including the ARCC, for the OICT, in order to reimburse SSAT a different amount for Excess Crane Removal Work in FY 2019, as may be directed by the Board.
3. Do not authorize the Executive Director enter into the proposed amendments. Instead, direct Staff to apply SSAT's costs toward SSAT's contribution to the Crane Removal Work, and reconcile amounts due to the Port after the Port's Excess Crane Removal Work is completed.

RECOMMENDATION

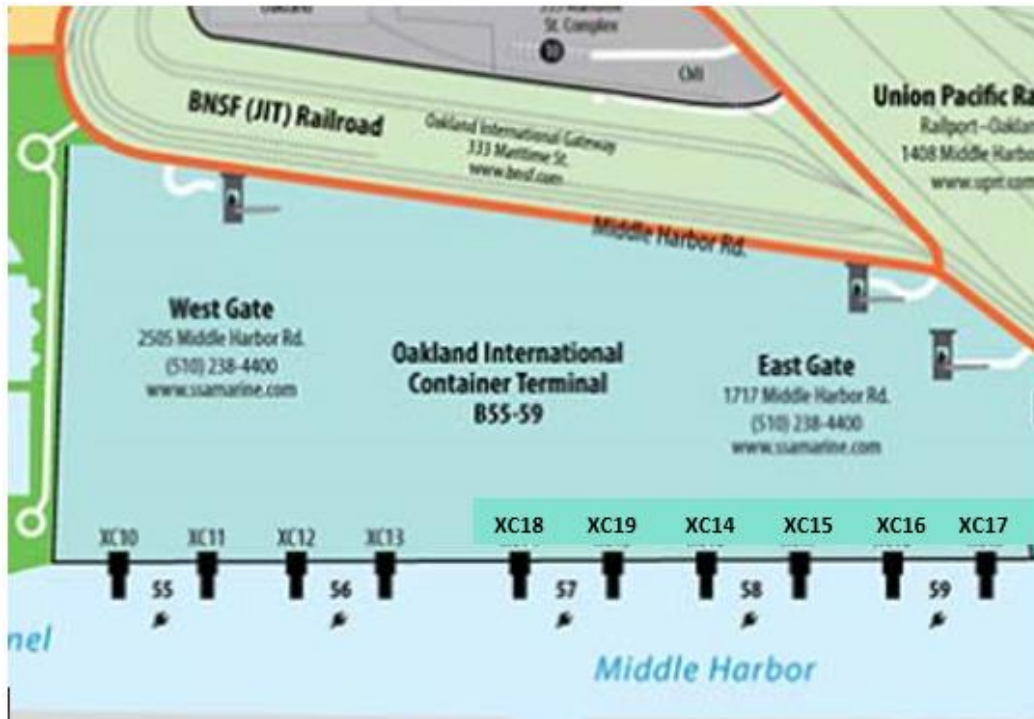
Approve and authorize the Executive Director to execute the:

- Ninth Supplemental Agreement to Berths 55-56 Non-Exclusive Preferential Assignment Agreement;
- Fifth Amendment to Berths 57-59 Amended and Restated Non-Exclusive Preferential Assignment Agreement; and
- First Amendment to the Amended and Fully Restated Agreement Regarding Combined Compensation at Berths 55-56 and Berths 57-59 Marine Terminals; all in order to reimburse 50% of costs incurred by SSAT, up to \$200,000, associated with Excess Crane Removal Work in FY 2019.

ATTACHMENT 1

Crane Location Maps

Prior to Relocation



After Relocation

