

PORT ORDINANCE NO. 4510

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO AMEND (1) THE NON-EXCLUSIVE PREFERENTIAL ASSIGNMENT AGREEMENTS ("NEPAAs") WITH SSA TERMINALS (OAKLAND), LLC FOR BERTHS 55-56 AND BERTHS 57-59 AND (2) THE AMENDED AND FULLY RESTATED AGREEMENT REGARDING COMBINED COMPENSATION AT BERTHS 55-56 AND BERTHS 57-59 WITH SSA TERMINALS (OAKLAND), LLC TO MODIFY REIMBURSEMENT TERMS ASSOCIATED WITH EXCESS CRANE REMOVAL WORK.

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 were subassigned to SSAT Oakland by SSA Terminals, LLC with the consent of the Port of Oakland ("Port"); and

WHEREAS, SSAT Oakland operates OICT as a single terminal pursuant to financial terms and conditions set forth in that certain Amended and Fully Restated Agreement Regarding Combined Compensations (the "ARCC"), which is attached as an exhibit to each NEPAA; and

WHEREAS, the ARCC contemplates that the Port and SSAT Oakland and SSA Terminals, LLC (SSAT Oakland and SSA Terminals, LLC are referred to collectively as "SSAT") would share the costs of relocating certain Port-owned cranes (referred to as "Excess Cranes") based upon the assumption that all costs for such relocation work would be incurred by the Port; and

WHEREAS, SSAT has incurred certain expenses in connection with such relocation work which Port staff concur should be considered part of the shared costs of relocating such Excess Cranes; and

WHEREAS, the Port and SSAT have negotiated certain amendments to (i) the ARCC to allow the Port to reimburse SSAT for the Port's share of costs to relocate the Excess Cranes as described in the Agenda Report, and (ii) each of the NEPAAs to incorporate the amendments to the ARCC into each NEPAA; and

WHEREAS, the Board has reviewed and evaluated Agenda Report Item No. 6.4 (the "Agenda Report") to the Agenda of the December 13, 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; **NOW, THEREFORE**,

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 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 ARCC and to each of the NEPAAs for OICT would allow the Port to reimburse SSAT for work necessary for the Port's performance of its Excess Crane Removal Work (as defined in the ARCC) as follows:

- 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 Excess Cranes. SSAT would reimburse the Port for up to \$1,275,000 of up to \$2,550,000 incurred by the Port for such Excess Crane Removal Work;

With the proposed amendment to the ARCC:

- The Port would reimburse SSAT up to \$200,000 in FY 2019, after receipt of the Crane Purchase Notice and after Port staff's review and approval of SSAT's invoice/documentation of costs incurred for the relocation of Excess Cranes;

- The Port would credit against SSAT's obligation to contribute up to \$1,275,000 to the Port's costs to perform Excess Crane Removal Work an amount equal to SSAT's share of such relocation work, resulting in a balance to SSAT's share of the Excess Crane Removal Work of \$1,075,000 (assuming the Port's \$200,000 reimbursement is made in FY 2019);

D. The terms and conditions of the proposed amendments to the ARCC and to each of the NEPAAs for OICT will benefit the Port by, among other things: (i) completing a portion of the Port's Excess Crane Removal Work under the ARCC; (ii) continuing to provide for equal sharing of the cost of removing any excess Port-owned cranes; (iii) continuing to encourage 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 (iv) providing the Port with greater assurances for the development and operation of a more modern 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 that this action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. Per Section 15301(p) of the Port CEQA Guidelines, the Port has determined that 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, are categorically exempt from CEQA. 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 ARCC and to each of the NEPAAs for OICT in accordance with the terms and conditions set forth in 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, December 13, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Lee, Leslie, Martinez, Story and President Butner - 7. Noes: 0.

Daria Edgerly

Secretary of the Board