

PORT ORDINANCE NO. 4515

**ORDINANCE AUTHORIZING AND APPROVING THE
EXECUTION OF A LICENSE AND CONCESSION AGREEMENT
WITH CONGLOBAL INDUSTRIES, LLC, FOR A TERM
EXTENDING THROUGH JUNE 30, 2023, RESULTING IN
ANNUAL RENT RANGING FROM APPROXIMATELY \$1.7
MILLION TO \$2.1 MILLION; AND AUTHORIZING \$76,331
FOR A ONE-TIME RENT CREDIT AND \$1.0 MILLION FOR
CERTAIN PAVEMENT IMPROVEMENTS.**

WHEREAS the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the proposed extension of space assignment agreements in the Port of Oakland's ("Port") maritime area as set forth in the Agenda Report for Agenda Item 6.2, dated March 28, 2019 (the "Agenda Report") and related agenda materials, has received the expert testimony of 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. ConGlobal Industries, LLC ("ConGlobal") is an existing Port tenant who operates a chassis, container, and refrigerated unit support yard on 14.6 acres located at 555A Maritime Street in the Port's Maritime Area ("Seaport"). ConGlobal's operations are an important ancillary maritime service to the Port's maritime terminal operators and other businesses that rely upon the waterborne transportation of maritime containers at the Port.

B. ConGlobal currently rents the 14.6 acre premises from the Port pursuant to a Space Assignment, but Port staff have negotiated and recommend a longer-term License and Concession Agreement for business stability and which transfers certain responsibilities for pavement repairs and improvements to ConGlobal. Fixed monthly rent under the proposed License and Concession Agreement would be \$141,780/mo., which is slightly less than what ConGlobal currently pays under the Space Assignment. However, staff believe that the benefits to the Port from a longer-term License and Concession Agreement with fixed annual rent increases and the transfer of responsibility for pavement repairs and improvements would equal the value of the reduced rent. Upon execution of the License and Concession, ConGlobal will be granted a rent credit in the amount of \$76,331, and upon the Port's issuance of a written notice of acceptance for pavement repair work, the Port will reimburse ConGlobal for 50% of the repavement cost up an amount not to exceed \$1 million. Other key terms are summarized in Exhibit A, attached to this Ordinance. Upon approval and execution of the License and Concession Agreement, the existing Space Assignment would terminate.

C. The proposal to enter into a License and Concession Agreement with ConGlobal for the same facility at 555A Maritime Street that ConGlobal currently rents pursuant to a Space Assignment was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. The proposed License and Concession Agreement is 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 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. Furthermore, the proposed pavement repairs and improvements are categorically exempt from CEQA pursuant to Section 15301, which exempts maintenance and repairs involving no expansion of use. Entering into a License and Concession Agreement with existing tenants to continue their current business operations and make pavement repairs to their existing premises meets the criteria for these exemptions.

SECTION 3. The Board approves the License and Concession Agreement set forth in the Agenda Report and authorizes the Executive Director to execute a License and Concession Agreement containing terms and conditions as summarized in Exhibit A, attached to this ordinance.

SECTION 4. The Board further authorizes the Executive Director to make minor modifications and corrections to the proposed License and Concession Agreement which the Executive Director in consultation with the Port Attorney determines are consistent with the intent of this ordinance.

SECTION 5. 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. This resolution approves and authorizes the execution of an agreement in accordance with the terms of this resolution. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed and 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, March 28, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and President Butner - 6. Excused: Commissioner Cluver - 1. Noes: 0.

Daria Edgerly

Secretary of the Board

Exhibit A

Summary of Proposed Key Terms for ConGlobal Industries, LLC

Effective Date	<ul style="list-style-type: none">• June 1, 2019
Rent	<ul style="list-style-type: none">• Starting on June 1, 2019, the Fixed Monthly Rent is \$141,780.• ConGlobal to receive a one-time rent credit in the amount of \$76,331 by December 31, 2019.
Rate Escalations and Contract Year	<ul style="list-style-type: none">• The Fixed Monthly Rent increases by 5% annually on July 1 of each Contract Year, starting July 1, 2019.• The Contract Year is defined as the 12-month period beginning on July 1 of a calendar year and ending on June 30 of the immediately succeeding calendar year.
Leasehold	<ul style="list-style-type: none">• The Premises is 635,784 square feet (14.6 acres).
Lease Term and Conditional Negotiating Opportunity	<ul style="list-style-type: none">• June 1, 2019 through June 30, 2023.• Conditional Negotiating Opportunity: Beginning on July 1, 2022, ConGlobal has rights to exclusively negotiate terms to extend lease should another Port tenant decline its exclusive negotiating right for the Premises.
Maintenance	<ul style="list-style-type: none">• ConGlobal remains responsible to maintain existing facility and pavement within Premises.• ConGlobal must maintain pavement in accordance with the provided schedule.• By December 31, 2020, ConGlobal must make all necessary pavement repairs within Area A as identified in ConGlobal Pavement Condition Survey dated December 7, 2018. Total estimated repair cost is \$1,600,000.• Port to reimburse ConGlobal for 50% of the actual costs it incurs to repair pavement, up to a maximum of \$1,000,000, in two equal payments.• Port will make payment #1 to ConGlobal within 90 days of pavement repair completion.• Port will make payment #2 to ConGlobal within 365 days of pavement repair completion.
Security Deposit	<ul style="list-style-type: none">• Three (3) months Fixed Monthly Rent.• Deposit shall be evidenced by cash, irrevocable letter of credit, or similar instrument acceptable by the Port.

Delinquency Charge	<ul style="list-style-type: none"> • If unpaid, Fixed Monthly Rent will become delinquent if the Port does not receive it on or before the tenth (10th) day of each month. • Delinquency charge of 0.06% per day.
Air Quality	<ul style="list-style-type: none"> • Port's standard "Environmental Responsibilities" Exhibit which includes updated Air Quality requirements. The new provisions require ConGlobal to comply with current and future Federal and State laws. ConGlobal shall also adhere to current and future Port requirements including the Maritime Air Quality Improvement Plan (MAQIP). Lastly, ConGlobal is committed to use best efforts to apply for grants to reduce emissions from its 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.