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Commissioner

AGENDA

Special Meeting of the Board of Port Commissioners
Tuesday July 2, 2013 – 9:00 a.m.
Board Room – 2nd Floor

ROLL CALL

Commissioner **Butner**, Commissioner **Hamlin**, Commissioner **Parker**, Commissioner **Uno**, 2nd Vice-President **Yee**, 1st Vice President **Head** and President **Gonzales**.

1. CLOSED SESSION

Closed Session discussions and materials may not be disclosed to a person not entitled to receive it, unless the Board authorizes disclosure of that confidential information.

1.1 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION. Pursuant to Subdivision (a) of California Government Code Section 54956.9.

SSA Terminals, LLC and SSA Terminals (Oakland), LLC v. the City of Oakland, Acting by and Through its Board of Port Commissioners Docket No. 09-08

ROLL CALL/OPEN SESSION (Approximately 9:30 am)

Commissioner **Butner**, Commissioner **Hamlin**, Commissioner **Parker**, Commissioner **Uno**, 2nd Vice-President **Yee**, 1st Vice President **Head** and President **Gonzales**.

CLOSED SESSION REPORT

The Port Attorney or Board Secretary will report on any final actions taken in Closed Session.

2. CONSENT ITEMS

Action by the Board under "Consent Items" means that all matters listed below have been summarized and will be adopted by one motion and appropriate vote. Consent Items may be removed for further discussion by the Board at the request of any member of the Board.

3. MAJOR PROJECTS

This segment of the meeting is reserved for action and discussions regarding the status of Major Projects and issues of special importance.

4. BUDGET & FINANCE

This segment of the meeting is reserved for action or discussion regarding the status of Budget and Finance issues.

5. STRATEGY & POLICY

This segment of the meeting is reserved for action or discussion on Strategy and Policy Issues.

6. REMAINING ACTION ITEMS

Remaining Action Items are items not previously addressed in this Agenda that may require staff presentation and/or discussion and information prior to action by the Board.

6.1 Ordinance: An Ordinance To Authorize The Executive Director To Execute Certain Lease Agreements And Amendments Relating To Berths 55-56 And Berths 57-59 And Berths 60-63 Necessary To Effectuate A Settlement Agreement In The Matter Of (1) SSA Terminals, LLC And SSA Terminals (Oakland), LLC V. The City Of Oakland, Acting By And Through Its Board Of Port Commissioners, Federal Maritime Commission Docket No. 09-08; And (2) City Of Oakland, Acting By And Through Its Board Of Port Commissioners, Plaintiff V. SSA Terminals, LLC, SSA Terminals (Oakland), LLC, Et Al., Defendants And SSA Terminals, LLC, SSA Terminals (Oakland), LLC, Et Al., Counterclaimants V. City Of Oakland, Acting By And Through Its Board Of Port Commissioners, Counter-Defendants, United States District Court For The Northern District Of California Case No. C11-01446 Should Such Settlement Be Approved After The Required Posting Of The Agenda.

Resolution: A Resolution To Authorize The Executive Director To Execute Certain Assignment, And Termination Agreements Relating Berths 55-56 And Berths 60-63 Necessary To Effectuate A Settlement Agreement In The Matter Of (1) SSA Terminals, LLC And SSA Terminals (Oakland), LLC V. The City Of Oakland, Acting By And Through Its Board Of Port Commissioners, Federal Maritime Commission Docket No. 09-08; And (2) City Of Oakland, Acting By And Through Its Board Of Port Commissioners, Plaintiff V. SSA Terminals, LLC, SSA Terminals (Oakland), LLC, Et Al., Defendants And SSA Terminals, LLC, SSA Terminals (Oakland), LLC, Et Al., Counterclaimants V. City Of Oakland, Acting By And Through Its Board Of Port Commissioners, Counter-Defendants, United States District Court For The Northern District Of California Case No. C11-01446 Should Such Settlement Be Approved After The Required Posting Of The Agenda. **(Maritime)**

7. UPDATES/ANNOUNCEMENTS

The President, Members of the Board and the Executive Director will report on noteworthy events occurring since the last Board Meeting.

8. SCHEDULING

This segment of the meeting is reserved for scheduling items for future Agendas and/or scheduling Special Meetings

OPEN FORUM

The Board will receive public comment on non-agenda items during this time. Please fill out a speaker card and present it to the Secretary of the Board.

ADJOURNMENT

The next Regular Meeting of the Board will be held on July 11, 2013 at 1:00 PM

PUBLIC PARTICIPATION

To Speak on an Agenda Item

You may speak on any item appearing on the Agenda. Please fill out a Speaker's Card and give it to the Board Secretary ***before the start of the meeting*** or immediately after conclusion of Closed Session. Cards received after the start of the meeting will be treated as a single request to speak in Open Forum. All speakers will be allotted a minimum of one minute.

To Receive Agendas & Related Materials

Should you have questions or concerns regarding this Agenda, or wish to review any of the Agenda Related Materials, please contact the Board Secretary, John Betterton, at: (510) 627-1696, or visit our web page at: **www.portofoakland.com**

To receive Port Agendas and Agenda Related Materials by email, please email your request to: **jbetterton@portoakland.com**

Disability Related Modifications

Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the meeting, may submit a written request, electronic request, or telephone request [via the California Relay Service (telephone) for the hearing impaired at (800) 735-2922], to the Secretary of the Board ***no later than five working days*** prior to the scheduled meeting date.

John Betterton, Secretary of the Board
530 Water Street, Oakland, CA 94607
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(510) 627-1696

Language & Interpretive Services

As a grantee of federal aid grant funds from the US Department of Transportation, the Port is responsible for ensuring equal access to its programs, services, and benefits. To request bilingual interpreters or materials in alternate formats, please contact the Assistant Secretary of the Board no later than five working days prior to the scheduled meeting date.

Daria Edgerly, Assistant Secretary of the Board
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Scented Products

Please refrain from wearing scented products to this meeting so attendees who experience chemical sensitivities may attend.

Commissioner's Statement of Intention

We are a governing Board whose authority lies with the entirety of the Board.

We govern in accordance with our fiduciary duty to the Port of Oakland.

We conduct ourselves with clarity and transparency, grounded in the principles of integrity, trust and respect.

We reach our decisions through candid, open and deliberative debate and hold both staff and ourselves accountable for implementing them.

CONSENT ITEMS

Action by the Board under “Consent Items” means that all matters listed below have been summarized, and are considered to be perfunctory in nature, and will be adopted by one motion and appropriate vote. Consent Items may be removed for further discussion by the Board at the request of any member of the Board.

MAJOR PROJECTS

This segment of the meeting is reserved for action and discussions regarding the status of Major Projects and issues of special importance.

BUDGET & FINANCE

This segment of the meeting is reserved for action or discussion regarding the status of Budget and Finance issues.

STRATEGY & POLICY

This segment of the meeting is reserved for action or discussion on Strategy and Policy Issues.

REMAINING ACTION ITEMS

Remaining Action Items are items not previously addressed in this Agenda that may require staff presentation and/or discussion and information prior to action by the Board.

BOARD MTG. DATE: **6/27/13**

AGENDA REPORT

TITLE: Authorizing the Executive Director to execute a certain consent to assignment, termination agreements, lease and lease amendments related to Berths 55-56, Berths 57-59, Berths 60-63, and Berths 67-68 in order to effectuate a settlement in the matter of (1) SSA Terminals, LLC and SSA Terminals (Oakland), LLC v. the City of Oakland, acting by and through its Board of Port Commissioners, Federal Maritime Commission Docket No. 09-08; and (2) City of Oakland, acting by and through its Board of Port Commissioners, Plaintiff v. SSA Terminals, LLC, SSA Terminals (Oakland), LLC, et al., Defendants and SSA Terminals, LLC, SSA Terminals (Oakland), LLC, et al., Counterclaimants v. City of Oakland, acting by and through its Board of Port Commissioners, Counter-Defendants, United States District Court for the Northern District of California Case No. C11-01446 (collectively, the "Lawsuits")

AMOUNT: n/a

PARTIES INVOLVED:

Corporate Name/Principal	Location
SSA Terminals, LLC	Seattle, WA
SSA Terminals (Oakland), LLC	Oakland, CA
Matson Navigation	Oakland, CA
Eagle Marine Services	Scottsdale, AZ
APL Ltd.	Singapore
Total Terminals Inc.	Long Beach, CA

TYPE OF ACTION: Resolution and Ordinance

SUBMITTED BY: Jean Banker, Deputy Executive Director and Acting Director of Maritime

APPROVED BY: Deborah Ale Flint, Acting Executive Director

STAFF RECOMMENDATION:

If the Board has approved and authorized the execution of the proposed Settlement Agreement reached during the June 18, 2013 mandatory settlement conference for the dismissal of the Lawsuits, staff recommends that the Board approve the Resolution and Ordinance in order to effectuate and terms and conditions of the Settlement Agreement.

BOARD MTG. DATE: **6/27/13**

SUMMARY

Port staff recommends and seeks authorization from the Board to enter into a lease agreement, two lease amendments (documents that require an Ordinance for approval), as well as a consent to assignment, and two termination agreements (documents that may be approved by resolution) (collectively, the "Terminal Agreements"), for marine terminals in the Middle and Inner Harbor areas of the seaport, namely:

- Howard Terminal (Berths 67-68) ("Howard")
- Global Gateway Central (Berths 60-63) ("GGC")
- Oakland International Container Terminal (Berths 57-59) ("OICT")
- TTI Terminal (Berths 55-56) ("TTI")

(See Attachment A for map)

Staff's request is for the purpose of settling the Lawsuits.

On Tuesday, June 18, 2013, the parties appeared before Federal Magistrate Joseph Spero for a mandatory settlement conference ordered by the Federal District Court Judge in the SSAT federal lawsuit. With the facilitation and mediation by the Judge, the parties reached a tentative agreement.

Pursuant to a noticed closed session item discussion, the Board considered the Settlement Agreement. If the Board approved the Settlement Agreement, the Ordinance and Resolution that is the subject of this Staff Report are necessary to effectuate the terms and conditions of the Settlement Agreement.

The transactions proposed for approval effectuate the dismissal of the Lawsuits, but also achieve important business and financial objectives that provide the Port, its tenants, customers, community and stakeholders with competitive benefits and future opportunities greater than those anticipated in the absence of the requested actions. The requested actions provide the Port and its stakeholders with three key benefits:

- Secures OICT and GGC lease revenue for an additional five years (through 2022), providing the Port with revenue stability and significant mitigation of down-side risk associated with unfavorable unilateral lease extension options in the current leases that may extend to 2027;
- Immediately creates a contiguous 350-acre terminal facility under one operation, mitigates the immediate need for wharf replacement at GGC, and allows the Port the opportunity to market this consolidated 350-acre terminal in the near future;
- Provides Port's major ocean carrier customers enhanced facilities that can, among other advantages, with minimal constraints accommodate the newest generation of ultra-large container vessels.

BOARD MTG. DATE: **6/27/13**

FACTUAL BACKGROUND

In late 2009, SSA Terminals, LLC and SSA Terminals (Oakland), LLC (collectively, "SSAT") filed a complaint with the Federal Maritime Commission ("FMC") claiming that the Port violated the Federal Shipping Act of 1984 (the "Shipping Act") by entering into a 50-year lease and concession agreement with Ports America Outer Harbor Terminals, LLC ("PAOHT") on January 1, 2010. SSAT also later filed a claim against the Port pursuant to the California Tort Claims Act alleging, among other things, that the Port violated the terms of the original 1911 Legislative grant of tidelands to the City of Oakland by entering into the lease with PAOHT.

In March 2012, Eagle Marine Services ("EMS"), a subsidiary of APL and the current tenant operator of the GGC terminal, notified the Port of their desire to suspend operations at GGC in advance of its lease expiration in 2016. They further advised that they would issue a Request for Proposal (RFP) to select a successor operator to take over operations at GGC to existing Oakland marine terminal operators. In the latter part of 2012, EMS announced that they had selected SSAT as the winning proposer and requested the Port to promptly enter into discussions with SSAT and APL regarding the transfer of operations at GGC from EMS to SSAT.

Independent from APL's request to the Port, the Port and SSAT have engaged in various rounds of settlement negotiations between 2009 and the present in a good-faith attempt to resolve the Lawsuits. APL's RFP process together with the most recent round of settlement negotiations has lead to the proposed package of Terminal Agreements. These agreements require both a resolution and an ordinance to be approved by the Board.

ANALYSIS

The proposed actions, as outlined above, offer the Port and its stakeholders certain business and financial advantages as compared to maintaining lease agreements unchanged from their current status (i.e., "status quo"). In particular, the proposed actions enable the Port to (a) secure lease revenues to 2022 for the subject terminals, (b) mitigate significant risks associated with current lease extension language that provides tenants with unilateral rights under very short notice periods to possibly extend to 2027, (c) positions the Port to immediately serve larger container vessels more effectively and to market enhanced facilities for customers in the future, and (d) minimizes expenditures associated with legal defense of lawsuits filed against the Port by SSAT in 2009.

Desire for Consolidated Optimized Terminal in the Future

Port staff has for some time analyzed the future needs of terminal operations at the Port, notably the trend toward larger terminals that can service multiple carriers. As larger vessels rapidly replace smaller vessels, port and terminal operations will be greatly impacted and will require longer berth length and larger terminal area. U.S. west coast ports have been investing heavily for many years in the infrastructure necessary to accommodate the rapid deployment of mega-sized vessels. The limited berth length and scale of operations at the three separate terminals in the Middle Harbor, and the shallow water depth at GGC in particular, will become a significant concern for our ocean carrier customers and terminal operators. One of APL's primary reasons

for their decision to cease operations at GGC is the inability of that terminal to accommodate new mega-ships.

The TTI Terminal (Berths 55-56) ("TTI"), OICT, and GGC ("Middle Harbor Terminals") together provide an opportunity to create such a consolidated terminal ("mega terminal") because of their contiguous land facilities. However, the current expiration dates and the option language in the leases for the Middle Harbor Terminals will likely prevent achievement, or minimally preclude the possibility of, a consolidated terminal in the near-term future, as further discussed below under Status Quo.

Status Quo – Analysis of lease prospects for Middle and Inner Harbor terminals

By the end of 2017, the Middle Harbor and Inner terminal leases are scheduled to expire, unless options are exercised by the tenants. These leases collectively represent approximately 58% of the Maritime Division's annual operating revenues as of fiscal year 2012. These terminals and their lease expirations offer several concerns for the Port: business continuity of ocean carrier services and terminal operations as vessel size increases, unilateral options, very short exercise notice periods, staggered expiration dates, and lower projected lease renewal rates due to sub-optimum acreage/infrastructure.

- Although all of these leases contain two unilateral 5-year options to extend the lease term, there are no assurances that the existing tenant will exercise their option. As noted previously in this report, EMS (the current tenant operator of GGC) notified the Port in 2012 of their intention to suspend operations at GGC in advance of the 2016 expiration.

- Concern over lease rates in the near future is exacerbated by the option language in the leases that gives the Port unreasonably short notification for the tenant's unilateral exercise of the 5-year options. The notification period ranges from 3 to 6 months, which does not allow the Port enough time to properly market the premises to an alternative tenant. This circumstance could result in no revenue from these terminals for a period of time as a result of vacancy, or pressure to conclude a new lease at lower rates.

- TTI, OICT, and GGC terminals are contiguous with each other so that they could be consolidated into one optimized terminal capable of handling the larger next-generation containerships in an economical manner. As separate stand-alone terminals, each terminal is constrained.

    - For example, GGC is currently not able to accommodate vessels requiring 50 ft of water depth, and the wharf and embankment would have to be replaced at an approximate cost of $130 million to keep the marine terminal viable with a depth of 50 ft. If GGC were consolidated with Berths 57-59, then this capital improvement could be postponed for quite some time because an operator of the combined facility would put smaller vessels at GGC and larger ones at Berths 57-59.

    - GGC only has 80 acres of land-side area, sub-optimum for continued operation as a marine container terminal. Considering this and the shallow berth depth, maintaining and growing revenue at GGC will be extremely challenging after the lease expires in 2016. The Port would most likely have to pursue alternative uses

such as bulk, break bulk, automobiles, or other ancillary maritime uses which traditionally command lower lease rates compared to marine container terminals.

Therefore, one of the most critical strategic priorities in Maritime has been to find a way to renew or exercise the options of these leases earlier, well before the 3 to 6-month notice period, or change the option language to allow the Port more time to market the terminals, thereby offering a better chance to preserve and maximize revenues in the Middle Harbor area going forward. The proposed actions achieve this objective.

Highlights of Settlement and Requested Actions
Below is a brief summary of the terms encompassed by the proposed agreements:

- Terminate the GGC lease with EMS. EMS would pay an early termination fee of $2.5 million
- SSAT, as the operator selected by EMS, will operate GGC terminal under new lease
- Extend both OICT and GGC leases to 2022 with no further options to extend
- SSAT to assume the current TTI lease and effectively operate an optimized terminal through June 2016 under three separate leases for TTI, OICT, and GGC
- Agree to a 1-year notice period for exercise of a single option through 2022 at TTI
- As consideration for the above, SSAT will be permitted to terminate the Howard Terminal lease in 2013

The early termination of the Howard lease is included in consideration for the above favorable changes to the existing GGC, TTI, and OICT terminal leases. This termination will accommodate the transfer of Matson cargo to GGC. Matson operates only smaller vessels as they serve the niche domestic market and will not require deep water berths (-50 ft) for the foreseeable future. Therefore, they can operate at either Howard or GGC without significant constraints; however, there are more operational efficiencies to be achieved by operating at GGC, adjacent to their joint venture partner, SSAT, at OICT. Matson and SSAT can share berth space, equipment, labor, gates, etc.

Evaluating current circumstances of terminal operators and ocean carriers, and future infrastructure requirements for viable marine container facilities, Port staff expects that in the near future, container operations will discontinue at either Howard or GGC (neither have 50ft depth or capacity to handle mega carrier ships). Given a choice between early termination of the Howard terminal lease or the GGC lease (and an associated change in operations at those facilities), the Port's strong preference is for the early termination of Howard. Howard and GGC terminals are similar in their infrastructure constraints. However, they are very different in one respect: Howard terminal is isolated in the Inner Harbor while GGC is contiguous to OICT, as discussed above. For this reason, GGC is more viable as a marine container terminal in the long run. Under the status quo, it is anticipated that Matson will stay at Howard through 2027 and GGC will become a bulk terminal. This would diminish the value of the larger optimized terminal that is in demand as larger vessels are deployed in the trans-Pacific trade. Regardless of which terminal will discontinue marine container operations, it is anticipated that the lease rate for a bulk-type facility will be 60% to 85% lower than the current marine container terminal lease rates.

In addition to the benefits of maximizing the acreage for a larger terminal in the Middle Harbor, studies of Howard Terminal provide other reasons why this terminal is the best candidate for alternative uses, as compared to GGC. Port staff commissioned a study in 2012 with transportation consultant, Transystems, to look at various sites within the seaport area that would be conducive to bulk terminal operations. Among all of the sites evaluated, Howard Terminal was identified as the most suitable location for bulk operations and conceptual plans for a bulk terminal at Howard were drafted accordingly.

Implementing the Terminal Agreements outlined above will require the Board's approval of the following resolution and ordinance:

Proposed Resolution

1. An agreement terminating the NEPAA and Guaranty between the Port and EMS in connection with EMS' use and operation of the GGC terminal.

2. An agreement consenting to the proposed assignment of the Berths 55-56 terminal from its current operator, TTI, to SSAT, and a subsequent sub-assignment from SSAT to SSAT (Oakland).

3. An agreement between the Port and SSAT that terminates SSAT's and SSA Marine's (SSAT's parent company and guarantor under the lease) obligations under the current lease of the terminal at Howard Terminal.

Proposed Ordinance

1. A new Lease for the GGC Terminal. The current lease with EMS for Berths 60-63 will be terminated effective July 15, 2013. SSAT will execute a new lease for GGC commencing on October 1, 2013 under substantially the same economic terms and conditions of the current GGC lease with the following material modifications (i) the term of the lease shall be extended to a period of approximately 14 years, to terminate on June 30, 2022, the date when the amended OICT lease will expire, (ii) eliminate any and all options to extend, and (iii) the "All-Inclusive Throughput Rate" per twenty foot equivalent unit ("TEU") for each TEU in excess of the MAG shall be amended to match the current over-the-MAG rate in the OICT lease at no less than $48.69 per loaded TEU.

2. An amendment to the lease for the B55-56 Terminal (after it is assigned to SSAT and hereafter referred to as the "B55-56 Amendment"). The B55-56 Amendment will (i) acknowledge SSAT as the new assignee of the B55-56 Terminal, (ii) modify the option provisions for the B55-56 Terminal to provide that SSAT will have only one option to extend the term to June 30, 2022 and which option must be exercised if at all on or before June 30, 2015 (there will be no further option to extend the term beyond June 30, 2022), (iii) amends the definition of a "Contract Year" under the B55-56 Lease to be a 12 month period beginning on January 1 and ending on December 31, and (iv) provides that the Port agrees that the Contract Year 2011 Fair Market Value adjustment authorized and set forth in Section 4.5 of the existing lease shall be zero percent.

3. An amendment to the current lease for the terminal at OICT. The amendment (the "B57-59 Amendment") will (i) extend the term of the B57-59 Lease to June 30, 2022, (ii) eliminate any and all options to extend, (iii) set the 2013 Fair Market Value adjustment authorized as of January 2013 at zero percent, and (iv) provide new terms and conditions for SSAT to raise and/or replace cranes at OICT.

Comparative Analysis: Status Quo vs Settlement

Advantages of the Status Quo

- Howard Terminal continues to be used for container activities until 2027, which yields higher revenue compared to alternative uses, assuming both 5-year options are exercised.

Disadvantages of the Status Quo

- Uncertainty of revenue at the Middle Harbor Terminals beyond 2016-2017.
- 5-year option lease language could lead to complete loss of revenue from these terminal(s) for a period of time as a result of vacancy, or pressure to quickly conclude a new lease, if the current tenants do not exercise their options.
- Timing of lease expirations and options does not give the Port the ability to effectively market the larger optimized terminal concept.
- If the larger optimized terminal concept cannot be realized, marketing each terminal alone is suboptimal.
- Legal actions related to SSAT's lawsuits against the Port continue.

Advantages of the Settlement

- Provides more revenue stability for OICT and GGC terminals through 2022. This mitigates the risk associated with the first of two 5-yr options at OICT, and marketing risk for GGC.
- Related to the bullet above, the proposed settlement postpones capital investment to address infrastructure constraints at the GGC Terminal.
- Improves the overall competitive position of the Port by increasing its ability to efficiently handle the increasing number of larger vessels. This efficiency is achieved by allowing SSAT to position vessels more freely across seven, instead of three berths, in the near term (through June 2016) and across five berths if the TTI option is not exercised in 2016.
- Allows the Port to competitively market this consolidated 350-acre terminal and other terminal operators the opportunity to propose operations for the facility sooner than under status quo.
- SSAT lawsuits dismissed.

Disadvantages of the Settlement

- Potentially isolates the TTI Terminal in 2016 for a period of approximately six years if SSAT does not exercise the single option to extend the TTI lease through June 2022.
- Loss of revenue at Howard (about $10m/yr) for four years; however, this loss may be potentially and partially offset by revenue from other activities (as described previously).
- The Port may no longer be eligible for $2.5 million in shore power grants related to Howard Terminal.

BUDGET & FINANCIAL IMPACT

Port staff believes the Terminal Agreements provide a more favorable lease renewal situation for the Middle Harbor terminals in comparison to status quo (no change to current lease provisions). However, in order to realize higher revenues beginning in FY 2017, the Terminal Agreements will result in significant revenue loss over the next approximate four years as a result of the early termination of the Howard Terminal lease.

The Port's financial analysis for the Terminal Agreements in comparison to status quo takes into consideration a number of assumptions, including but not limited to:

- Projected cargo growth
- Anticipated increases in the Port's tariff, which can affect all or certain lease rates
- Projected lease rates given market conditions for container cargo and alternative uses
- Cargo movement between terminals, which affects revenue
- Impact of certain lease terms, such as the most favored nations clause, which may also affect lease rates at certain terminals during the term of the lease
- Loss of potential shore power grant funds
- Assumptions about raising the height of existing cranes

Further, Port staff has analyzed the financial impact of the Terminal Agreements under a range of "sensitivity" scenarios (i.e., mid, high, low). Mid-case is meant to be reflective of the expected revenues in FY 2014-27 based on the knowledge Port staff have today. The High Case is meant to reflect a more robust economic environment and more success with marketing the Port terminal facilities, resulting in higher terminal lease rates, higher cargo growth and less adverse shifts in cargo movement among Port terminals. The Low Case is meant to reflect a more subdued economic environment and less success with marketing the Port terminal facilities, resulting in lower terminal lease rates and less cargo growth. In all scenarios, the revenue projections are based on numerous assumptions as stated above that may or may not materialize.

The table below summarizes the comparison of projected revenues between the Settlement and status quo.

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Comparison of Projected Middle and Inner Harbor Terminal Revenues
Settlement vs Status Quo
($ millions)

	Difference in Revenues Comparing Settlement to Status Quo [Range Low to High Scenarios]
FY 2014-16	(40.3) – (37.2)
FY 2017-27	20.5 – 93.4
FY 2014-27 Total	(18.7) – 56.2
FY 2014-27 PV of Total	(23.7) – 25.3

Based on Port staff's analysis, under most scenarios the Port would financially recover the loss of Howard Terminal revenues, not taking into account the value of settling the outstanding lawsuits or use of Howard terminal as non-maritime facility. That is, the loss of revenues from Howard terminal in the short-term is offset by higher projected revenues in the long-term. The breakeven (on a gross basis), however, does not occur until FY 2022-25 timeframe. In all scenarios, the financial analysis of the Terminal Agreements is highly dependent on long-term revenue assumptions, which cannot be predicted with certainty and may or may not materialize.

The financial impact of the Settlement has been reflected in the FY 2014 Budget.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goal and objective of the Port's Strategic Plan:

STRATEGIC PRIORITY AREAS	**GOAL**	**OBJECTIVE**	**HOW THIS PROJECT IMPLEMENTS + WHEN**
Sustainable Economic and Business Development	Goal A: Create sustainable economic growth for the Port and beyond Goal B: Maintain and Aggressively Grow Core Businesses	Maximize the use of existing assets Retain existing customers and tenants Market strategically and aggressively to attract new customers and tenants.	Utilizes the existing infrastructure and capabilities at GGC terminal for marine container terminal operations by combining with the operations at the adjacent Berths 57-59. Provides the Port's major ocean carrier customers enhanced facilities that can, among other advantages, accommodate the newest generation of ultra-large container vessels. Allows the Port to competitively market this consolidated 350-acre

BOARD MTG. DATE: **6/27/13**

STRATEGIC PRIORITY AREAS	GOAL	OBJECTIVE	HOW THIS PROJECT IMPLEMENTS + WHEN
			terminal in the Middle Harbor sooner than under the current lease agreements.

STAFFING IMPACT

There is not impact on staffing as a result of this proposed action.

SUSTAINABILITY

There are no obvious environmental impacts or enhancement opportunities identified in the proposed agreements, consent to assignment, lease and lease amendments.

ENVIRONMENTAL

The proposals to execute a settlement and to approve a new lease, lease extensions, assumptions and terminations and related actions with existing tenants were reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that approving a settlement and taking those actions related to leases with existing tenants and for continuing marine terminal uses will result in a physical change in the environment, and therefore they are not subject to CEQA and no further environmental review is required.

Furthermore, the environmental impacts of ongoing marine terminal uses that will continue under the lease actions were previously reviewed under CEQA. In July 2002, the City of Oakland ("City"), as the lead agency under CEQA, certified an Environmental Impact Report ("EIR") for reuse of the Oakland Army Base ("OAB") and redevelopment of the seaport area. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and a mitigation program in reliance on the City's EIR (Resolution No. 02317). In addition to improvement projects on the former OAB, such as rail yards and maritime support facilities, the OAB EIR described and analyzed cargo throughput increases throughout the seaport that would be supported in part by operational efficiencies and Port terminal realignments, as described in this agenda report.

Any facility modernization or improvement projects planned for the terminals will require a Port Development Permit and additional environmental review prior to undertaking the improvements.

BOARD MTG. DATE: **6/27/13**

MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)

Authorization to enter into lease agreements and to terminate others are actions that do 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. However, if future tenant construction work under these agreements exceeds the thresholds required for coverage under the MAPLA, the provisions of MAPLA will apply when Port Permits are requested for said future construction work.

OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) coverage does not apply to the proposed agreements, consent to assignments, lease and lease amendments.

GENERAL PLAN

The proposed agreements, consent to assignments, lease and lease amendments do not change the use of any 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.

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 termination of agreements. However, for all new lease agreements, living wage requirements will apply if the tenants employ 21 or more employees working on Port-related work and the tenancy agreement is greater than $50,000.

OPTIONS

Staff has identified the following options for the Board's consideration:

1. Approve resolution and ordinance associated with and outlined in this report.
2. Do not approve resolution and ordinance associated with and outlined in this report and direct staff to plan for status quo.

BOARD MTG. DATE: **6/27/13**

RECOMMENDATION

Staff recommends that the Board:

1. Approve resolution and ordinance associated with and outlined in this report.

Port of Oakland Marine Terminals

ATTACHMENT A

PORT OF OAKLAND

Berth 20-26 Ports America Outer Harbor Terminal
Berth 30-32 TraPac Terminal
Berth 35-38 Ben E. Nutter Terminal
Berth 55-56 Hanjin Terminal
Berth 57-59 Oakland Int'l Container Terminal
Berth 60-63 Global Gateway Central Terminal
Berth 67-68 Charles P. Howard Terminal

June 27, 2013
6.2 Ordinance Item
DC/KK

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

ORDINANCE TO AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE CERTAIN LEASE AGREEMENTS AND AMENDMENTS RELATING TO BERTHS 55-56 AND BERTHS 57-59 AND BERTHS 60-63 NECESSARY TO EFFECTUATE A SETTLEMENT AGREEMENT IN THE MATTER OF (1) SSA TERMINALS, LLC AND SSA TERMINALS (OAKLAND), LLC V. THE CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, FEDERAL MARITIME COMMISSION DOCKET NO. 09-08; AND (2) CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, PLAINTIFF V. SSA TERMINALS, LLC, SSA TERMINALS (OAKLAND), LLC, ET AL., DEFENDANTS AND SSA TERMINALS, LLC, SSA TERMINALS (OAKLAND), LLC, ET AL., COUNTERCLAIMANTS V. CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, COUNTER-DEFENDANTS, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA CASE NO. C11-01446.

WHEREAS, the Port, on the one hand, and SSA Terminals, LLC ("SSA") and SSA Terminals (Oakland), LLC ("SSA (Oakland)"), on the other hand, are parties to the above reference lawsuits (collectively referred to herein as the "Lawsuits"). SSA and SSA (Oakland) are collectively referred to as "SSAT"; and

WHEREAS, the Port and SSAT, after a mandatory settlement conference before Judge Magistrate Joseph Spero (the "Court") held on June 18, 2013, have reached an agreement (the "Settlement Agreement") that will result in the dismissal with prejudice of all claims and cross-claims against the Port in the Lawsuits; and

WHEREAS, pursuant to the recorded proceedings of the Court and in consideration for settlement terms, the Court has established the timeline for the adoption of the Settlement Agreement and various agreements necessary to effectuate the Settlement Agreement terms and conditions (the "Implementing Agreements"), as set forth in this Ordinance; and

WHEREAS, the mandatory settlement conference, and the approval of the Settlement Agreement occurred after the posting

of the agenda pursuant to the Port's Rules for Public Participation referring the City of Oakland Sunshine Ordinance; and the Court-established timeline provided for the Board consideration of the Implementing Agreement on the June 27, 2013 Board meeting; and

WHEREAS, notice of this item was posted as part of a supplemental agenda in compliance with the Ralph M. Brown Act; and

WHEREAS, in order the consider the Implementing Agreement in the timeline as established by the Court, the Board, by a motion approved by at least a two-thirds majority of the Board members present, determined that there is a need to take immediate action which came to the attention of the Port after the agenda was posted, and that the need to take immediate action is required to avoid a substantial impact that would occur if the action was deferred to a subsequent special or regular meeting, namely that the approval to the Implementing Agreements must be considered at this meeting to comply with the Court-established timeline and in order to satisfy and fully benefit from the terms of the Settlement Agreement; and

WHEREAS, copies of each of the agreements referred to in this ordinance are available for inspection at the Board Secretary's Office; now therefore

BE IT ORDAINED:

1. That for the reasons stated in the Agenda Report for this Ordinance and, in order to give authority to the Executive Director to effectuate the Settlement Agreement, the Board hereby finds, determines, and declares that it is in the best interest of the Port to approve and enter into the Implementing Agreements set forth in this Ordinance below.

2. That the Board hereby approves each of the following Implementing Agreements in the order set forth herein below, each of which is on file and available for inspection in the Board Secretary's Office:

a. The SSAT B60-63 Lease as referenced and defined in the Settlement Agreement;

b. The B55-56 Amendment as referenced and defined in the Settlement Agreement; and

c. The B57-59 Amendment as referenced and defined in the Settlement Agreement.

3. The Board further authorizes the Executive Director to execute each of the Implementing Agreements in the form on file

with the Office of the Board Secretary and to, in consultation the Port Attorney, make alteration and minor amendments as may be necessary to carry out and implement the intent of the Settlement Agreement provided that such alterations or amendments do not materially alter the terms and conditions of any of the form of agreements on file with the Board Secretary and are consistent with the intent of the Settlement Agreement.

4. That the Board finds as follows:

a. The proposals to execute a settlement agreement and to approve a new lease, lease extensions, assumptions and terminations and related actions with existing tenants were reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that approving a settlement agreement and taking those actions related to leases with existing tenants and for continuing marine terminal uses will result in a physical change in the environment, and therefore they are not subject to CEQA and no further environmental review is required.

b. The environmental impacts of ongoing marine terminal uses that will continue under the lease actions were previously reviewed under CEQA. In July 2002, the City of Oakland ("City"), as the lead agency under CEQA, certified an Environmental Impact Report ("EIR") for reuse of the Oakland Army Base ("OAB") and redevelopment of the seaport area. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and a mitigation program in reliance on the City's EIR (Resolution No. 02317). In addition to improvement projects on the former OAB, such as railyards and maritime support facilities, the OAB EIR described and analyzed cargo throughput increases throughout the seaport that would be supported in part by operational efficiencies and Port terminal realignments, as described in this agenda report.

5. That this ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, title or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. This ordinance approves and authorizes the execution of agreements in accordance with the terms of this ordinance. Unless and until agreements are duly executed on behalf of the Board as authorized by this ordinance, are signed and approved as to form and legality by the Port Attorney, and are delivered to the other contracting party, there shall be no valid or effective agreements.

6. That this Ordinance shall be effective immediately upon the final adoption.

DRAFT

_____
President.

Attest: _____
Secretary.

Approved as to form and legality:

_____
Port Attorney

6/27/13
6.2 (Urgency Item)
DC/KK

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

RESOLUTION TO AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE CERTAIN CONSENT TO ASSIGNMENT, AND TERMINATION AGREEMENTS RELATING TO BERTHS 55-56 AND BERTHS 60-63 NECESSARY TO EFFECTUATE SETTLEMENT AGREEMENT IN THE MATTER OF (1) SSA TERMINALS, LLC AND SSA TERMINALS (OAKLAND), LLC V. THE CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, FEDERAL MARITIME COMMISSION DOCKET NO. 09-08; AND (2) CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, PLAINTIFF V. SSA TERMINALS, LLC, SSA TERMINALS (OAKLAND), LLC, ET AL., DEFENDANTS AND SSA TERMINALS, LLC, SSA TERMINALS (OAKLAND), LLC, ET AL., COUNTERCLAIMANTS V. CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, COUNTER-DEFENDANTS, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA CASE NO. C11-01446.

WHEREAS, the Port on the one hand and SSA Terminals, LLC ("SSA") and SSA Terminals (Oakland), LLC ("SSA (Oakland)") on the other hand are parties to the above reference lawsuits (collectively referred to herein as the "Lawsuits"). SSA and SSA (Oakland) are collectively referred to as "SSAT"; and

WHEREAS, the Port and SSAT, after a mandatory settlement conference before Judge Magistrate Joseph Spero (the "Court") held on June 18, 2013, have reached an agreement (the "Settlement Agreement") that will result in the dismissal with prejudice of all claims and cross-claims against the Port in the Lawsuits; and

WHEREAS, pursuant to the recorded proceedings of the Court and in consideration for settlement terms, the Court has established the timeline for the adoption of the Settlement Agreement and various agreements necessary to effectuate the Settlement Agreement terms and conditions (the "Implementing Agreements"), as set forth in this Resolution; and

WHEREAS, the mandatory settlement conference, and the approval of the Settlement Agreement occurred after the posting of the agenda pursuant to the Port's Rules for Public Participation referring the City of Oakland Sunshine Ordinance; and the Court-established timeline provided for the Board consideration of the Implementing Agreement on the June 27, 2013 Board meeting; and

WHEREAS, notice of this item was posted as part of a supplemental agenda in compliance with the Ralph M. Brown Act; and

WHEREAS, in order the consider the Implementing Agreement in the timeline as established by the Court, the Board, by a motion approved by at least a two-thirds majority of the Board members present, determined that there is a need to take immediate action which came to the attention of the Port after the agenda was posted, and that the need to take immediate action is required to avoid a substantial impact that would occur if the action was deferred to a subsequent special or regular meeting, namely that the approval to the Implementing Agreements must be considered at this meeting to comply with the Court-established timeline and in order to satisfy and fully benefit from the terms of the Settlement Agreement; and

WHEREAS, copies of each of the agreements that are the subject of this Resolution are available for inspection at the Board Secretary's Office; and now therefore be it

RESOLVED, that for the reasons stated in the Agenda Report for this Resolution and, in order to give authority to the Executive Director to effectuate the Settlement Agreement, the Board hereby finds, determines, and declares that it is in the best interest of the Port to approve and enter into the Implementing Agreements set forth in this Resolution below; and be it

FURTHER RESOLVED, that the Board hereby approves each of the following Implementing Agreements in the order set forth herein below, each of which is on file and available for inspection in the Board Secretary's Office:

1. The Termination of Non-Exclusive Preferential Assignment Agreement and Guaranty between the Port and Eagle Marine Services, Ltd ("EMS") in connection with EMS' use and operation of the maritime terminal at Berths 60-63 (the "Berths 60-63 Terminal");

2. The Consent to Assignment between the Port, on the one hand, and Hanjin Shipping Company, Ltd. and Total Terminals International, LLC ("TTI") on the other hand in connection with the Port's consent to TTI's

assignment and SSA's assumption of rights and certain obligations under that Non-Exclusive Preferential Assignment Agreement between the Port and TTI for the Berths 55-56 Terminal; and

3. The Termination of Non-Exclusive Preferential Assignment Agreement and Guaranty between the Port and SSA in connection with SSA's use and operation of the maritime terminal at Berths 67-68 ("Howard Terminal"); and be it

FURTHER RESOLVED, that the approval and effectiveness of any of the foregoing Implementing Agreements is made expressly contingent upon the final approval as well as the execution and delivery of the (i) SSAT B60-63 Lease as referenced and defined in the Settlement Agreement, (ii) B55-56 Amendment as referenced and defined in the Settlement Agreement, and (iii) B57-59 Amendment as referenced and defined in the Settlement Agreement (collectively, the "Lease Agreements"); and be it

FURTHER RESOLVED, that the Board further authorizes the Executive Director to execute each of the Implementing Agreements in the form on file with the Office of the Board Secretary and to, in consultation the Port Attorney, make alteration and minor amendments as may be necessary to carry out and implement the intent of the Settlement Agreement provided that such alterations or amendments do not materially alter the terms and conditions of any of the form of agreements on file with the Board Secretary and are consistent with the intent of the Settlement Agreement; and be it

FURTHER RESOLVED, that the Board finds as follows:

1. The proposals to execute a settlement agreement and to approve a new lease, lease extensions, assumptions and terminations and related actions with existing tenants were reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that approving a settlement agreement and taking those actions related to leases with existing tenants and for continuing marine terminal uses will result in a physical change in the environment, and therefore they are not subject to CEQA and no further environmental review is required; and

2. The environmental impacts of ongoing marine terminal uses that will continue under the lease actions were previously reviewed under CEQA. In July 2002, the City of Oakland ("City"), as the lead agency under CEQA, certified an

Environmental Impact Report ("EIR") for reuse of the Oakland Army Base ("OAB") and redevelopment of the seaport area. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and a mitigation program in reliance on the City's EIR (Resolution No. 02317). In addition to improvement projects on the former OAB, such as railyards and maritime support facilities, the OAB EIR described and analyzed cargo throughput increases throughout the seaport that would be supported in part by operational efficiencies and Port terminal realignments, as described in this agenda report; and be it

FURTHER RESOLVED, that this resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, title 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 agreements in accordance with the terms of this resolution. Unless and until agreements are duly executed on behalf of the Board as authorized by this resolution, are signed and approved as to form and legality by the Port Attorney, and are delivered to the other contracting party, there shall be no valid or effective agreements; and be it

FURETHER RESOLVED, that this Resolution shall be effective upon the final adoption after the second reading of an ordinance of the Board approving the Lease Agreements referenced above.

DRAFT

UPDATES & ANNOUNCEMENTS

The President, Members of the Board and the Executive Director will report on noteworthy events occurring since the last Board Meeting.

SCHEDULING

This segment of the meeting is reserved for scheduling items for future Agendas and/or scheduling Special Meetings.