

BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND

2/19/17  
Item: 6.2  
Dcl/ha  
dnc

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A FIRST AMENDMENT TO LICENSE AND CONCESSION AGREEMENT WITH HADAL, INC. TO EXTEND THE TERM FOR AN ADDITIONAL FIVE YEARS AND AN OPTION TO EXTEND FOR ANOTHER FIVE YEARS FOR PROPERTY LOCATED AT 1363 EMBARCADERO ROAD.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.2, dated February 9, 2017 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("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. The Port entered into a License and Concession Agreement dated March 3, 2014 ("L&C") with Hadal, Inc. ("Hadal") for approximately 10,804 square feet of land and improvements and approximately 23,685 square feet of water area including a boat ramp and docks on Port property located at 1363 Embarcadero Road, as depicted on Exhibit A to this Agenda Report. The initial term of the L&C will expire on February 28, 2017; and

B. Port staff have negotiated and recommend entering into a first amendment to the L&C with Hadal to extend the term of the L&C an additional five (5) years from March 1, 2017 with one option to further extend the term another five (5) years; and

C. Rent during the period March 1, 2017 to February 28, 2022 will be the target rental rate of \$12,785.03 per month, subject to a 3% annual increase. If Hadal exercises its option to extend, monthly rent will be adjusted to fair market rental rate on March 1, 2022, and increased 3% each year thereafter for the remainder of the term; and

D. Each time monthly rent increases, Hadal's security deposit will also increase to an amount equal to 3-months rent. All other terms and conditions of the L&C shall remain the same; and

E. For the reasons stated in this ordinance, the Agenda Report, and other information received by the Board, the Board hereby finds and determines that the proposed First Amendment to License and Concession Agreement is in the Port's best interest; and

F. The Board further finds and determines that the proposed first amendment to the License and Concession Agreement with Hadal is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, Article 19, Section 15300.4, which exempts the execution of leases or 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. Approval of the proposed first amendment to the License and Concession Agreement with Hadal falls within this class of exemptions. No additional environmental review is required to take the action recommended in this Agenda Report; and

G. Hadal will comply with the requirements of Bay Conservation and Development Commission ("BCDC") permit M1999.028.02, which requires fencing, access pathways, signage and gates to provide public access to the leased premises and the adjacent property to the east of the leased premises.

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the proposed first amendment to License and Concession Agreement with Hadal and to make minor amendments thereto consistent with the intent of this ordinance and the Agenda Report, subject to approval as to form and legality by the Port Attorney.

**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 a separate written agreement is 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 the other contracting party, there shall be no valid or effective agreement.

DRAFT

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**President.**

Attest: \_\_\_\_\_  
**Secretary.**

**Approved as to form and legality:**

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**Port Attorney**