

PORT ORDINANCE NO. 4447

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A FIRST AMENDMENT TO LICENSE AND CONCESSION AGREEMENT WITH BROTZEIT-LOKAL, LLC TO EXTEND THE TERM AN ADDITIONAL FIVE YEARS AT A MONTHLY RENTAL RATE OF \$4,753 FOR PREMISES AT 1000 EMBARCADERO ROAD, OAKLAND, CALIFORNIA.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.4, dated October 26, 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. Brotzeit-Lokal, LLC ("Brotzeit") has been using and occupying approximately 2,090 square feet of improved land located at 1000 Embarcadero Road, Oakland, California ("Premises") to operate a restaurant on said Premises since November 1, 2012 pursuant to a License and Concession Agreement ("L&C") that will expire on May 31, 2018; and

B. The L&C grants to Brotzeit two options to extend the term of the L&C for an additional five (5) years each at fair market rental rates as determined by mutual agreement or third party appraisal. Staff and Brotzeit have reached agreement that a minimum monthly rent of \$4,753 per month represents the fair market rental rate for the Premises. The agreed upon minimum monthly rent is \$1,000 per month greater than Brotzeit's current minimum monthly rent, is consistent with the Port's Target Rental Rates for the Premises, and will increase by 3% annually; and

C. Brotzeit has also agreed to pay the Port a percentage rent equal to 5.5% of gross sales less minimum monthly rent, which is a change to the benefit of the Port over the current percentage rental provisions; and

D. The proposed amendment to the L&C with Brotzeit will therefore include the following terms:

- i. Premises: an approximately 2,090 square feet of improved land located at 1000 Embarcadero Road as shown and depicted in the map attached to the Agenda Report as Exhibit A;
- ii. Extension Term: June 1, 2018 to May 31, 2023;

- iii. Monthly Rent: \$4,753/mo. with 3% annual increases;
- iv. Percentage Rent: 5.5% of gross sales less minimum rent;
- v. Security Deposit: \$10,005 (the existing L&C states that only the amount of rent paid shall be the subject of negotiations when exercising an Option, so the Security Deposit must remain unchanged and is less than three times the new monthly minimum rent);
- vi. Maintenance: Brotzeit is responsible for all maintenance of the Premises. There are no proposed Port maintenance responsibilities;
- vii. Proposed Use of the Premises: operation of a restaurant;

E. The Board further finds and determines that the proposed First Amendment to the L&C with Brotzeit is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, Article 19, Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Approval of the proposed First Amendment with Brotzeit falls within this class of exemptions, as no changes to the Premises or use are proposed. No additional environmental review is required to take the action recommended by Port staff.

F. 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.

G. The proposed First Amendment will retain an important tenant in the Commercial Real Estate portfolio, help deter theft and vandalism of the property, continues an appropriate and beneficial use of the Premises, and will allow the Port to continue receiving revenue from this property without interruption at monthly rental rates consistent with the Port's Target Rental Rates for an additional five years; and

H. The proposed First Amendment is consistent with the Port's duty to use and manage Port property in trust for the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the First Amendment will not interfere with the Tidelands Trust.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the proposed First Amendment with Brotzeit and to make minor amendments thereto consistent with the intent of the Board as described

in the Agenda Report and this ordinance, 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.

The Board of Port Commissioners, Oakland, California, October 26, 2017. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Hamlin, Martinez, Yee and President Story - 5. Excused: Commissioners Butner and Cluver - 2. Noes: 0.

Daria Edgerly
Acting Secretary of the Board