

PORT ORDINANCE NO. 4444

**ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO ENTER INTO A 10-YEAR LICENSE AND
CONCESSION AGREEMENT WITH T-MOBILE WEST, LLC FOR
A TELECOMMUNICATIONS FACILITY ON THE ROOF AT 101
WASHINGTON STREET, OAKLAND, CALIFORNIA.**

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.2, dated October 12, 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. T-Mobile West, LLC ("TMO") has been using and occupying approximately 120 square feet of the southeasterly corner of the roof of the Port's public parking garage at 101 Washington Street, Oakland, California ("Premises") to operate, maintain, repair, and replace certain telecommunication antennas and related equipment on said Premises for the past year pursuant to a Temporary Rental Agreement that will expire on October 31, 2017; and

B. TMO wishes to continue such use of the Premises for another ten (10) years and therefore wishes to enter into a new 10-year License and Concession Agreement ("L&C") with the Port for the same Premises. A site plan and map of the Premises is shown on the map attached to the Agenda Report as Exhibit A; and

C. The Premises are not currently usable for parking or other public parking garage uses, and Port staff believe that TMO's use and occupancy of the Premises is an appropriate use of that space and will allow the Port to receive revenue from an area that would not otherwise be rentable. The Premises will also allow TMO to offer and provide cellular coverage to members of the public using the Jack London Square area; and

D. Port staff have negotiated and recommend a new 10-year License and Concession Agreement with TMO under the following terms:

- i. Premises: an approximately 120 square foot area of the southeastern corner of the 7th floor roof of the Port's public parking garage at 101 Washington

Street, as shown and depicted in the map attached to the Agenda Report as Exhibit A;

- ii. Term: November 1, 2017 to October 31, 2027;
- iii. Monthly Rent: \$5,871/mo. with 3% annual increases;
- iv. Security Deposit: \$17,613, or three (3) times the monthly rent;
- v. Proposed Use of the Premises: operation, maintenance, repair and replacement of an unstaffed telecommunications facility comprised of antennas and related equipment attached to certain walls of the Premises;
- vi. TMO is responsible for all maintenance and operation of its equipment on the Premises. There are no proposed Port maintenance responsibilities.

E. The Board further finds and determines that the proposed Temporary Rental Agreement is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15301 of the CEQA Guidelines, 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. No changes to the premises or use are proposed.

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 License and Concession Agreement will put currently unrentable property to productive use, generate revenues for the Port of otherwise unproductive property, and is in the best interest of the Port; and

H. The proposed License and Concession Agreement 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 License and Concession Agreement will not interfere with the Tidelands Trust.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the proposed License and Concession Agreement with TMO 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 12, 2017.
Passed to print for one day by the following vote: Ayes: Commissioners Butner, Cluver, Colbruno, Hamlin, Martinez, Yee and President Story - 7. Noes: 0.

Daria Edgerly
Acting Secretary of the Board