

**PORT ORDINANCE NO. 4462**

**ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A FIVE-YEAR LICENSE AND CONCESSION AGREEMENT WITH OAKLAND ATHLETIC ROWING SOCIETY FOR A MONTHLY RENTAL RATE OF \$1,849 PER MONTH FOR PREMISES LOCATED AT THE LIVINGSTON STREET PIER IN OAKLAND, CALIFORNIA.**

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.8, dated January 25, 2018 (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 Oakland Athletic Rowing Society ("OARS") currently uses and occupies and approximately 3,200 square feet building at the Livingston Street Pier pursuant to a Temporary Rental Agreement ("TRA") that will expire on February 7, 2018; and

B. OARS would like to enter into a five (5) year agreement with the Port to not only continue to use and occupy the building but also to use and occupy certain open areas shown on Exhibit A, attached hereto (collectively, the "Proposed Premises"), for the storage and operation of rowing parts and equipment and a launch dock for a youth rowing club; and

C. Port staff have negotiated and recommend entering into a License and Concession Agreement ("L&C") with OARS for the Proposed Premises under the following terms:

- i. Premises: A 3,200 square foot building and open pier areas at the Livingston Street Pier, as shown on Exhibit A attached to this ordinance - all in its "as-is, where-is, with all faults" condition;
- ii. Term: Five (5) years through February 2023;
- iii. Right of First Negotiation: The Port will grant OARS a right of first negotiation for an additional five (5) year term at fair market value, provided that OARS gives the Port written notice of its intent to exercise such right no earlier than 90 days and no later than 30 days prior to the expiration of the initial term. The parties would then negotiate in good faith the terms and conditions of an extension to the L&C, including, without limitation, the fair market rental value of the Proposed Premises. If after 30 days from the Port's receipt of OARS' written notice, the parties have not reached agreement on the terms and conditions of an extension, neither party shall have any further obligation to negotiate, and the Port will have the right to lease the Proposed Premises to any other third party;
- iv. Monthly Rent: \$1,849.00/mo. (with 3% annual increases thereafter);
- v. Security Deposit: \$5,547 (3 times the monthly rent);
- vi. Maintenance: There are no proposed Port maintenance responsibilities. OARS will be responsible for all maintenance of the Proposed Premises. OARS will also be responsible for all utilities and for maintaining the entire pier area within the Proposed Premises for as long as they are the only tenant on the pier;
- vii. Proposed Uses: Storage and operation of rowing parts and equipment and a launch dock for a youth rowing club;
- viii. Tenant Improvements: OARS will perform the following tenant improvements:
  - a. Removing all interior walls in the building to create an open plan;

- b. Restoring water conduits and services to the building structure of the Proposed Premises;
- c. Restoring electricity conduit, wiring, meters, and fuse panels to the building structure of the Proposed Premises;
- d. Restoring gas conduit and services to the building structure on the Proposed Premises;
- e. Restoring electricity, plumbing, heating and air conditioning systems in and to the Proposed Premises;
- f. Replacing broken glass doors and windows within the Proposed Premises;
- g. Installing glass garage door for enhanced access to the warehouse building on the Proposed Premises;
- h. Repainting the Proposed Premises in a mutually acceptable color/quality;
- i. Replacing flooring in a mutually acceptable color/quality; and
- j. Installing any other improvements to the Proposed Premises necessary for OARS' proposed use and occupancy of the Proposed Premises, including, without limitation, the following:
  - i. A floating dock on the southern edge of the pier; provided that prior to such installation, OARS provides the Port with the measurements and location of the floating dock and secures all necessary regulatory permits and other approvals required by law; and
  - ii. Any security system, telephone and computer wiring required for OARS' proposed use and occupation of the Proposed Premises.

All other terms and conditions of the Port's standard form of License and Concession Agreement will also be incorporated into the L&C.

D. Prior to OARS' use of the building pursuant to the TRA, the Livingston Street Pier had been vacant since August of 2015, and the continued use and occupancy of the Proposed Premises (i) will help to deter theft and vandalism, (ii) is an appropriate and beneficial use of the Livingston Street Pier, (iii) the rental rate is reasonable based upon the fair market rental rate for the Proposed Premises, and (iv) by entering into the L&C, the Port will continue to receive uninterrupted revenue from this property for the next 5 years and enable a local water-oriented business to continue to provide water-oriented services at the Livingston Street Pier.

E. The Board further finds and determines that the proposed L&C is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Article 19, Section 15301 of the CEQA Guidelines 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. The approval of the proposed L&C falls within this class of exemption. No additional environmental review is required to take the action recommended in this Agenda Report.

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 L&C with OARS for the Proposed Premises will enable the Port to accommodate the growth and expansion needs of an existing tenant in good standing and secure a revenue stream from the entire building for a longer term; and

H. The proposed L&C 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 proposed private use of Port property pursuant to the proposed amendment will not interfere with the Tidelands Trust.

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the proposed L&C with OARS and to make such minor amendments to the L&C and the project description, as described in 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.

The Board of Port Commissioners, Oakland, California, January 25, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Cluver, Colbruno, Martinez, Yee and President Story - 6. Excused: Commissioner Hamlin - 1. Noes: 0.

Daria Edgerly  
Secretary of the Board

EXHIBIT A  
SKETCH OF PROPERTY

