

PORT ORDINANCE NO. 4490

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO APPROVE AN ASSIGNMENT OF THE LICENSE AND CONCESSION AGREEMENT WITH ALTA SUPPLY, INC. TO CANNROY DELAWARE, INC., AND TO AMEND SAID LICENSE AND CONCESSION AGREEMENT TO INCREASE THE PERFORMANCE DEPOSIT, FOR PREMISES LOCATED AT 424 PENDLETON WAY, OAKLAND.

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 September 13, 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; and

WHEREAS, 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 waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

WHEREAS, the proposed action 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 continued private use of Port property pursuant to the subject License and Concession Agreement ("Agreement") will not interfere with the Tidelands Trust; 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. Alta Supply, Inc. ("Alta Supply") is currently the Licensee to the Agreement, with an effective date of August 1, 2017, for approximately 8,849 square feet of warehouse and office space with dedicated parking located at 424 Pendleton Way, Oakland (the "Premises"); and

B. Alta Supply seeks a formal assignment of the Agreement to CannRoy Delaware, Inc., which now wholly owns Alta Supply, but desires to remain the named Licensee on the Agreement, as further described in the Agenda Report; and

C. As inducement for the Port to consent to the assignment, both CannRoy Delaware, Inc., a Delaware corporation, and its parent company, CannaRoyalty Corporation, a Canadian corporation, have executed Guarantees of the Agreement and Port staff and Alta Supply have negotiated and recommend amending the Agreement to increase the Performance Deposit to six (6) times the current monthly rent; and

D. The Board further finds and determines that the proposed assignment and amendment is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, 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 action falls within this class of exemptions. No additional environmental review is required to take the action recommended in the Agenda Report.

Section 3. The Board hereby:

A. Approves the assignment of the Agreement with Alta Supply, Inc. to **CannRoy Delaware, Inc.**, while keeping Alta Supply, Inc. the named Licensee on the Agreement; and

B. Approves and authorizes the Executive Director to amend the Agreement to increase the Performance Deposit to six (6) times the current monthly rent, provided also that CannRoy Delaware, Inc., a Delaware corporation, and CannaRoyalty Corporation, a Canadian corporation, shall guaranty the Agreement, as further described in the Agenda Report; and

C. Authorizes the Executive Director to execute all documents as may be appropriate to consummate the proposed transactions, subject to approval as to form and legality by the Port Attorney. Furthermore, if such documents are not fully executed within thirty (30) days after Board approval, the approval shall be null and void, unless extended at the sole and absolute discretion of the Executive Director or his designee.

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, September 13, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Hamlin, Martinez, Story, Yee and President Butner - 6. Recused: Commissioner Colbruno - 1. Noes: 0.

Daria Edgerly
Secretary of the Board