

PORT ORDINANCE NO. 4495

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A THIRD SUPPLEMENTAL TO LEASE WITH RADIO MIRCHI, INC. TO EXTEND THE TERM THROUGH DECEMBER 31, 2028 FOR A MONTHLY RENTAL AMOUNT OF \$13,733.63, WITH INCREASES, FOR PREMISES LOCATED ON THE NORTHERLY SIDE OF THE BAY BRIDGE IN 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 October 11, 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 will provide service for members of the public who use the waterfront, and 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 proposed 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. Radio Mirchi, Inc. is currently the Lessee to a Lease, with an effective date of November 18, 1997 and expiring on October 31, 2018 - for the operation of a radio transmission tower on approximately 4.6 acres of water and land in the North Harbor Area near the Bay Bridge, Oakland (the "Premises"); and

B. Radio Mirchi, Inc. and the Port desire to amend the Lease to extend the term through December 31, 2028; adjust the monthly rent to \$13,733.63 for the first two months of the extended term, which shall increase to \$14,420.00 on January 1, 2019 and increase by four percent

(4%) beginning January 1, 2020 and every year thereafter with a fair market value adjustment on January 1, 2024; implement a nonrefundable administrative fee of \$5,000 for requests to approve future assignments or transfers of the Lease; and implement changes as further described in the Agenda Report; and

C. The Board further finds and determines that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301 (Existing Facilities), which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures involving negligible or no expansion of use beyond that previously existing.

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the proposed Third Supplemental to Lease with **Radio Mirchi, Inc.** for the Premises to implement the changes described herein and as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed Third Supplemental to Lease is not fully executed within ninety (90) days after Board approval, the approval shall be null and void unless extended at the sole and absolute discretion of the Executive Director of 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, October 11, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Hamlin, Martinez, Story and President Butner - 6. Noes: 0.

Daria Edgerly

Secretary of the Board