

PORT ORDINANCE NO. 4501

**ORDINANCE AUTHORIZING AND APPROVING EXTENSION OF
TEMPORARY RENTAL AGREEMENT WITH THE CITY OF
OAKLAND FOR EMERGENCY VEHICLE ACCESS RELATED TO
THE RECONSTRUCTION OF THE EMBARCADERO BRIDGE FROM
JANUARY 1, 2019, THROUGH JUNE 30, 2019.**

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the proposed extension of a Temporary Rental Agreement ("TRA") with the City of Oakland ("City") for emergency vehicle access as set forth in the Agenda Report for Agenda Item 2.1, dated November 29, 2018 (the "Agenda Report") and related agenda materials, has received the expert testimony of 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 City is replacing the Embarcadero Bridge (the "Bridge") over Lake Merritt Channel, and during the closure of the Bridge, idle trains may block emergency vehicles access to lands south of Embarcadero West Street and west of the Bridge.

B. On January 4, 2016, the Port granted the City a TRA to provide temporary emergency vehicular access across certain Port properties as shown in Exhibit A to the Agenda Report.

B. The TRA has been amended three times to extend the term thereof due to construction delays, and the City has requested an additional extension of the TRA through June 30, 2019.

C. Port staff believe that the possibility of an idle train blocking emergency access during the Bridge closure is an unacceptable risk and therefore support the City's request.

D. The proposal to authorize the Executive Director to execute an amendment to extend the term of the TRA with the City for an alternate emergency vehicle access route to properties and areas south of Embarcadero West Street and west of the Bridge through June 30, 2019 was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port's CEQA Guidelines. The TRA is categorically exempt from CEQA pursuant to Section 15301(p) of

the Port CEQA Guidelines, which exempts the execution of leases or license agreements where the premises or licensed activity was previously leased or licensed to the same or another person/entity, involving negligible or no expansion of use beyond that previously existing. The extension of the term of the TRA to allow emergency vehicle access meets the criteria for this exemption.

SECTION 3. The Board approves the extension of the TRA as set forth in the Agenda Report and authorizes the Executive Director to execute an amendment to the TRA with the City for emergency vehicle access to properties south of Embarcadero West Street and west of the Embarcadero Bridge through June 30, 2019.

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. This ordinance approves and authorizes the execution of an agreement in accordance with the terms of this ordinance. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed and approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

The Board of Port Commissioners, Oakland, California, November 29, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Lee, Martinez, Story and President Butner - 6. Noes: 0.

Daria Edgerly

Secretary of the Board