

**PORT ORDINANCE NO. 4513**

**ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE  
DIRECTOR TO EXECUTE A SECOND AMENDMENT TO A LICENSE &  
CONCESSION AGREEMENT WITH TRANSFER CASE EXPRESS, INC.  
FOR PREMISES LOCATED AT 1285 EMBARCADERO ROAD,  
OAKLAND.**

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.4, dated March 28, 2019 (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 License & Concession 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. Transfer Case Express, Inc. ("Licensee") is currently the Licensee to a License & Concession Agreement, with an effective date of March 1, 2014, as amended by a First Amendment dated May 1, 2016 ("Agreement") for operation of a transfer case business on Port owned property located at 1285 Embarcadero Road, Oakland ("Premises"); and

B. Licensee and the Port desire to amend the Agreement to approve a sub-license to Afterguard Sailing Academy (who will utilize the Premises for maritime education for sailboat operation and safety, and related ancillary administrative purposes), amend the permitted uses to allow for such sub-license, and eliminate an option to extend the Agreement such that the Agreement expire on April 30, 2021, 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, 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 previously existing.

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the proposed Second Amendment and such additional documents necessary to consummate the contemplated transaction with **Transfer Case Express, Inc.** for the Premises to approve the sub-license to Afterguard Sailing Academy, amend the permitted uses to allow for such sub-license, and eliminate the option to extend the Agreement so that the Agreement will expire on April 30, 2021, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed Second Amendment or such additional documents necessary to consummate the contemplated transaction are not fully executed within sixty (60) 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, March 28, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and President Butner - 6. Excused: Commissioner Cluver - 1. Noes: 0.

Daria Edgerly

Secretary of the Board