

PORT ORDINANCE NO. 4520

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDMENT TO A LICENSE & CONCESSION AGREEMENT WITH HERC RENTALS INC. FOR PREMISES LOCATED AT 7727 OAKPORT STREET, OAKLAND TO EXTEND THE TERM FOR FIVE (5) YEARS WITH ONE ADDITIONAL OPTION TO EXTEND FOR AN ADDITIONAL FIVE (5) YEARS WITH A STARTING MONTHLY RENT OF \$32,055.00.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.4, dated May 9, 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. Herc Rentals Inc. ("Licensee") is currently the Licensee to a Multi-Year License and Concession Agreement, with an effective date of April 29, 2015 ("Agreement") for premises located at 7727 Oakport Street, Oakland consisting of approximately 2.79 acres of land containing two buildings totaling 25,000 square feet of showroom, office, and warehouse use and yard area ("Premises"); and
- B. Prior to June 2016, Licensee was previously known as Hertz Equipment Rental Corporation before changing its name to Licensee's current name, after which Licensee remained Licensee under the Agreement; and
- C. In anticipation of the expiration of the Agreement on July 31, 2019, Licensee and the Port desire to amend the

Agreement to extend the Agreement for a period of five (5) years commencing on August 1, 2019 at a monthly rent of \$32,055.00 with one option to extend for another five (5) years commencing on August 1, 2024, as well as provide a one-time rent credit in the amount not to exceed one times' the current monthly rent for Licensee's repaving of the driveway and yard area, as further described in the Agenda Report; and

- D. The Board further finds and determines that the proposed approval is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301(p), which exempts the execution, renewal, extension, or amendment to leases or to license and concession agreements where the premises was previously leased or licensed to the same or another person and which involves 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 amendment and such additional documents necessary to consummate the contemplated transaction with **Herc Rentals Inc.** for the Premises to extend the term for an additional five years with one option for an additional five-year extension, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed 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, May 9, 2019.
Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and President Butner - 7. Noes: 0.

Daria Edgerly

Secretary of the Board