

PORT ORDINANCE NO. 4550

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LICENSE AND CONCESSION AGREEMENT WITH PASSAGE NAUTICAL ENTERPRISES, INC. FOR A THIRTY-EIGHT (38) MONTH TERM FOR THE PREMISES LOCATED AT 544 WATER STREET, OAKLAND, WITH AN INITIAL MONTHLY RENT OF \$1,538.00 AND 4% ANNUAL INCREASES THEREAFTER.

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.5, dated January 23, 2020 (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 of Oakland ("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 people of 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. The Port-owned property at 544 Water Street, Oakland (the "Premises") consists of approximately 696 square feet ("sf") of office space at the northwest corner of the ground floor of the building at 530 Water Street, Oakland. The Premises are currently leased to Deborah Reynolds, doing business as Tradewind Yacht Sales under a Temporary Rental Agreement that expires on March 31, 2020.

B. Passage Nautical Enterprises, Inc. ("Passage Nautical") is based in Richmond, California and has been in business for the past 35 years to sell, broker, service, and charter boats, as well as provide sail and power boat lessons. Passage Nautical wishes to enter into a rental agreement for the Premises.

C. Port staff have negotiated and recommend entering into a License and Concession Agreement with Passage Nautical for the Premises under the following terms, as further described in the Agenda Report:

- a. Licensee: Passage Nautical Enterprises, Inc.
- b. Premises: 544 Water Street, Oakland, consisting of approximately 696 sf of ground floor office space.
- c. Term: April 1, 2020, through May 31, 2023.
- d. Use: Administrative office functions supporting boat charters.
- e. Monthly Rent: \$1,538.00 starting in the third month and increasing by 4% on April 1<sup>st</sup> of each year.
- f. Common Area Expense Reimbursement: \$710.00 per month beginning at the commencement of the Term and increasing by 4% on January 1<sup>st</sup> of each year.
- g. Tenant Improvement Rent Credit: The Port will waive two months' of Monthly Rent in exchange for Licensee installing new flooring in the Premises within six months of the commencement of the Term.

D. The Board further finds and determines that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines, which states that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and the proposed approval will not have such significant effect and therefore is not a project under CEQA.

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the proposed License and Concession Agreement, and any other documents necessary to consummate the proposed transaction, with **Passage Nautical Enterprises, Inc.** for the Premises for a thirty-eight (38) month term, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed agreement and any consummating documents are not fully executed within thirty (30) days after the effective date of the Board's 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, January 23, 2020. 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