

PORT ORDINANCE NO. 4626

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND A NO-COST TEMPORARY LICENSE AGREEMENT WITH ALAMEDA COUNTY TRANSPORTATION COMMISSION FROM DECEMBER 31, 2021 TO DECEMBER 31, 2022, WITH A POSSIBLE EXTENSION THROUGH JUNE 30, 2023, FOR CONSTRUCTION-RELATED ACTIVITIES ASSOCIATED WITH THE FREIGHT INTELLIGENT TRANSPORTATION SYSTEM PROJECT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 2.1, dated November 18, 2021, ("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, the Port and the Alameda County Transportation Commission ("Alameda CTC") have been working together to develop and implement a suite of freight transportation projects known as the GoPort Program ("GoPort Program"). The **GoPort Program** consists of three distinct projects: The **Freight Intelligent Transportation System Project ("FITS Project")**; the 7th Street Grade Separation Project West ("7th Street West Project"); and the 7th Street Grade Separation East Project ("7th Street East Project"); and

WHEREAS, on November 29, 2018, the Board authorized the Executive Director of the Port ("Executive Director") to execute a no-cost temporary license agreement ("TLA") with Alameda CTC for construction-related activities associated with the FITS Project, with an expiration date of December 31, 2021; and

WHEREAS, for various reasons, construction-related activities on the FITS Project will extend beyond December 31, 2021, and Alameda CTC has requested an extension of the TLA for a term expiring no later than June 30, 2023; and

WHEREAS, that 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; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. Based upon the information contained in the Agenda Report and in testimony received, the Board finds and determines that the proposed actions were reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and no supplemental review is required under Section 15162 of the CEQA Guidelines. The 2002 Oakland Army Base Area ("OAB") Redevelopment Plan Environmental Impact

Report ("2002 Redevelopment EIR") evaluated the potential impacts of redevelopment of the 1,800-acre redevelopment area, which included the Port locations for the FITS Project components. The EIR was certified by the lead agency, the City of Oakland, in June 2002. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and the mitigation program in the City's EIR (Resolution No. 02317). In 2012, the City of Oakland, in consultation with the Port, issued an Initial Study/Addendum to the Redevelopment EIR to evaluate proposed changes to the redevelopment plan. The Board approved the revised redevelopment plan and adopted the revised mitigation program on June 21, 2012 (Resolution No. 12-76). The OAB Redevelopment EIR, as addended, includes construction and installation of all supporting infrastructure, including Intelligent Transportation System elements consistent with those in the FITS Project. This action does not trigger any of the conditions set forth in Section 15162 of the CEQA Guidelines, and no further review is thus required.

Section 2. The Board hereby approves and authorizes the Executive Director to execute an amendment to the TLA ("Amendment") with Alameda CTC for the FITS Project for no cost and for an initial extended term through December 31, 2022, and subject to one (1) further six-month extension through June 30, 2023, and as further described in the Agenda Report and provided that the Amendment and all other necessary agreements are approved as to form and legality by the Port Attorney.

Section 3. 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 Port. This ordinance approves and authorizes the execution of a contract in accordance with the terms of this ordinance. Unless and until a separate written contract 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 other contracting party, there shall be no valid or effective contract.

Section 4. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, November 18, 2021. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story, and President Cluver - 7. Noes: 0.

Daria Edgerly

Secretary of the Board