

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

1/26/2023
Item No.: 6.2 (A)
CLF/pcm

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ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A COOPERATIVE AGREEMENT WITH ALAMEDA COUNTY TRANSPORTATION COMMISSION AND THE CITY OF OAKLAND THAT OUTLINES OWNERSHIP, OPERATIONS, AND MAINTENANCE OBLIGATIONS ASSOCIATED WITH THE 7TH STREET GRADE SEPARATION EAST PROJECT AND FINDING THAT THE PROPOSED ACTION COMPLIES WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AS IT WAS ANALYZED IN THE 2012 ADDENDUM TO THE 2002 OAKLAND ARMY BASE AREA REDEVELOPMENT PLAN ENVIRONMENTAL IMPACT REPORT.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 6.2, dated January 26, 2023, and related agenda materials ("Agenda Report"), 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 ("FITS") project; the 7th Street Grade Separation Project West; and the 7th Street Grade Separation East Project ("7th Street East Project"); and

WHEREAS, the Port, Alameda CTC, and the City of Oakland ("City") plan to memorialize the parties' ownership, operations, and maintenance obligations associated with the 7th Street East Project in the form of a cooperative agreement ("Cooperative Agreement"); 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. The Board hereby finds and determines that the proposed action was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"). 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, in June 2002. On September 17, 2002, the Board, acting on behalf of the Port of Oakland as a responsible agency under CEQA, adopted findings and the mitigation program in the City's EIR (Resolution No. 02317). In 2012, the City, 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 7th Street East Project was included in the 2002 Redevelopment EIR and the 2012 Addendum. No supplemental review is required under Section 15162 of the CEQA Guidelines.

Section 2. The Board further finds and determines that Port staff have negotiated and recommend entering into a Cooperative Agreement on the following terms:

- A. The Cooperative Agreement will be a three-way agreement between the City, Port, and Alameda CTC, whereby Alameda CTC will transfer and assign its ongoing Operations & Maintenance ("O&M") responsibilities, as well as access, liability, and other rights of the Port and the City.
- B. The Port will assume O&M of the new rail bridge structure to be built for the 7th Street East Project ("Bridge").
- C. The Port will not have any O&M obligations associated with the new roadway alignment beneath the Bridge, or the Bridge footings, as these are City obligations.
- D. The Port will also not be responsible for O&M obligations associated with railroad and railroad-related facilities on the Bridge, which consist of the tracks, ties, ballast, and the perimeter fence, all of which is the responsibility of Union Pacific Railroad ("UP").
- E. To perform maintenance, other than for annual inspections, the Port's access to the Bridge will be through UP's standard right of entry process and such access may be subject to market rate fees.

Section 3. The Board hereby approves and authorizes the Executive Director to:

- A. Execute on behalf of the Board the Cooperative Agreement with Alameda CTC and the City under the terms outlined in Section 2 above and as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney.
- B. Make such additions, modifications, or corrections as necessary to implement the Lease or to correct errors, subject to the limitations set forth herein and provided that any such addition, modification, or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report.

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 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 5. 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.

DRAFT

President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney