

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

6/22/17
Item 6.3
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ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO ENTER INTO A SEVENTH SUPPLEMENTAL
AGREEMENT WITH BURLINGTON NORTHERN SANTA FE
RAILWAY COMPANY FOR THE JOINT INTERMODAL FACILITY.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.3, dated June 22, 2017 (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; 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 originally entered into a lease (the "Lease") for the Joint Intermodal Terminal (the "Premises") with BNSF Railway Company ("BNSF") in 2002; and

B. The Port and BNSF have amended the lease six times since 2002 with the Sixth Amendment expiring as of September 2014. BNSF and the Port have been negotiating the terms of a lease amendment. BNSF has been leasing the JIT in holdover status since the expiration of the Sixth Amendment; and

C. Through the Fourth Amendment to the Lease, approximately 2.4 acres was added to the Premises. BNSF never made improvements to this area and it was not incorporated into the Premises. The Port requires removal of this 2.4 acre area from the Premises in order to install rail infrastructure for a new development; and

D. The proposed Seventh Supplemental Agreement will remove the 2.4 acre from the Premises; and

E. The Board hereby finds and determines that entering into the proposed Seventh Supplemental Agreement is categorically exempt from the requirements of California Environmental Quality Act ("CEQA") pursuant to Section 15301, Existing Facilities.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the proposed Seventh Supplemental Agreement with BNSF to remove 2.4 acres from the Premises, as described in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

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.

DRAFT

President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney