

PORT ORDINANCE NO. 4454

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND THE TERM OF THREE TEMPORARY RIGHT OF ENTRY AND CONSTRUCTION ACCESS AGREEMENTS FOR THREE YEARS WITH THE CITY OF OAKLAND AND THE AFFECTED TENANTS FOR INSTALLATION OF WATERFRONT TRAIL IMPROVEMENTS ON THREE PORT-OWNED PROPERTIES LOCATED ALONG THE OAKLAND ESTUARY.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.4, dated November 30, 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; 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 approvals will promote commerce and navigation, 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 private uses of Port property pursuant to the proposed approvals 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 approves the terms of, and authorizes the Executive Director to execute, extensions of the Temporary Right of Entry and Construction Access Agreements for three years (through December 31, 2020) for installation of waterfront trail improvements with the parties and at the sites described below, as further described in the Agenda Report and in this ordinance, provided that such extensions are approved as to form and legality by the Port Attorney:

- A. With the **City of Oakland and East Bay Regional Park District** for the Crowley Site located at 1441-1551 Embarcadero Road; and
- B. With the **City of Oakland and Embarcadero Cove Enterprises LLC** for the Embarcadero Cove properties located at 1901-1951 Embarcadero Road; and
- C. With the **City of Oakland** for the Livingston Street Pier site located at Embarcadero Road and Livingston Street.

Section 3. The Board further finds and determines that the requested approvals are exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301(c), which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features (such as sidewalks, bicycle and pedestrian trails, and similar facilities), involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

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, November 30, 2017. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Cluver, Colbruno, Hamlin, Martinez, Yee and President Story - 7. Noes: 0.

Daria Edgerly
Secretary of the Board