

PORT ORDINANCE NO. 4500

ORDINANCE APPROVING AND AUTHORIZING A GRANT OF EASEMENT TO PACIFIC GAS AND ELECTRIC COMPANY FOR ACCESS, REPAIR, AND MAINTENANCE OF FACILITIES LOCATED IN A JOINT TRENCH ALONG THE EASTERN SIDE OF MARITIME STREET FROM 14TH STREET TO APPROXIMATELY 18TH STREET, TO PROVIDE ELECTRICITY SERVICE TO THE PORTION OF THE FORMER OAKLAND ARMY BASE PROPERTY OWNED BY THE CITY OF OAKLAND, FOR NO MONETARY CONSIDERATION.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item No. 2.1 dated October 25, 2018 ("Agenda Report") and related agenda materials, has received the expert testimony of Port staff, and has provided opportunities for and taken public comment; 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;

BE IT ORDAINED BY THE BOARD OF PORT COMMISSIONERS OF THE CITY OF OAKLAND AS FOLLOWS:

SECTION 1. The Board hereby finds and determines as follows:

- a. As part of the City of Oakland's ("City") and the Port's joint efforts to redevelop the former Oakland Army Base ("OAB"), the City and the Port entered into an Amended and Restated Cost Sharing Agreement ("CSA"), dated June 19, 2012, for the development of certain common backbone infrastructure; and
- b. Among the infrastructure improvements developed pursuant to the CSA was a joint trench ("Joint Trench") along the eastern boundary of Maritime Street with conduits for various utilities, including, without limitation, conduits for PG&E's electric circuits; and
- c. As a condition to commencing the transmission of electricity to the City's portion of OAB ("City Lands"), PG&E requested a direct easement from the Port for those portions of PG&E'S circuits within the portions of the Joint Trench located on the Port's portion of OAB ("Port Lands"); and
- d. The proposed easement to PG&E is for the benefit of the City in consideration of the mutual covenants and conditions set forth in the CSA and therefore will require no further payment from PG&E; and

- e. The proposed easement to PG&E was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"). CEQA Guidelines Section 15378(a) states that "Project" means the whole of an action that has a potential for resulting in either direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The general rule in Section 15061(b)(3) of the CEQA Guidelines additionally states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. Because it can be seen with certainty that there is no possibility that executing a Grant of Easement Agreement with PG&E may have a significant effect on the environment, the action is not a "Project" under CEQA, and is not subject to CEQA under the General Rule Exclusion. No further review of this action under CEQA is required.

SECTION 2. The Board hereby approves the terms and conditions of the Grant of Easement Agreement with PG&E, with the following major terms and conditions:

- a. **Premises:** The easement premises ("Premises") will be an area of approximately 1,500 linear feet by approximately 15 feet wide along the eastern side of Maritime Street between 14th Street and 18th Street, and along and beneath a portion of 14th Street, east of Maritime Street, all as depicted in the "Location Map" in the Agenda Report; and
- b. **Permitted Uses:** PG&E will be given a non-exclusive easement for the purpose of constructing, operating, inspecting, maintaining, repairing, removing and replacing, from time-to-time, electrical conduits containing electric transmission or distribution lines (collectively, "PG&E's Facilities") to provide electricity to the City Lands. PG&E will not be allowed to expand or enlarge PG&E's Facilities, add additional conduits, or install lateral connections on Port Lands without first obtaining the Port's prior written permission, which the Port may grant, deny, or condition in its sole and absolute discretion; and
- c. **Term:** The term of the easement will terminate due to abandonment, non-use, or violation of the tidelands trust; and
- d. **Payment:** None. The proposed easement to PG&E is for the benefit of the City and is in consideration of the mutual covenants and conditions set forth in the CSA.

SECTION 3. The Board hereby authorizes the Executive Director to:

A. Execute on behalf of the Board the Grant of Easement Agreement with PG&E, subject to the terms and conditions set forth herein and in the Agenda Report;

B. Make such additions, modifications, or corrections as necessary to implement the Grant of Easement Agreement 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 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 other contracting party, there shall be no valid or effective agreement.

SECTION 5. This ordinance shall be effective thirty (30) days following the adoption of this ordinance by the Board.

The Board of Port Commissioners, Oakland, California, October 25, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Hamlin, Martinez, Story and President Butner - 6. Abstain: Commissioner Lee - 1. Noes: 0.

Daria Edgerly

Secretary of the Board