

PORT ORDINANCE NO. 4505

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A NO-COST TEMPORARY LICENSE AGREEMENT WITH ALAMEDA COUNTY TRANSPORTATION COMMISSION AND ITS SELECTED CONTRACTORS FROM JUNE 1, 2019, THROUGH DECEMBER 31, 2021, WITH AN OPTION TO EXTEND FOR AN ADDITIONAL SIX MONTHS, FOR CONSTRUCTION ACTIVITIES AT THE SEAPORT ASSOCIATED WITH THE FREIGHT INTELLIGENT TRANSPORTATION SYSTEM PROGRAM.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 3.2, dated November 29, 2018 (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 and the Alameda County Transportation Commission ("Alameda CTC") are currently working together to design, implement and construct the Freight Intelligent Transportation System Program ("FITS Program"), which consists of fifteen (15) demonstration projects intended to improve traffic flow, vehicle safety and goods movement, enhance traveler information and experience on the roadway, and reduce congestion; and

B. Alameda CTC wishes to enter into a Temporary License Agreement ("TLA") with its selected contractors and the Port for access and construction of the FITS Program improvements on Port property; and

C. Port staff has proposed a TLA with Alameda CTC and its selected contractors on the following terms:

- i. Premises: Areas adjacent to and on Middle Harbor Road, Maritime Street, 7th Street and within the Outer Harbor Intermodal Terminal, as shown and depicted in the map attached to the Agenda Report as Exhibit A;

- ii. Use of Premises: Construction activities related to the FITS Program;
- iii. Term: June 1, 2019 through December 31, 2021, with an option to extend for an additional six (6) months subject to Executive Director approval;
- iv. Monthly Rent: \$0;
- v. Performance Deposit: \$0;
- vi. Environmental: Alameda CTC's and its selected contractors agreement to comply with the Port's Environmental Ordinance;
- vii. Insurance: Alameda CTC's and its selected contractors agreement to comply with Port insurance requirements; and
- viii. Cooperative Agreement: Execution of TLA contingent on Board approval of the Traffic Management Projects Cooperative Agreement with Alameda CTC for FITS Program.

D. The Board further finds and determines that entering into a TLA with Alameda CTC and its selected contractors for construction activities related to the FITS Program was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and applicable existing CEQA documentation. 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 Program components. The EIR was certified by the lead agency, the City of Oakland, in June 2002. On September 17, 2002, the Board ("City"), 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 OAB Redevelopment EIR, as addended, includes construction and installation of all supporting infrastructure, including Intelligent Transportation System elements consistent with the those in the FITS Program. This action does not trigger any of the conditions set forth in Section 15162 of the CEQA Guidelines, and no further CEQA review is required.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the proposed TLA with Alameda CTC and its selected contractors and to make minor amendments thereto consistent with the intent of the Board as described in the Agenda Report and this ordinance, 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.

The Board of Port Commissioners, Oakland, California, November 29, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Lee, Martinez, Story and President Butner - 6 Noes: 0.

Daria Edgerly

Secretary of the Board