

**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

12/13/18  
Item No.: 2.1  
ESP/ms  
CP  
MA

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDMENT TO A TEMPORARY RIGHT OF ENTRY AND CONSTRUCTION ACCESS AGREEMENT WITH THE CITY OF OAKLAND AND ZARSIION-OHP I LLC FOR RECONSTRUCTION OF EMBARCADERO BRIDGE TO EXTEND THE TERM FOR AN ADDITIONAL SIX MONTHS THROUGH JUNE 30, 2019.

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.1, dated December 13, 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; 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 action will 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 the private use of Port property pursuant to the subject agreement 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 finds and determines that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, which

categorically exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of use beyond that existing at the time of determination of the lead agency, i.e., the City of Oakland, which had issued a Notice of Exemption for the project under CEQA Guidelines Section 15183 (Projects Consistent with Community Plan or Zoning) and Section 15302 (Replacement or Reconstruction).

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the Second Amendment to the Temporary Right of Entry and Construction Access Agreement with the **City of Oakland** and **Zarsion-OHP I LLC** for reconstruction of Embarcadero Bridge, to extend the term for an additional six months through June 30, 2019, as further 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.

\_\_\_\_\_  
**President.**

**Attest:** \_\_\_\_\_  
**Secretary.**

**Approved as to form and legality:**

\_\_\_\_\_  
**Port Attorney**