

PORT ORDINANCE NO. 4533

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A FIRST AMENDMENT TO THE TEMPORARY LICENSE AGREEMENT WITH HDR ENGINEERING, INC. FOR CERTAIN PORT OF OAKLAND LANDS LOCATED ADJACENT TO 7<sup>TH</sup> STREET AND WITHIN THE RIGHT OF WAY OF 7<sup>TH</sup> STREET AND MARITIME STREET TO EXTEND THE TERM THROUGH MARCH 31, 2020, FOR VARIOUS ACTIVITIES IN SUPPORT OF THE 7<sup>TH</sup> STREET GRADE SEPARATION PROJECTS.

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.3, dated September 12, 2019 (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**, the Port entered into a rent-free Temporary License Agreement with the HDR Engineering, Inc. ("HDR") on or about November 1, 2018, for as-needed access and use by HDR with access to Port property near the intersection of 7<sup>th</sup> Street and Maritime Street to conduct certain activities necessary to complete the design of the 7<sup>th</sup> Street Grade Separation East Project ("TLA"); 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 and authorizes the extension of the TLA with HDR through March 31, 2020, and otherwise on the same terms and conditions as the original TLA.

**Section 3.** The Board finds and determines that:

A. Based upon all the information received by the Port, the services provided by HDR pursuant to the First Amendment to the TLA related to the 7<sup>th</sup> Street Grade Separation Projects provide a direct benefit to the Port and can be accommodated without adverse impacts to the Port's maritime operations.

B. Based upon all the information received by the Port, the proposed First Amendment to the TLA is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15306, which exempts from CEQA data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

**Section 4.** The Board hereby approves and authorizes the Executive Director of the Port ("Executive Director") to execute the First Amendment to the TLA with HDR and to make minor amendments to the TLA consistent with the intent of this ordinance and the Agenda Report, subject to approval as to form and legality by the Port Attorney.

**Section 5.** 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, September 12, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Lee, Leslie, Martinez, Story and President Butner - 7. Noes: 0.

Daria Edgerly

Secretary of the Board

