

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

12/12/19
Item No.: 2.2
CF/msr off
MH

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE AN ENCROACHMENT AGREEMENT WITH
UNION PACIFIC RAILROAD COMPANY FOR THE INSTALLATION
OF RADIO FREQUENCY IDENTIFICATION DEVICE EQUIPMENT
AND TRAIN DETECTION EQUIPMENT ASSOCIATED WITH THE
FREIGHT INTELLIGENT TRANSPORTATION SYSTEM ("FITS")
ELEMENT OF THE GOPORT PROGRAM.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.2, dated December 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 and the Union Pacific Railroad Company ("UP") desire to enter into an Encroachment Agreement ("Agreement") to improve traffic and safety conditions of the Seaport, by helping to capture vehicle and train movement in an important and busy area of the Seaport; 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 execution of the Encroachment Agreement with UP on the terms and conditions outlined in the Agreement.

Section 3. The Board finds and determines that:

A. Based upon all the information received by the Port, the Agreement with UP will facilitate the installation of the train detection equipment and radio frequency identification device readers in the best and most effective location, which is on UP property. This is a direct benefit to the Port and can be accommodated without adverse impacts to the Port's maritime operations.

B. Based upon the information contained in the Agenda Report and in testimony received, the Board finds and determines that the proposed Agreement was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and no supplemental review is required under Section 15162 of the CEQA Guidelines. 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 Project components. The EIR was certified by the lead agency, the City of Oakland, in June 2002. On September 17, 2002, the Board of Port Commissioners, 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 of Oakland, in consultation with the Port, issued an Initial Study/Addendum to the Redevelopment EIR to evaluate proposed changes to the redevelopment plan. The Board of Port Commissioners approved the revised redevelopment plan and adopted the revised mitigation program on June 21, 2012 (Resolution No. 12-76). The Port prepared an Addendum per Section 15164 of the CEQA Guidelines to document minor changes as described in the 2002 Redevelopment Plan as addended.

Section 4. The Board hereby approves and authorizes the Executive Director of the Port ("Executive Director") to execute the Agreement with UP, 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.

President.

Attest:

Secretary.

Approved as to form and legality:

Port Attorney