

PORT ORDINANCE NO. 4615

ORDINANCE AUTHORIZING AN ACCESS AGREEMENT WITH THE CITY OF OAKLAND ("CITY") FOR THE PORT OF OAKLAND ("PORT") TO ACCESS, OPERATE, AND MAINTAIN PORT UTILITY INFRASTRUCTURE LOCATED ON CITY OF OAKLAND PROPERTY.

WHEREAS, the Board of Port Commissioners ("Board") of the City of Oakland has reviewed and evaluated the Agenda Report Item No. 2.1 dated, September 30, 2021, ("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; now therefore

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. This action was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"). The proposed action is exempt from CEQA pursuant to CEQA Guidelines Section 15301 as the proposed access agreement ("Access Agreement") merely facilitates Port access to operate and maintain existing Port utility infrastructure.

B. The proposed Access Agreement to be provided by the City to the Port is for the benefit of Port tenants for continued electrical service, and to the Port more generally to facilitate ongoing access, operation, and maintenance rights of the Port to its electrical infrastructure located on City property.

**SECTION 2.** The Board hereby approves the terms and conditions of the Access Agreement with the City, with the following major terms and conditions:

**A. License Area:** The Access Agreement provides the Port access to an area of the City's Oakland Army Base redevelopment area ("License Area") where Port electrical infrastructure is currently installed, including Circuit 2 and related equipment ("Circuit 2"). Exhibit B to the Agenda Report provides a general depiction of the location of the License Area.

**B. Purpose:** The Port will be given non-exclusive access to the License Area for the purpose of maintaining, restoring repairing, replacing, and operating Circuit 2. If the Port elects, at a future date, to underground electrical lines within the License Area, the Port and City will work in good faith to amend the Access Agreement.

- C. Access:** The License Area shall be accessed by the Port through the Port's Berth 9 property.
- D. Term:** The term of the Access Agreement is so long as the Port's existing electrical infrastructure is located on City property.
- E. Fee:** None. The City is not charging a fee to provide the proposed Access Agreement to the Port.

**SECTION 3.** The Board hereby authorizes the Executive Director of the Port ("Executive Director") to:

A. Execute on behalf of the Board the Access Agreement with the City, subject to the terms and conditions set forth herein and as further set forth in the Agenda Report.

B. Make such additions, modifications, or corrections as necessary to implement the Access 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 and are approved 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 Port. 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 take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this ordinance shall be suspended, and all actions authorized by this ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, September 30, 2021. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story and President Cluver - 7. Noes: 0.

Daria Edgerly

Secretary of the Board