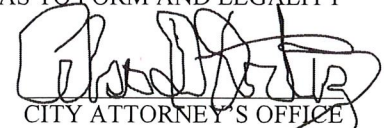


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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

RESOLUTION NO. 89674 C.M.S.

**A RESOLUTION:**

**(1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A COOPERATIVE AGREEMENT, BETWEEN THE CITY OF OAKLAND (CITY), ALAMEDA COUNTY TRANSPORTATION COMMISSION (ACTC), AND THE PORT OF OAKLAND (PORT), FOR THE 7TH STREET GRADE SEPARATION EAST PROJECT (PROJECT); AND**

**(2) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AMENDED CONSTRUCTION MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY, ACTC, AND THE PORT FOR THE PROJECT; AND**

**(3) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AMENDED REIMBURSEMENT AGREEMENT BETWEEN THE CITY AND ACTC; AND**

**(4) ADOPTING NATIONAL ENVIRONMENTAL POLICY ACT AND CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

**WHEREAS**, the Alameda County Transportation Commission (“ACTC”), as implementing agency, has been working with the City of Oakland (“City”) and the Port of Oakland (“Port”) to develop and implement a suite of freight transportation projects known as the Global Opportunities at the Port of Oakland Program (“GoPort Program”), which includes the 7th Street Grade Separation East Project (“Project”) that is designed to realign and rebuild a grade-separated underpass structure for vehicular, cyclist and pedestrian traffic on 7th Street to cross under the Union Pacific Railroad (“UPRR”) tracks to improve Port access and traffic safety while preserving rail operations; and

**WHEREAS**, on November 27, 2018, the Oakland City Council passed Resolution No .87415 CMS, which authorized the City Administrator to negotiate and execute an agreement with ACTC for the reimbursement of City costs incurred in the review and approval of design plans and documents for the GoPort Program projects; and

**WHEREAS**, the California Department of Transportation as the lead agency, working collaboratively with ACTC, obtained approvals and clearance for the Project under the National Environmental Policy Act (“NEPA”) and issued a NEPA Categorical Exclusion on October 25, 2018 and the Project was included in the 2002 Oakland Army Base Redevelopment Environmental Impact Report (“OAB EIR”) and its addenda, as certified by the City and the Port in June 2012. In November 2019, a California Environmental Quality Act (“CEQA”) determination pursuant to CEQA Guidelines section 15164 was made that the Project would not result in any new significant environmental effects beyond those identified in the OAB EIR, nor would result in a substantial increase in the severity of previously identified significant effects; and

**WHEREAS**, on August 26, 2019, and amended June 1, 2021, ACTC and the City entered into Agreement No. A19-0028 (as amended, the “Reimbursement Agreement”) to compensate the City for its reimbursable design oversight services for the Project; and

**WHEREAS**, in January 2020, ACTC, the City, and the Port of Oakland executed that certain Memorandum of Understanding (A20-0005) (the “Construction MOU”), to define their respective roles, responsibilities, and authorities for design and permitting phase of the Project; and

**WHEREAS**, on December 2, 2022, UPRR and ACTC entered into that certain Construction and Maintenance Agreement, 7th Street, DOT No. 972497A, Mile Post 4.75 – Niles Subdivision, Oakland, Alameda County, California, and known in UPRR’s records as part of Real Estate Folder Number 3142-52, in which, among other things, ACTC commits to construct the Project; and

**WHEREAS**, the realignment of 7th Street will also necessitate the relocation of existing pipelines owned by SFPP, L.P., which is affiliate with, or controlled by, Kinder Morgan, currently used for jet fuel from their existing underground location to a bridge over new 7th Street alignment (“New Pipelines Location”); and

**WHEREAS**, upon completion and acceptance of construction of the Project, UPRR will retain ownership of the project improvements that are within the railroad operating right of way, ACTC will assign ownership of specific portions of the improvements to the City and the Port; and

**WHEREAS**, the City desires to enter into (1) a Cooperative Agreement with the Port, and ACTC to define the operations, repairs and maintenance responsibilities of the parties, (2) an Amended Construction MOU pursuant to which the parties acknowledge that ACTC is responsible for the procurement of contractor(s) and funding for the construction phase of the Project, and that the City and Port will have construction oversight roles and responsibilities during construction, and (3) an Amended Reimbursement Agreement obligating ACTC to reimburse the City for those costs identified in the Amended Construction MOU; now, therefore, be it

**RESOLVED:** That the City Administrator is hereby authorized to (a) negotiate and execute a Cooperative Agreement, an amended Construction MOU, and an amended Reimbursement Agreement, and substantially in accordance with the forms attached to the Agenda Report for this item and; (b) negotiate and execute such other additions, amendments or other modifications to the foregoing documents that the City Administrator, in consultation with the City

Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transaction contemplated by this Resolution; and (c) to negotiate and execute such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to implement the Cooperative Agreement, the amended Construction MOU, and the amended Reimbursement Agreement, , including, without limitation, a joint use agreement related to the New Pipelines Location, in order to consummate the agreements to otherwise effectuate the purpose of this Resolution and its basic purposes; and be it

**FURTHER RESOLVED:** That the City Council has independently considered and finds that the Project obtained California Department of Transportation approvals, including a NEPA Categorical Exclusion on October 25, 2018. The City Council also finds that the Project complies with CEQA pursuant to CEQA Guidelines section 15164 since the Project would not result in any new significant environmental effects beyond those identified in the OAB EIR, nor would it result in a substantial increase in the severity of previously identified significant effects; and be it

**FURTHER RESOLVED:** That an original copy of the Cooperative Agreement, the Amended Construction MOU, and the Amended Reimbursement Agreement be kept on file with the City Clerk, once executed.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:


**APR 18 2023**

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
~~PRESIDENT FORTUNATO BAS~~ 7

NOES -  
ABSENT -  
ABSTENTION -

Excused: 1 - BAS

ATTEST:

  
\_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California