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OFFICE OF THE CITY CLERK
OAKLAND


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. 13733 - C.M.S.

AN ORDINANCE:

(1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A FIRST AMENDMENT TO INDENTURE DATED DECEMBER 23, 1930, BETWEEN UNION PACIFIC RAILROAD AND THE CITY OF OAKLAND (CITY), TO RELINQUISH A PORTION OF THE 1930 ROADWAY EASEMENT, AND ACCEPT THE EASEMENTS THEREIN, UPON COMPLETION OF THE 7TH STREET GRADE SEPARATION EAST PROJECT (PROJECT); AND

(2) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN ASSIGNMENT AGREEMENT BETWEEN THE ALAMEDA COUNTY TRANSPORTATION COMMISSION AND THE CITY FOR THE ASSIGNMENT OF A ROADWAY EASEMENT DEED, AND ACCEPT THE EASEMENTS THEREIN, UPON COMPLETION OF THE PROJECT; AND

(3) ADOPTING NATIONAL ENVIRONMENTAL POLICY ACT AND CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, pursuant to that certain Indenture Dated December 23, 1930, Southern Pacific Transportation Company, the successor-in-interest of which is Union Pacific Railroad (“UPRR”), granted an easement (“1930 Easement”) to the City of Oakland (“City”) for the construction, use, and maintenance of a grade-separated underpass structure (“Existing Underpass”) for vehicular traffic on 7th Street to cross under UPRR’s tracks (the “1930 Indenture”); and

WHEREAS, the City is responsible for maintaining 7th Street, the Existing Underpass, and a related pump station;

WHEREAS, the Alameda County Transportation Commission (“ACTC”) is the lead agency for designing and constructing a realigned roadway and new underpass for 7th Street as part of the 7th Street Grade Separation East Project (“Project”); and

WHEREAS, 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 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, in January 2020, ACTC, the City, and the Port of Oakland executed that certain Memorandum of Understanding (A20-0005), 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 (“C&M Agreement”), in which, among other things, ACTC commits to construct the Project and UPRR commits to grant certain easement rights in and to UPRR property to ACTC, including granting to ACTC a roadway easement deed (“Roadway Easement Deed”) for the new alignment of 7th Street, together with ACTC’s right to assign the Roadway Easement Deed to the City upon completion of the Project; and

WHEREAS, pursuant to the C&M Agreement, the Existing Underpass structure located in the 1930 Easement will be modified by filling the space under the structure with grout or other fill material to effectively block off the existing 7th Street, and a portion of the 1930 Easement will continue to be used by the City to accommodate drainage piping exiting a new pump station and other drainage facilities; 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 to the Roadway Easement Deed to the City, and UPRR will require the City to relinquish a portion of the 1930 Easement that will no longer be necessary due to the new alignment of 7th Street pursuant to a First Amendment to the 1930 Indenture with UPRR (“Indenture Amendment”); and

WHEREAS, the City desires to enter into Indenture Amendment and an Assignment Agreement (“Assignment”) for the assignment by ACTC of the Roadway Easement Deed to the City effective upon completion of the Project; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

SECTION 2. The City finds and declares pursuant to Oakland Municipal Code Section 2.41.060, the acceptance of perpetual easements from UPRR and ACTC is in the City's best interest, for the reasons provided in the Agenda Report for this item, attachments thereto, and elsewhere in the record, which are hereby incorporated herein by this reference as if fully set forth herein.

SECTION 3. The City Council hereby authorizes the City Administrator to (a) negotiate and execute the Indenture Amendment and Assignment substantially in accordance with the forms attached to the Agenda Report for this item and accept the easements granted thereby; (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 Ordinance; and (c) to negotiate and execute such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to implement the Indenture Amendment, Assignment and the related Roadway Easement Deed in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose of this Ordinance and its basic purposes.

SECTION 4. National Environmental Policy Act and California Environmental Quality Act Findings. 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.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

NOTICE AND DIGEST

AN ORDINANCE:

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(2) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN ASSIGNMENT AGREEMENT BETWEEN THE ALAMEDA COUNTY TRANSPORTATION COMMISSION AND THE CITY FOR THE ASSIGNMENT OF A ROADWAY EASEMENT DEED, AND ACCEPT THE EASEMENTS THEREIN, UPON COMPLETION OF THE PROJECT; AND

(3) ADOPTING NATIONAL ENVIRONMENTAL POLICY ACT AND CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

Per an Indenture Dated December 23, 1930, Southern Pacific Transportation Company, the successor-in-interest of which is Union Pacific Railroad (“UPRR”), granted an easement (“1930 Easement”) to the City of Oakland (“City”) for the construction, use, and maintenance of a grade-separated underpass structure for vehicular traffic on 7th Street to cross under UPRR’s tracks (the “1930 Indenture”). On December 2, 2022, UPRR and the Alameda County Transportation Commission (“ACTC”) entered into that certain Construction and Maintenance Agreement, 7th Street, in which, among other things, ACTC commits to construct the 7th Street Grade Separation East Project, which will create a new alignment of 7th Street, and UPRR commits to grant certain easement rights in and to UPRR property to ACTC, including granting to ACTC a roadway easement deed (“Roadway Easement Deed”) for the new 7th Street alignment. This Ordinance will authorize the City Administrator to negotiate and execute an assignment by ACTC of the Roadway Easement Deed and an amendment to the 1930 Indenture with UPRR and to accept an easement over the new alignment of 7th Street and relinquish a portion of the 1930 Easement no longer needed due to the new alignment, effective upon completion and acceptance of construction of the Project. The City Council will also adopt National Environmental Policy Act and California Environmental Quality Act findings related to the Project.


SECTION 6. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, **MAY 2 2023**

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS - 8

NOES – 0
ABSENT – 0
ABSTENTION – 0

ATTEST: 
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Introduction Date

APR 18 2023

Date of Attestation: May 24, 2023