

AGENDA REPORT

Ordinance: Approve and Authorize the Executive Director to Extend the Term of Three Temporary Right of Entry and Construction Access Agreements for Three Years for Installation of Waterfront Trail Improvements on Three Port Owned Properties Located Along the Oakland Estuary **(CRE)**

MEETING DATE: 11/30/2017

AMOUNT: N/A
Choose an item.

PARTIES INVOLVED: Embarcadero Cove Enterprises, LLC
East Bay Regional Parks District
City of Oakland

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

This agenda report is a request for approval to extend three existing Temporary Right of Entry and Construction Access Agreements for installation of waterfront trail improvements by the City of Oakland for an additional three years each. Two of the three existing Temporary Right of Entry and Construction Access Agreements also require the consent of existing tenants located on the subject properties; Embarcadero Cove Enterprises and the East Bay Regional Parks District.

BACKGROUND

In 2002, the voters in the City of Oakland ("City") approved the issuance of approximately \$200,000,000 in bond funds related to various waterfront, water-related and recreational facility improvements entitled Measure DD. Since its' passage the City has been actively pursuing completion of the lengthy list of projects identified as part of the Measure DD funding package, which include various Lake Merritt improvements, modifications to various City recreational facilities, water quality enhancement and water habitat restoration projects throughout the City, and installation of enhancements to the Waterfront Trail ("Trail"), also known as the Bay Trail. While most of the Port owned properties along the Oakland Estuary already contain Bay Trail improvements installed as part of their respective San Francisco Bay Conservation and Development Commission ("BCDC") permits required for development

on those sites, there are a few remaining undeveloped areas where the Trail has not yet been installed, and other locations where the Trail was installed decades ago but could benefit from new design enhancements.

There are four relatively small segments of properties within the Commercial Real Estate Division ("CRE") portfolio where Trail enhancements are proposed as part of the Measure DD project, three of which are currently occupied by existing Port tenants with existing property agreements encumbering the area where the proposed improvements are planned. City staff and their design consultant team have been working diligently with Port staff and with the affected tenants to address the various design, maintenance, and operational concerns specific to the proposed improvements on each site. Concurrently, City staff has also been pursuing permit approvals for installation of the Trail improvements from BCDC, since the locations of the Trail segments lie within BCDC permit jurisdiction. As a result of these ongoing discussions and design refinements, three of the four property sites are ready for installation of the planned Trail improvements including: the Crowley site located at 1441-1551 Embarcadero Road; the Embarcadero Cove properties located at 1901-1951 Embarcadero Road; and the Livingston Street Pier site at Embarcadero Road and Livingston Street. The Board of Port Commissioners approved execution of Temporary Right of Entry and Construction Access Agreements ("Agreements") for each of these sites back in April of 2016, each with a term expiration date of December 31, 2017. A copy of the previous agenda report is attached for reference.

The fourth site, which is located in the Marina Operator Lease premises near 1835 Embarcadero Road, continues to be the subject of ongoing design discussions between the City's consultant team and the Lessee due to the proposed siting of the new Trail within the Lessee's exclusive use premises and certain unique security and use challenges with this proposed Trail configuration. Port staff is hopeful that this fourth segment will be the subject of a subsequent agenda report in the near future.

ANALYSIS

As stated above, the term of these existing three Agreements is set to expire on December 31, 2017. The Port received a letter from the City on October 26, 2017 requesting a three year extension to the term of all three Agreements. A copy of the letter received is included as an attachment to this report.

As stated in the City's letter, construction work has not yet commenced on any of the three sites for various reasons. The City has requested three additional years of term on these Agreements in order to finalize any lingering design issues, prepare and review bid documents, and install the physical improvements. Port staff believes that this extension request is appropriate, and that the requested additional three years will provide adequate time for the City to complete all three segments. No other changes to the existing Agreements are requested, other than the three year extension of the term.

Based on the analysis contained within this Agenda Report, staff recommends approval of the requested amendment to extend the term of each of these existing Agreements by an additional three years.

BUDGET & STAFFING

There are no budget implications from the requested extension of term for these Agreements. As stated in the prior Agenda Report on this matter, in some instances Port maintenance of the final Trail improvements will be required once they are installed by the City, unless existing or future tenants are required to maintain the Trail improvements within their existing or proposed property rental agreements. The Trail improvements are being fully funded by the City using Measure DD bond proceeds. There are no staffing impacts from the proposed amendments, all three properties are currently managed by existing CRE Division staff.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

Goal G: Sustain Healthy Communities through Leading Edge Environmental Stewardship

- Goal G: Objective 2: Partner to share risk, accountability, benefits and improve environmental and safety compliance.
- Goal G: Objective 4: Continue to provide quality public access and open space at a financially-sustainable level.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this matter because tenancies outside of the Aviation and Maritime areas with entities that do not principally provide aviation or maritime services are excluded from the Living Wage Regulations.

ENVIRONMENTAL

CEQA Determination: The approval to extend the term of three existing Temporary Right of Entry and Construction Access Agreements for installation of Waterfront Trail improvements

on three Port owned properties has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15301 (c), which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

GENERAL PLAN

The project appears to conform to the policies of the General Plan. The project is within City of Oakland planning jurisdiction, and they will make an official finding as part of any required zoning approvals.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a Port capital improvement construction project.

OPTIONS

- Authorize the Executive Director to execute an amendment to extend the term of three existing Temporary Right of Entry and Construction Access Agreements with the City of Oakland and the affected tenant(s) for installation of Waterfront Trail improvements on three Port owned properties located along the Oakland Estuary, subject to the terms and conditions stated within this Agenda Report. This is the recommended action.
- Authorize the Executive Director to execute an amendment to extend the term of three existing Temporary Right of Entry and Construction Access Agreements with the City of Oakland and the affected tenant(s) for installation of Waterfront Trail improvements on three Port owned properties located along the Oakland Estuary, subject to different terms and conditions other than those stated within this Agenda Report, which depending on the nature of those changed terms and conditions, may not be acceptable to the City of Oakland or the affected tenant(s).
- Do not authorize the Executive Director to execute an amendment to extend the term of three existing Temporary Right of Entry and Construction Access Agreements with the City of Oakland and the affected tenant(s) for installation of Waterfront Trail improvements on one or more of the subject Port owned properties located along the Oakland Estuary, which may result in the Waterfront Trail improvements not being constructed on these sites for some time into the future.

RECOMMENDATION

Staff recommends that the Board approve an amendment to extend the term of three Temporary Right of Entry and Construction Access Agreements for installation of Waterfront Trail Improvements on three Port owned properties located along the Oakland Estuary for three additional years with a new term expiration date of December 31, 2020, and authorize the Executive Director to execute these amendments, subject to approval as to form and legality by the Port Attorney.

Attachments: Original Agenda Report Authorizing Existing Agreements
City Letter Requesting Term Extension