

AGENDA REPORT

Resolution: Authorizing the Executive Director to Enter Into a Memorandum of Understanding With the East Bay Municipal Utility District For the Provision of Fire Water and Domestic Water Service within the Seaport Area. **(Engineering)**

MEETING DATE: 6/28/2018

AMOUNT: N/A
Choose an item.

PARTIES INVOLVED: East Bay Municipal Utility District, Oakland, CA,
Alexander Coate

SUBMITTED BY: Chris Chan, Director of Engineering
John Driscoll, Director of Maritime

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Port staff seeks the Board's approval and authorization to enter into a Memorandum of Understanding with the East Bay Municipal Utility District ("EBMUD") in connection with EBMUD's provision of domestic water and fire water services to the Port of Oakland's ("Port") Seaport Area. The Seaport Area and other parts of the Port Area are somewhat unique in EBMUD's perspective of its water service customers. On the one hand, the Port owns all the lands in the Seaport Area, but it leases most of its lands to third parties who often develop their own improvements on those lands. Many of the Port's leases in the Seaport Area are for large areas of land, and often the improvements on those lands are significant structures and/or arranged in something of a campus style. These buildings (when developed or remodeled) often require new or expanded domestic and/or fire water service from EBMUD. EBMUD's regulations (as described below) generally require separate water meters for each "Premises" and require every new building constructed after 2010 (regardless of whether it's on a separate Premises or not) to be separately metered. The unique nature of the operations and development on the Seaport Area have created ambiguities and confusion as to how the EBMUD Regulations apply to the Seaport Area. Port and EBMUD staff have therefore negotiated a Memorandum of Understanding ("MOU") to clarify the application of EBMUD's Regulations on the Seaport Area and to streamline EBMUD's process in reviewing and approving applications for new or expanded domestic and/or fire water services within the Seaport Area.

BACKGROUND

The Port owns and manages all of the lands within the Seaport Area, and the Port leases defined portions of property (each a “Leasehold Property”) within the Seaport Area that are developed and/or operated by various enterprises for purposes consistent with the Tidelands Trust Doctrine.

Domestic water and fire water services are currently provided to various Port tenants as well as to the Port on various portions of land within the Seaport Area by way of an existing system of water infrastructure within the Seaport Area (collectively, the “Existing Water Infrastructure”), and certain portions of such Existing Water Infrastructure are owned, operated and maintained by EBMUD (the “EBMUD’s Water Infrastructure”) whereas other portions are owned and maintained by the Port. Both EBMUD’s Water Infrastructure and the Port’s infrastructure currently span and serve Leasehold Properties across multiple Alameda County (County) Assessor Parcel Numbers (APNs) within the Seaport Area.

EBMUD’s Regulations Governing Water Service to Customers (“Regulations”) defines “Premises” to mean “a parcel of real estate, including any improvements thereon, which is determined by EBMUD to be a single premise for purposes of receiving, using and paying for service.” Because APNs within the Seaport Area do not reflect the various Leasehold Property boundaries within the Seaport Area, the Port’s Leasehold Properties conflict with EBMUD’s definition of a Premises.

The Regulations also requires each new structure built after January 1, 2010 within a Premises to be separately metered for domestic water service when EBMUD determines it is feasible to do so, but the Regulations allow multiple structures within a Premises to be served by a single meter for fire service. Many of the Port’s leases in the Seaport Area encompass multiple (sometimes hundreds) of acres, and Port tenants occasionally develop a variety of structures on their Leasehold Property to support their operations. Many of these buildings do not require water services, but EBMUD is concerned about its ability to verify whether those buildings are in compliance with its Regulations. EBMUD and the Port have been negotiating a Memorandum of Understanding (MOU) that allows the Parties to agree upon a standard method for EBMUD to determine what constitutes a single “Premises” for purposes of providing domestic water and fire water service to the Leasehold Properties and other Port-owned lands within the Seaport Area in a consistent manner that complies with EBMUD’s Regulations to the extent possible, while recognizing the uniqueness of the property rights within the Seaport Area.

Key Provisions of the MOU include:

- EBMUD will treat the property within the boundaries of any leasehold premises within the Seaport Area as a single “Premises” for purposes of EBMUD’s Regulations.
- The Port will be the applicant for service for fire water services when the fire water service serves more than one Leasehold Property and EBMUD agrees to treat the services provided as being in a single Premises.
- Each new structure that requires domestic water service will be individually metered as determined by the EBMUD.

- Any structures (new or existing) that do not require water service under local or state laws or regulations governing the occupancy of such structures (each an “Exempt Structure”) are not required to be individually metered.
- Any existing structure built before 2010 that is modified or expanded such that there is no net increase in domestic water demand and any structure that is a temporary, non-permanent portable structure are not required to be individually metered.
- The Port must notify EBMUD prior to the issuance of a Port development permit for any new construction or renovation, and EBMUD must determine within 60 days of such notice whether a new meter or modified meter is required.
- In the unlikely event the Port sells or transfers land to a third-party, the Port will be required to notify the EBMUD of the sale and the New Owner that it would be required to comply with EBMUD’s regulation which may involve applying for a new connection, disconnecting from other existing Port connections, or paying EBMUD’s water connection fees.
- The Port agrees to indemnify, defend, and hold EBMUD harmless from claims where (A) the Port sells or transfers land within the Seaport Area that received domestic water or fire service as a result of EBMUD’s waiver of its Regulations pursuant to this MOU, and (B) EBMUD’s refusal or termination of service is based on the new owner’s failure or refusal to obtain water service from EBMUD in compliance with the Regulations.
- The term of this MOU is 10 years.

ANALYSIS

Recently, EBMUD has identified two current construction projects in the Maritime area where the boundaries of the tenants’ Leasehold Properties do not line up with the boundaries in the County’s APNs. The Port has applied for a fire water connection for the Shippers Transport Express property. The fire connection will span multiple parcels. Cool Port has applied for a domestic water connection which spans multiple parcels. Citing EBMUD’s Regulations, EBMUD refused to make domestic water and fire water connections for these projects until the Port and EBMUD could agree to a standard method by which it could define what constitutes a “Premises.” Under the new MOU, EBMUD will recognize the Shippers Transport Express Leasehold Property and the Cool Port Leasehold Property each as individual Premises under EBMUD’s Regulations.

There is no direct financial impact as a result of this MOU, but it’s important to note that EBMUD’s Regulations can drive additional costs. For example, when a new structure is built, there could be construction cost impacts if EBMUD requires a new water service connection for the new building and the building is located away from EBMUD’s main line.

Staff recommends the Board approve and authorize the Executive Director to enter into the MOU with EBMUD for fire water and domestic water services.

BUDGET & STAFFING

The proposed action does not have any budget or staffing impact.

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 Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Modernize and Maintain Infrastructure

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, do not apply to this agreement because East Bay Municipal Utility District is a government agency.

SUSTAINABILITY

This Agenda Report does not have any sustainability as it is an Agreement which exempts the Port from certain EBMUD regulations and does not affect the Port's or its tenants' actual use of water services.

ENVIRONMENTAL

This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that an MOU to agree upon a standard method for EBMUD to determine what constitutes a single "Premises" for purposes of providing domestic water and fire water service will result in a physical change in the environment. Projects to build domestic water or fire water infrastructure would be subject to environmental review when they are proposed for implementation. Therefore, this action is not subject to CEQA and no further environmental review is required.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

1. Adopt a resolution authorizing the Executive Director to enter into a Memorandum of Understanding with East Bay Municipal Utility District for domestic water and fire water services for a term of 10 years. This is the recommended action.
2. Provide direction to staff to continue negotiating the MOU with EBMUD. This will continue to delay the construction of the fire water connection for Shippers Transport Express and potentially the domestic water connection for Cool Port.

RECOMMENDATION

Adopt a resolution authorizing the Executive Director to enter into a Memorandum of Understanding with East Bay Municipal Utility District for domestic water and fire water services for a term of 10 years.