

## AGENDA REPORT

**Ordinance:** Approve and Authorize the Executive Director to Execute a Second Amendment to a Temporary Right of Entry and Construction Access Agreement with the City of Oakland and Zarsion-OHP I LLC for Reconstruction of Embarcadero Bridge to Extend the Term for an Additional Six Months Through June 30, 2019. **(CRE)**

**MEETING DATE:** 12/13/2018

**AMOUNT:** N/A  
Choose an item.

**PARTIES INVOLVED:** City of Oakland, Oakland, CA  
Sabrina Landreth, City Administrator  
  
Zarsion-OHP I, LLC, Oakland, CA  
Michael Ghielmetti, Principal

**SUBMITTED BY:** Pamela Kershaw, Director of Commercial Real Estate

**APPROVED BY:** Danny Wan, Acting Executive Director

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

This report is a request to approve a six-month extension to an existing Temporary Right of Way and Construction Access Agreement ("Agreement") with the City of Oakland ("City") and Zarsion-OHP I LLC, to allow the City additional time to complete the reconstruction underway of Embarcadero Bridge. The original Agreement was executed on May 1, 2013 with an original term length through December 31, 2016, then was extended for an additional two years through December 31, 2018, and is set to expire this month. The City is requesting six months of additional term length through June 30, 2019 for the contractor to complete the project.

### **BACKGROUND**

In 2001 the City of Oakland ("City") applied for and was selected by the California Department of Transportation ("Caltrans") as a recipient of Seismic Safety Retrofit Program funds to replace the Embarcadero Bridge over the Lake Merritt Channel. The project consists of the removal and replacement of the existing City owned bridge, including reconstruction of approaches, bridge abutments, pavement, bike facilities, concrete sidewalk, curb and gutter, street lighting, minor landscaping, reconstruction of the existing restroom facilities in the adjacent Estuary Park and installation of bio-swales at both ends of the bridge. Ultimately the bridge will be widened from 37 feet to 59 feet

to accommodate one 12-foot travel lane in each direction, one 6-foot bike lane/shoulder in each direction, a 5-foot sidewalk on the north side, and a 12-foot multi-use path on the south side to connect to the waterfront trail. The widening of the bridge will provide for the continuity of public access facilities along the waterfront on the Embarcadero. In addition, the new bridge will be raised approximately 6 feet to allow for small boats to pass underneath the bridge in the future.

The Embarcadero Roadway immediately abuts Port owned property within the Oak to Ninth District project site, specifically the Estuary Park site which is leased to ZOHP and subleased to the City of Oakland under a long term ground lease, the water in Lake Merritt Channel, and a portion of vacant land also leased to Zarsion-OHP ("ZOHP") for construction of future open space park lands on the eastern end of the bridge. In May of 2012 the Board of Port Commissioners approved the execution of a Right of Entry and Temporary Construction Easement for the City of Oakland to construct the bridge improvements, which was executed by the City, Port, and ZOHP in May of 2013. The amount of property needed from the Port is fairly small, totaling approximately 1.8 acres, which primarily consists of water area in Lake Merritt Channel below and adjacent to the proposed bridge as well as property within the Estuary Park leasehold and a small segment on the opposing shoreline. The construction work was originally anticipated to begin in April of 2014 and the term of the original Agreement ended in December of 2016. A site plan indicating the location and footprint of the existing Agreement boundary is attached to this report for reference.

In June of 2016 City staff requested that the Port and ZOHP amend the existing Agreement to allow for a 24-month extension to the term of the Agreement. Commencement of the work on the bridge was delayed beyond the original anticipated start date of April 2014 to May of 2016. City staff anticipated that the project would be completed by December of 2018. The term of the Agreement was extended and a First Amendment to the Agreement was approved by the Board in October of 2016 and the term was extended through December of 2018.

On November 9, 2018, the Port received a request from the City to extend the term of the Agreement a second time, for an additional six months, through June 30, 2019. According to the letter from the City, the contractor encountered delays while constructing the bridge and anticipates the project being completed in February of 2019.

## **ANALYSIS**

Staff believes that the requested amendment to the Agreement is appropriate since this bridge provides a key transportation connection between the Jack London district and the eastern portion of the city along Embarcadero Road and beyond, and that the seismic improvements and bicycle/pedestrian enhancements to the bridge will facilitate access and alternative travel modes to and from the area. The construction work is substantially complete, at least it appears to be, and the City now anticipates that the contractor will be finished in February of 2019. City staff has requested that the term of the Agreement be extended for an additional six months, through June 30, 2019, in the event that further delays are encountered.

Based on the analysis contained within this Agenda Report and the fact that the structure appears to be substantially complete, staff recommends approval of the requested Second Amendment to the Agreement to allow for an additional six months of term for the City to complete the Embarcadero Bridge replacement project.

### **BUDGET & STAFFING**

There is no monetary consideration for this Agreement and the proposed action does not have any budget or staffing impact as the current request is managed by existing Commercial Real Estate Division staff.

### **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The work performed under this contract is in the Port's Commercial Real Estate area and is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA). Therefore, the provisions of the MAPLA do not apply to this work.

### **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>

- Goal: Modernize and Maintain Infrastructure
- Goal: Serve Our Community

### **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 the City of Oakland is a government agency.

### **SUSTAINABILITY**

The Embarcadero Bridge Reconstruction Project is a City of Oakland approved project, and incorporates City sustainable construction practices and requirements that are applicable to this Public Works project, as codified in the Oakland Municipal Code.

### **ENVIRONMENTAL**

The Port, as the Responsible Agency under the California Environmental Quality Act ("CEQA"), has determined that the discretionary action to grant the requested amendment to the Agreement to provide the City additional time to perform the bridge reconstruction work is categorically exempt pursuant to CEQA Guidelines Section 15301 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 beyond that existing at the time of the Lead Agency's determination.

The City is the Lead Agency for the project for purposes of CEQA. In December of 2010, the City issued a Notice of Exemption for the project, pursuant to CEQA Guidelines Sections 15183 (Projects consistent with a Community Plan or zoning) and 15302 (Replacement or Reconstruction) of the California Environmental Quality Act.

### **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 made an official finding as part of the City Public Works project approval for this reconstruction project several years ago.

### **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 Port capital improvement construction projects.

### **OPTIONS**

- Approve the Second Amendment to the Temporary Right of Entry and Construction Access Agreement to extend the term of the Agreement by six months as described within this Agenda Report. This is the recommended action.
- Do not approve the Second Amendment to the Temporary Right of Entry and Construction Access Agreement as requested by the City of Oakland, which may result in the bridge reconstruction project not being completed within the currently authorized timeframes and the project may need to be halted.
- Approve a Second Amendment to the Temporary Right of Entry and Construction Access Agreement to extend the term of the Agreement for some other amount of time rather than by six months as requested by the City, which depending on the timeframe proposed, may result in the project not being able to be completed.

### **RECOMMENDATION**

Adopt an Ordinance to approve and authorize the Executive Director to execute a Second Amendment to a Temporary Right of Entry and Construction Access Agreement with the City of Oakland and Zarsion-OHP I LLC for reconstruction of Embarcadero Bridge to extend the term for an additional six months, as described within this Agenda Report, subject to approval as to form and legality by the Port Attorney.

Attachment: Site Map