

AGENDA REPORT

Ordinance: Approve and Authorize the Executive Director to Execute an Amendment Rider to an Existing Right of Way Contract with the State of California Department of Transportation and the East Bay Municipal Utility District for the Premises Located at Embarcadero near 5th Avenue in Oakland, to Extend the Term for Eighteen (18) Months commencing on July 14, 2022 for a Fee of \$9,900 **(CRE)**

MEETING DATE: 9/30/2021

AMOUNT: \$9,900.00
Revenue

PARTIES INVOLVED: The State of California, Department of Transportation
East Bay Municipal Utility District
Oakland, CA

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

This item requests approval of an eighteen (18) month extension of a Right of Way Contract with the State of California Department of Transportation (“Caltrans”) and the East Bay Municipal Utility District (“EBMUD”) for the premises located at Embarcadero near 5th Avenue in Oakland. The Right of Way Contract grants a temporary construction easement to Caltrans for staging equipment on the premises, which is owned by the Port but currently leased to EBMUD.

BACKGROUND

The Port owns property consisting of approximately 51,950 sq. ft. of paved and fenced land near 5th Avenue on Embarcadero Road, bounded by the Interstate 880 freeway, Union Pacific railroad, Embarcadero Road, and the Lake Merritt Channel in Oakland. Caltrans has requested the right to use approximately 1,908 square feet of this property (“Premises”) for use as a construction staging site. The Premises is currently leased by East Bay Municipal Utility District (“EBMUD”), under a long-term Lease dated April 6, 1993. On July 14, 2021, the Port, Caltrans, and EBMUD executed a short term Right of Way Contract for twelve (12) months to provide for the immediate initial short-term use in order to facilitate a planned adjacent construction project for Caltrans. In order to finish their construction project, Caltrans has requested an extension to the Right of Way Contract, through an Amendment Rider, for an additional eighteen (18) month

term (“Amendment Rider”). Although the proposed Amendment Rider is not effective until July 2022, Caltrans has requested approval of the additional term now, as property rights are a necessary step for Caltrans to secure necessary funding for this construction project.

A site plan and map indicating the location of the Premises is attached as Exhibit A to this report.

ANALYSIS

As stated above, EBMUD has been leasing the Premises from the Port for use as a Wet Weather Treatment Facility under a long-term lease in effect since 1993. The Premises is located just South of the Lake Merritt Channel, with an entry running adjacent to Embarcadero and underneath the 880 Freeway. Caltrans approached the Port and EBMUD to request a temporary construction easement for the purpose of storing construction equipment (such as rig, crane, and pipe trailer), including temporary fencing, which will be used to relocate the Kinder Morgan Pipeline in connection with Caltrans planned rebuilding of the railroad bridge over the channel that connects the Oakland Estuary to Lake Merritt. EBMUD has agreed to the requested temporary use of their leased Premises, in exchange for compensation from Caltrans in the amount of \$33,600 for the use and potential disruption of their leasehold Premises. In addition to the payment to EBMUD, Caltrans has agreed to compensate the Port for the administration costs/fees of the requested Amendment Rider.

Staff has been negotiating the potential terms of the proposed Amendment Rider with Caltrans for several weeks, and the key terms of the proposed Amendment Rider are summarized below:

- Agreement: Amendment Rider to the existing Right of Way Contract executed on July 14, 2021.
- Parties: The Port, EBMUD, and Caltrans
- Premises: Approximately 1,908 sq. ft. of paved and fenced land located on the Port owned EBMUD Leased Premises bound by Embarcadero, 880 Freeway, Union Pacific Railroad, and Lake Merritt Channel, as indicated in Exhibit A.
- Term: Eighteen months commencing on July 14, 2022.
- Fee to Port: \$9,900 for the additional 18-month term (FY 2023 and FY 2024)
- Security Deposit: N/A.
- Maintenance and Improvements: All maintenance and improvement obligations to be performed by Caltrans; no Port maintenance or improvement responsibilities.
- Proposed Use: Storing construction equipment (such as rigs, crane, and pipe trailer), including temporary fencing, used to relocate the adjacent Kinder Morgan

Pipeline in connection with rebuilding the railroad bridge over the channel that connects the Oakland Estuary to Lake Merritt.

The proposed Amendment Rider will enable the Port to receive additional revenue from the use and administration of this property, which is already leased from the Port to EBMUD, and will enable Caltrans to complete their proposed adjacent project to rebuild the railroad bridge over the Lake Merritt Channel. Based on the analysis above, staff recommends approval of the proposed Right of Way Contract Amendment Rider, based upon the terms and conditions stated within this Agenda Report.

BUDGET & STAFFING

The proposed Amendment Rider to the Right of Way Contract will result in additional revenue that will be incorporated into the FY 2023 and FY 2024 budget. There is no impact on the FY 2022 budget from this action. The proposed action does not have any 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>

- Goal: Grow Net Revenues
- Goal: Improve Customer Service

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.

SUSTAINABILITY

Caltrans has not proposed any development for the Port-owned leased area. If Caltrans decides to develop the site in the future, they must comply with the 2000 Sustainability Policy and complete the Sustainability Opportunities Assessment Form.

ENVIRONMENTAL

The action in this Agenda Report was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA). Section 15301 “Existing Facilities” of the CEQA Guidelines 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 existing or former use. Executing an Amendment Rider to the Right of Way Contract with Caltrans as described in this Agenda Report meets this criterion and is therefore exempt from the provisions of CEQA.

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)

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

OPTIONS

- Adopt an ordinance approving the proposed Amendment Rider to the Right of Way Contract with Caltrans and EBMUD, subject to the terms and conditions described within this Agenda Report. This is the recommended option.
- Do not adopt an ordinance approving the proposed Amendment Rider to the Right of Way Contract with Caltrans and EBMUD, which will likely result in an interruption to Caltrans’ planned railroad bridge reconstruction project.
- Adopt an ordinance approving the proposed Amendment Rider to the Right of Way Contract with Caltrans and EBMUD, but subject to different terms and conditions than those contained within this Agenda Report, which depending on the nature of those terms and conditions, may require further negotiation with Caltrans and could delay the implementation of the railroad bridge reconstruction project.

RECOMMENDATION

It is recommended that the Board adopt an ordinance to approve the proposed Amendment Rider to an existing Right of Way Contract with Caltrans and EBMUD to extend the term for eighteen (18) months commencing on July 14, 2022 for a fee of \$9,900, for the premises located at Embarcadero Road near 5th Avenue, and authorize the Executive Director or his designee to approve and execute such agreements and such additional documents as may be necessary to consummate the transaction contemplated in this Agenda Report, subject to approval by the Port Attorney as to form and legality, and as further described in this Agenda Report. It is further recommended that the subject approval be valid for no longer than 60 days from the date of Board approval, and that if the subject agreement is not fully

executed by that date such approval shall be null and void unless further extended at the sole and absolute discretion of the Executive Director or his designee.

Attachment: Exhibit A – Site Map of the Premises