



CITY OF OAKLAND

AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Alexa Jeffress
Director, Economic and
Workforce Development
Department

SUBJECT: Power Line Maintenance Access
Agreement with the Port of Oakland

DATE: January 31, 2022

City Administrator Approval

Date: Mar 2, 2022

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Enter Into An Access Agreement Between The City Of Oakland And The Port Of Oakland For Power Line Maintenance On City-Owned Property Adjacent to Berth 9 At No Cost To The City Or Port For So Long As the Port's Electrical Lines Exist And Are Operated By The Port; And Adopt California Environmental Quality Act Findings

EXECUTIVE SUMMARY

The Port of Oakland (Port) owns electrical distribution lines and related infrastructure to serve its tenants and operations. A segment of this electrical infrastructure is located on the former Oakland Army Base, near Berth 9, on property that is owned by the City of Oakland (City).

The proposed resolution authorizing a Power Line Access Agreement between the City and the Port would ensure that the Port can continue to access, use, and maintain existing electrical lines on the City's property with the Port being responsible for any costs associated with it access, use and maintenance of the electrical lines. The agreement will help support the ongoing operations of the Port, which are critical to the local economy. On September 30, 2021, the Port Commission adopted Port Ordinance No. 4615, which authorized the Executive Director of the Port to enter into the Power Line Access Agreement with the City.

BACKGROUND / LEGISLATIVE HISTORY

The City owns real property consisting of a portion of property commonly known as the former Oakland Army Base (Property).

The Property is subject to the Army Base Gateway Redevelopment Project Ground Lease for the MH-1 Lease Area, dated December 6, 2016, by and between the City and Prologis, L.P. (Tenant), which as amended and assigned, is referred to as the "Lease". Warehouses

City Council
March 15, 2022

developed and operated by Tenant for a variety of commercial purposes are located in the Lease area.

A portion of the Property is adjacent to a wharf, commonly known as “Berth 9,” which is within the Port Area as defined in the City Charter and is subject to jurisdiction of the Port.

The Port is an electrical utility provider and owns and maintains electrical distribution lines and related infrastructure to serve its tenants and its operations. A segment of this electrical infrastructure (Electrical Lines) is located on the Property near Berth 9. In 2020, staff requested the Port relocate this segment to allow Tenant to develop an approximately 13-acre parcel of City-owned property pursuant to its Lease. The Port agreed to relocate the Electrical Lines pursuant to the Temporary License for Electrical Pole and Line Installation (Former Oakland Army Base – Berth 9) dated August 26, 2020, between the City and the Port, (Temporary License). The Port has since relocated and installed the Electrical Lines on the Property, allowing Tenant to proceed with development.

The City and Port staff have reached agreement on the terms and conditions of a new Power Line Access Agreement to replace the Temporary License and allow reliable, long-term Port access from Berth 9 to the Property to maintain the Electrical Lines in their new locations.

The terms and conditions include, among other things, that there shall be no cost to the City or the Port. The term of the agreement will commence on the date of recordation of the Power Line Access Agreement and continue so long as the Port’s Electrical Lines exist and are operated by the Port.

On September 30, 2021, the Board of Port Commissioners adopted Port Ordinance No. 4615, which authorized the Executive Director of the Port to enter into the Power Line Access Agreement.

ANALYSIS AND POLICY ALTERNATIVES

The recommended Power Line Access Agreement will ensure that the Port can continue to enter the Property to maintain, and if necessary, repair the Electrical Lines so long as they exist and are operated by the Port. The Port will be responsible for maintenance and repair related costs. This is critical to Port operations and, by extension, to the healthy function of the broader Oakland economy. Approval of the requested action advances the Citywide priority of **housing, economic, and cultural security**.

Not entering into the recommended Power Line Access Agreement would impede the Port’s ability to use and maintain the Electrical Lines over time and could disrupt Port operations to the detriment of the broader Oakland economy.

FISCAL IMPACT

There is no fiscal impact associated with this action.

PUBLIC OUTREACH / INTEREST

This matter was considered in a public meeting of the Board of Port Commissioners on September 30, 2021, at which the Port Commission authorized its Executive Director to enter into the Power Line Access Agreement. Given the routine nature of the recommended action there was no additional public outreach beyond the standard City Council agenda noticing procedures.

COORDINATION

Staff coordinated efforts with the Bureau of Planning, Economic & Workforce Development Department and the City Attorney's Office. The Office of the City Attorney has also assisted in preparing the form of the Power Line Access Agreement.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed action ensures that the Port will be able to continue to provide electrical power to its facilities and continue its operations without disruption. The Port's facilities play a significant role in Oakland's economy, contributing to the tax base and generating a large job number of jobs.

Environmental: The proposed action will not have an environmental impact as it simply allows for the continued use of an existing facility.

Race and Equity: The proposed action provides for uninterrupted electrical service to the Port, which is a major source of employment for people with a broad range of education levels and backgrounds in Oakland, including people who identify as Black, Indigenous and People of Color (BIPOC).

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The action to authorize entering into a Power Line Access Agreement is exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines, which exempts 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 use.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Enter Into An Access Agreement Between The City Of Oakland And The Port of Oakland For Power Line Maintenance On City-Owned Property Adjacent To Berth 9 At No Cost To The City Or Port For So Long As The Port's Electrical Lines Exist And Are Operated By The Port; And Adopt California Environmental Quality Act Findings.

For questions regarding this report, please contact John Monetta, Army Base Project Manager II at (510) 238-7125.

Respectfully submitted,



ALEXA JEFFRESS
Director, Economic and Workforce
Development Department

Reviewed by:
Brendan Moriarty, Real Property Asset
Manager, EWDD

Prepared by:
John Monetta, Project Manager II, EWDD

Attachment 1: Power Line Access Agreement

ATTACHMENT 1

ACCESS AGREEMENT (Berth 9 – Power Line Maintenance)

This Access Agreement (Berth 9 – Power Line Maintenance) (the “**Agreement**”) is entered into as of _____, 2022 (the “**Effective Date**”), by and between the City of Oakland, a municipal corporation, acting by and through its City Council (the “**City**”), and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (“**Port**”).

RECITALS

This Agreement is entered upon the basis of the following facts, understandings, and intentions of the City and the Port:

A. The City owns certain real property commonly known as the former Oakland Army Base, located in the City of Oakland, County of Alameda, State of California, a portion of which is generally depicted on **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”).

B. The Property is subject to that certain Army Base Gateway Redevelopment Project Ground Lease for MH-1 Lease Area, dated as of December 6, 2016, as modified by that certain unrecorded Army Base Gateway Redevelopment Project First Amendment Ground Lease for the MH-1 Lease Area, dated as of April 30, 2018; as disclosed by that certain Amended and Restated Memorandum of Army Base Gateway Redevelopment Project Ground Lease for MH-1 Lease Area, dated as of July 31, 2019, and recorded in the Official Records of Alameda County, California (“**Official Records**”), on August 6, 2019 as Instrument No. 2019151905; and as assigned to Prologis, L.P., a Delaware limited partnership (“**Tenant**”), by that certain Assignment and Assumption Agreement dated as of August 8, 2019, and recorded in the Official Records on August 9, 2019 as Instrument No. 2019154733 (collectively, the “**Lease**”).

C. A portion of the Property is adjacent to a wharf, commonly know as “**Berth 9**,” which is within the Port Area and is subject to jurisdiction of the Port, as generally depicted on **Exhibit A** attached hereto.

D. The Property is subject to (1) that certain Consent Agreement with the State of California, requiring environmental restrictions on the Property as set forth in the Covenant to Restrict Use of Property, recorded on August 8, 2003 as Document No. 2003-466371 and Document No. 2004-513848 in the Official Records (collectively, the “**Covenants**”), (2) (i) that certain Remedial Action Plan (the “**RAP**”), and (ii) that certain Risk Management Plan (“**RMP**”), each dated September 27, 2002 (as amended, collectively, the “**RAP/RMP**”), and (3) that certain Order No. R2-2004-0086, dated November 5, 2004, issued by the Regional Water Quality Control Board (collectively, the “**Environmental Restrictions**”).

E. The Port intends to install Electrical Lines (as defined below) over a portion of the Property described as “**License Area**” as shown on **Exhibit A** attached hereto pursuant to that certain Temporary License for Electrical Pole and Line Installation (Former Oakland Army Base – Berth 9) dated August 26, 2020, by and between the City, as Licensor, and the Port, as Licensee, and as more particularly described in the attached **Exhibit B**.

F. The Port desires to enter into this Agreement to access the License Area from Berth 9 to operate and maintain the Power Lines.

G. It is in the best interests of the City to permit such access by the Port.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City and the Port agree as follows:

1. Purpose of Right of Access. The Port, and its employees and contractors shall have the nonexclusive right of access to, from, and over the License Area from Berth 9 (“**Access Rights**”) for the purpose of maintaining, restoring, repairing, replacing, and operating the electrical utilities and all necessary and proper lines, conduit, fittings, measuring and protective devices, and other related apparatus and equipment (collectively, the “**Electrical Lines**”) in, over, and across the License Area, as well as emergency access use in, along, upon, and across the License Area to ensure operational safety of the Electrical Lines. In the event the Port elects, after recordation of this Agreement, to underground Electrical Lines, the City and the Port shall work together in good faith to amend the terms of this Agreement or replace this Agreement to address terms and conditions applicable to such undergrounding, which shall include rights comparable to the Access Rights herein.

2. No Interference with Use; Environmental Restrictions.

a. The City reserves the right to (i) grant nonexclusive easements or other licenses above, over, under, upon, along, through, and across the License Area, and (ii) to use the License Area for any purpose not inconsistent with this Agreement; provided that the City shall not unreasonably interfere with, or permit the unreasonable interference with, the use of the License Area for the purposes herein provided.

b. All installation, maintenance, restoration, repair, replacement, reconstruction, and operation of the Electrical Lines, together with related ingress and egress, shall be in a manner that will minimize disruption to, and will not unreasonably interfere with, the use of the Property. The Port shall also, at all times during the such work, comply at its own cost and risk with all the hazardous materials compliance requirements related to compliance with the Environmental Restrictions, including the Covenants and RAP/RMP.

3. Term. The Access Rights created hereunder shall continue in full force and effect from the date of recordation of this Agreement in perpetuity as long as the Electrical Lines exist and are operated by the Port, unless this Agreement is amended, modified, or terminated by an agreement executed, acknowledged, and recorded by the City and the Port hereto.

4. Compliance with Laws and Agreements. All activities and operations of the Port, its employees, and contractors under this Agreement shall be in compliance with all applicable federal, state, and local laws and regulations.

5. Notices. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier, or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

City: City of Oakland
One Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Attn: OAB Project Manager

with copies to: Office of the City Attorney
One Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612
Attn: Supervising City Attorney for Real Estate

Port: Port of Oakland
530 Water Street
Oakland, CA 94607
Attn: Executive Director

With copies to: Port Attorney's Office
530 Water Street
Oakland, CA 94607
Attn: Port Attorney

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt or refusal to accept actually occurs (if personally served or sent by courier) or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

6. Assignment by Port. This Agreement is personal to the Port and shall not be transferred by the Port without the City's prior written consent, which may be granted or denied in the City's sole discretion. Any attempt by the Port to transfer this Agreement in violation of the immediately preceding sentence shall be null and void and cause the immediate termination and revocation of this Agreement and the Access Rights. Notwithstanding the foregoing, the City acknowledges that some or all of the work may be performed by the Port's contractors, and such performance shall not be construed as an assignment or transfer by the Port of this Agreement.

7. Strictly Construed. This Agreement is to be strictly construed and no use other than that specifically stated herein is authorized hereby.

8. General Provisions.

a. This Agreement may not be amended or modified except by a written instrument signed by an officer or other authorized representative of the City and the Port.

b. No waiver by either the City or the Port of any of the provisions of this Agreement shall be effective unless in writing and signed by the party granting the waiver, and only to the extent expressly provided in such written waiver.

c. The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

d. This Agreement shall be construed and governed in accordance with the laws of the State of California.

e. Subject to the limitations on assignments or other transfers by Agreement hereunder, this Agreement shall be binding upon and inure to the benefit of the City and the Port and their respective heirs, representatives, successors and assigns.

f. Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein.

g. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY:

City of Oakland,
a municipal corporation
acting by and through its City Council

By: _____
Edward D. Reiskin
City Administrator

Approved as to form and legality:

By: _____
JoAnne Dunec
Deputy City Attorney

[Signatures continue on following page.]

PORT:

CITY OF OAKLAND,
a municipal corporation,
acting by and through its Board of Port Commissioners

By: _____
Name: _____
Title: _____

Approved as to form and legality:

By: _____
Port Attorney

The Tenant hereby consents to the foregoing Agreement:

Prologis, L.P.,
a Delaware limited partnership

By: Prologis, Inc., a Maryland corporation,
its general partner

By: _____
Name: _____
Title: _____

EXHIBIT A

Property, Berth 9, and License Area Depiction

[Attached]

EXHIBIT B

License Area Plat and Legal Description

[Attached]