



CITY OF OAKLAND

AGENDA REPORT

TO: Steven Falk
Interim City Administrator

FROM: Fred Kelley
Director, Oakland
Department of
Transportation

SUBJECT: GoPort Program - 7th Street Grade
Separation East Project

DATE: March 22, 2023

City Administrator Approval

Date: Mar 29, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt The Following Pieces Of Legislation:

A Resolution:

- (1) Authorizing The City Administrator To Negotiate And Execute A Cooperative Agreement, Between The City of Oakland (City), Alameda County Transportation Commission (ACTC), And The Port of Oakland (Port), For The 7th Street Grade Separation East Project (Project); And**
- (2) Authorizing The City Administrator To Negotiate And Execute An Amended Construction Memorandum Of Understanding Between The City, ACTC, And The Port, For The Project; And**
- (3) Authorizing The City Administrator to Negotiate and Execute An Amended Reimbursement Agreement Between The City And ACTC; And**
- (4) Adopting National Environmental Policy Act and California Environmental Quality Act Findings; And**

An Ordinance:

(1) Authorizing The City Administrator To Negotiate And Execute A First Amendment to Indenture Dated December 23, 1930, Between Union Pacific Railroad and the City of Oakland (City), To Relinquish A Portion Of The 1930 Roadway Easement, And Accept The Easements Therein, Upon Completion Of The 7th Street Grade Separation East Project (Project); And

(2) Authorizing The City Administrator To Negotiate And Execute An Assignment Agreement Between The Alameda County Transportation Commission And The City For The Assignment Of A Roadway Easement Deed, And Accept The Easements Therein, Upon Completion Of The Project; And

(3) Adopting National Environmental Policy Act and California Environmental Quality Act Findings

EXECUTIVE SUMMARY

The Alameda County Transportation Commission (ACTC), as implementing agency, has been working with the City of Oakland (City) and the Port of Oakland (Port) to develop and implement a suite of freight transportation projects known as the Global Opportunities at the Port of Oakland Program (GoPort Program), which includes the 7th Street Grade Separation East Project (Project). The Project is designed to realign and rebuild a grade-separated underpass structure for vehicular, cyclist and pedestrian traffic on 7th Street to cross under the Union Pacific Railroad (UPRR) tracks to improve Port access and traffic safety while preserving rail operations.

The current underpass structure, constructed per an easement granted to the City in 1930, has outlived its useful life and, due to its current geometric configuration, has a direct impact on the ability of trucks to move in and out of the Port in the most safe and efficient manner. As one of three gateways ingress/egressing the Port, the Project has been designed to meet current geometric and seismic standards by increasing both vertical and horizontal clearances for trucks traversing under the UPRR tracks. The new alignment of 7th Street will also upgrade the roadway to accommodate a shared pedestrian/bicycle pathway to meet current American with Disabilities Act and geometric design standards. The realignment of 7th Street will also necessitate the relocation of existing pipelines currently used for jet fuel from their existing underground location to a bridge over new 7th Street alignment (New Pipeline Location). The pipelines are owned by SFPP, L.P., which is affiliate with, or controlled by, Kinder Morgan.

Forms of the Cooperative Agreement, Amended Construction Memorandum of Understanding and the related Amended Reimbursement Agreement, the First Amendment to Indenture Dated December 23, 1930, and the Assignment Agreement between ACTC and the City, together with the related Roadway Easement Deed, attached hereto as **Attachments A through D**, respectively, for this Project will each independently memorialize the roles and responsibilities of ACTC, the City, the Port and UPRR for ownership, operations, maintenance and repairs of certain assets associated with the Project. In addition, the City and Kinder Morgan propose to enter into

a joint use agreement regarding the rights and obligations of the parties with respect to operation and maintenance related to the New Pipeline Location.

BACKGROUND / LEGISLATIVE HISTORY

The GoPort Program has been under design development for many years. The 7th Street Grade Separation East Project (Project) is transitioning from the design phase to the construction phase.

ACTC anticipates achieving the following milestones for this portion of the overall GoPort Program (\$264 million):

7th Street Grade Separation East Project:

Completed plans – January 3, 2023

Construction bid opening – March 14, 2023

Award construction contract – May 25, 2023

Commence Construction – July 25, 2023

Complete construction – November 30, 2026

End Construction (Project Closeout and Acceptance) – March 20, 2027

The City currently has ownership, operations, maintenance, and repair responsibilities along existing 7th Street, including the grade-separated underpass structures and a pump station, for cyclists, pedestrians and vehicular traffic on 7th Street to cross under UPRR's tracks. At the completion of construction by ACTC, the City will accept ownership of certain portions of the Project infrastructure and commence associated operations, maintenance and repair responsibilities.

The following related agreements are previously established:

- By an Indenture dated December 23, 1930 (1930 Indenture), Southern Pacific Transportation Company, the successor-in-interest of which is UPRR, granted an easement to the City for the construction, use, and maintenance of a grade-separated underpass structure for vehicular traffic on 7th Street to cross under the railroad tracks at what today is milepost 4.50 on the UPRR Niles Subdivision (DOT Crossing No. 972497a).
- Port and City are parties to a Memorandum of Understanding (MOU) dated July 1, 1983, wherein the City agrees to provide the Port certain general services, including, but not limited to general services of the City's Police, Fire, and Public Works departments, and the Port agrees to reimburse to the City the cost thereof, as most recently amended/supplemented by the Eighteenth Supplemental Agreement (General Services), dated June 5, 2014 (the original MOU together with all exhibits, attachments, and supplements are collectively referred to as the "General Services Agreement").
- On November 27, 2018, the Oakland City Council passed Resolution No. 87415 CMS, which authorized the City Administrator to negotiate and execute an agreement with ACTC for the reimbursement of City costs incurred in the review and approval of design plans and documents for the GoPort Program projects.

- On August 26, 2019, and amended June 1, 2021, ACTC and the City entered into Agreement No. A19-0028 (Reimbursement Agreement) to compensate the City for its reimbursable design oversight services for the Project.
- In January 2020, ACTC, the Port and the City executed a MOU (A20-0005) (Construction MOU) to define the respective roles, responsibilities, and authorities of the Port, the City, and ACTC specifically for the design and permitting phases of the Project.
- On December 2, 2022, ACTC and UPRR executed a Construction and Maintenance Agreement (C&M Agreement). The C&M Agreement defines roles and responsibilities of UPRR and ACTC for ownership, operations, maintenance, and repairs. Under the C&M Agreement, UPRR allows ACTC to assign all ACTC ownership, operations, maintenance, and repair responsibilities to “others” (the City and the Port).

ANALYSIS AND POLICY ALTERNATIVES

ACTC, as the implementing agency, is responsible for constructing the Project under the GoPort Program. The series of agreements and easements proposed for approval through resolution and ordinance set out the roles of the parties related to the Project. Specifically, the proposed resolution includes a Cooperative Agreement between the City, Port and ACTC, an amended Construction Memorandum of Understanding between the City, Port and ACTC, and an amendment to the Reimbursement Agreement between the City and ACTC. The proposed ordinance includes an amendment to a 1930 Indenture with UPRR and City acceptance of a new roadway easement.

These actions will enable the Project to implement the Citywide priorities of **holistic community safety, vibrant, sustainable infrastructure**, and **responsive, trustworthy government** by working with local agencies to replace aging infrastructure, remove nonstandard geometric conditions, and improve pedestrian and cyclist access and safety to the waterfront.

The agreements under each of the proposed resolution and ordinance are further discussed below.

Resolution Related to Amended Construction Management MOU, amended Reimbursement Agreement, and an Amended Cooperative Agreement

Cooperative Agreement between the City, ACTC and the Port

The proposed resolution would authorize the City Administrator to negotiate and execute a Cooperative Agreement substantially in the form attached hereto as **Attachment A** (Cooperative Agreement) that defines and memorializes the roles and responsibilities of ACTC, the City and the Port (and indirectly, UPRR through a separate but related agreement) for ownership, operations, maintenance and repairs of certain assets associated with the Project. The responsibilities described herein will only commence after the Project construction contract has been completed and formally accepted by the City, the Port and UPRR.

Generally, UPRR will own, operate, maintain, and repair railroad assets on the bridge over 7th Street. The Port will own, repair, and maintain the bridge over 7th Street, and this bridge supports

the railroad tracks and UPRR operations. The City will own, operate, maintain, and repair 7th Street that passes under the bridge that supports the UPRR tracks.

Specifically, the City's responsibilities are contemplated as provided in the form of the Cooperative Agreement attached hereto as **Attachment A**.

Amended Construction Management MOU

The proposed resolution would authorize the City Administrator to negotiate and execute an amendment to the Construction MOU between the City, Port and ACTC substantially in the form attached hereto as Attachment B (Amended Construction MOU).

The amendment relates to construction roles and responsibilities. It acknowledges that ACTC is responsible for the procurement of contractor(s) and funding for the construction phase of the Project, and that the City and Port (the ultimate owners of the new infrastructure) will have construction oversight roles and responsibilities during construction.

The Construction MOU includes a Construction Coordination and Communication Plan that sets out the parties' respective roles and responsibilities and will apply throughout the estimated 46-months of construction (the construction responsibilities described herein will commence, on or about June 1, 2023, and are anticipated to conclude March 20, 2027). The plan also addresses preconstruction activities, meeting attendance requirements, safety, differing site conditions, submittals, inspections, value engineering, materials, project closeout requirements and a dispute resolution process. City staff has developed a City/consultant organization chart, a City/consultant staffing plan, and a City/consultant time and materials cost estimate that correlates with the City's obligations defined within the Construction Coordination and Communication Plan.

Amended Reimbursement Agreement

The proposed resolution would authorize the City Administrator to negotiate and execute an amendment to the Reimbursement Agreement substantially in the form attached hereto as **Attachment B** (Amended Reimbursement Agreement) obligating ACTC to reimburse the City for those costs identified in the Amended Construction MOU.

Under this amendment, ACTC will reimburse the City for time and materials staff and consultant costs necessary to support the construction phase activities for the Project in a manner that accommodates the City's final approval authority for all construction change orders and other changes to the plans, specifications, estimates and other construction documents that affect or impact existing or proposed City and/or Port operations and assets.

Ordinance Related to Relinquishment of 1930 Easement and Assignment of New Roadway Easement Deed

In December 1930, Southern Pacific Railroad Company and Southern Pacific Company (Railroad), predecessors in interest to UPRR, and the City, entered into the 1930 Indenture in which Railroad granted to the City easements (1930 Easement) for the construction, use, and maintenance of a grade-separated underpass structure (Existing Underpass) for vehicular traffic on 7th Street to cross under UPRR's tracks.

The City is responsible for maintaining 7th Street, the Existing Underpass, and a related pump station.

The Project requires modifications to the existing 7th Street alignment and underpass, requiring UPRR to grant rights to ACTC over the 1930 Easement in order for ACTC to complete the Project.

The Existing Underpass structure located in the 1930 Easement will be modified by filling the space under the structure with grout or other fill material to effectively block off the existing 7th Street. In addition, a portion of the 1930 Easement will continue to be used by the City to accommodate drainage piping exiting a new pump station and other drainage facilities (bioswales, detention basin, maintenance access, fencing, etc.), and UPRR and the City agree that such uses shall not be deemed an abandonment or failure to use under the 1930 Indenture for roadway purposes.

On December 2, 2022, UPRR and ACTC entered into that certain Construction and Maintenance Agreement, 7th Street, DOT No. 972497A, Mile Post 4.75 – Niles Subdivision, Oakland, Alameda County, California, and known in UPRR's records as part of Real Estate Folder Number 3142-52 (C&M Agreement), in which, among other things, ACTC commits to construct the Project, and UPRR commits to grant certain easement rights in and to UPRR property to ACTC, including granting to ACTC a roadway easement deed (Roadway Easement Deed) for the new alignment of 7th Street and an underpass easement deed (Underpass Easement Deed) for a new underpass to be constructed over the new alignment, together with ACTC's right to assign the Roadway Easement Deed to the City and to assign the Underpass Easement Deed to the Port, upon completion of the Project.

Upon completion and acceptance of the 7th Street Grade Separation East Project, UPRR will retain ownership of the project improvements that are within the railroad operating right of way, ACTC will assign the Roadway Easement Deed to the City and the Underpass Easement Deed to the Port, and UPRR will require the City to relinquish a portion of the 1930 Easement that will no longer be necessary due to the new alignment of 7th Street pursuant to a First Amendment to the 1930 Indenture with UPRR.

FISCAL IMPACT

Staff acknowledges that the City is currently responsible for maintaining and repairing existing 7th Street between I-880 and Maritime Street. Said responsibilities include maintaining and/or repairing an existing storm water pump station.

At the conclusion of constructing the 7th Street Grade Separation East Project, the City will be responsible for owning, operating, maintaining and repairing the new 7th Street roadway infrastructure between I-880 and Maritime Street, except the railroad underpass structure. Staff acknowledges that the proposed improvements will completely remove and relocate the existing alignment of 7th Street and the new alignment will include new pavement, a new pump station and various supporting roadway infrastructure. These new improvements will require minimal maintenance during the initial life of the improvements. It is also noted that the Project will be constructing new improvements that do not currently exist – new street lighting, an expanded multiuse trail, trail lighting, trail railings, wall landscaping, and crash cushions, etc. It is estimated that the average labor and materials to maintain and repair assets along this segment of 7th Street

during the first 10 years post construction will be less than the average of current responsibilities. During the period 10 year to 20 years after construction, repairs and maintenance responsibilities will increase to be more than the current responsibilities by a factor of 2 (generally equivalent to existing conditions). For +20 years post construction, it is anticipated the average labor and materials to maintain and repair assets along this segment of 7th Street will be 3 times more than the average of current responsibilities.

NATIONAL ENVIRONMENTAL POLICY ACT AND CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

The California Department of Transportation (Caltrans) as the lead agency, working collaboratively with ACTC, obtained the approvals and clearance for the Project under the National Environmental Policy Act (NEPA). Specifically, Caltrans issued a NEPA Categorical Exclusion on October 25, 2018. The Project was included in the 2002 Oakland Army Base Redevelopment Environmental Impact Report (OAB EIR) and its addenda, as certified by the City in July 2002 and adopted by the Port as a responsible agency under CEQA in September 2002. The 2012 Addendum to the OAB EIR, which included updates to the Project, was approved by the City and the Port in June 2012. In November 2019, pursuant to Section 15164 of the CEQA Guidelines, the Port evaluated the Project and documented in an addendum that the Project would not result in any new significant impacts beyond those identified in the OAB EIR, nor would it result in a substantial increase in the severity of any previously identified significant impacts. The determination also required that the Project would include implementation of all applicable mitigation measures and Standard Conditions of Approvals from the OAB Standard Conditions of Approval and Mitigation Monitoring and Reporting Program. It was determined that none of the conditions in Section 15162 and 15163 of the CEQA Guidelines would result from the Project.

PUBLIC OUTREACH / INTEREST

The proposed resolution and ordinance will be heard at public meetings of the City Council's Public Works and Transportation Committee and the full City Council and will be publicly noticed consistent with standard City Council public noticing provisions.

COORDINATION

The Budget Bureau and City Attorney's Office provided review and coordination of this agenda report and resolution.

SUSTAINABLE OPPORTUNITIES

Economic: The resolution and ordinance identified herein will ensure that planned improvements and maintenance in Oakland roadways can continue without delay.

The Project will improve a key bicycle and pedestrian connection from the Bay Trail to West Oakland. This improved connection will contribute to local economic activity. Specifically, the new route will provide a comfortable path from the Bay Trail to commercial areas along 7th Street and

to Downtown Oakland. The Project will also improve transportation conditions and make the 7th Street corridor operate more efficiently, with improved lighting, wider and safer lanes dominated by trucks, and will be a more attractive corridor.

Environmental: The Project improves storm water quality conveyance to the Bay by installing a new storm water retention basin. The storm water retention basin captures particulates in a controlled grass area prior to the storm water being released into the Bay. The Project will provide a safer and more comfortable multiuse trail for pedestrians and bicyclists. These improvements will encourage an overall shift in mode of transportation away from single-occupancy vehicles to more energy-efficient forms of transportation – walking and biking and provide improved access to the waterfront.

Race & Equity: The GoPort Program benefits West Oakland residents and businesses by improving trucking ingress and egress to/from the Port thereby minimizing traffic congestion and improving air quality. The Project is located adjacent to high and highest priority areas as identified in the Department of Transportation's Racial Equity Team Geographic Equity Tool and the Metropolitan Transportation Commission (MTC) Equity Priorities Community map. The Project will advance affordable, accessible, and equitable mobility for West Oakland residents that desire to access the waterfront and the Bay Trail. The multiuse trail creates a new recreational space and affords residents new opportunities for physical activity, relaxation, and non-auto travel.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt The Following Pieces of Legislation:

A Resolution:

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- (3) Adopting National Environmental Policy Act and California Environmental Quality Act Findings

For questions regarding this report, please contact Fred Kelley, Director, (510) 292-8868.

Respectfully submitted,

Fred Kelley
Fred Kelley (Mar 28, 2023 11:43 PDT)

FRED KELLEY
Director,
Oakland Department of Transportation

Prepared by:
Fred Kelley, Director
Oakland Department of Transportation

Attachments (4):

Attachment A: Form of Cooperative Agreement

Attachment B: Form of Amended Construction MOU and Amended Reimbursement Agreement

Attachment C: Form of First Amendment to Indenture dated December 23, 1930

Attachment D: Form of Assignment Agreement between the City and ACTC, together with the form of the related Roadway Easement Deed.