



DATE: June 21, 2021

TO: Mayor and Members of the City Council

VIA: Peter Pirnejad, City Manager

FROM: Jean Savaree, City Attorney
Camas Steinmetz, Deputy City Attorney

SUBJECT: RIGHT OF ENTRY AGREEMENTS TO ENTER PRIVATE PROPERTY TO CONSTRUCT CERTAIN PUBLIC ACCESS AND AMENITY IMPROVEMENTS REQUIRED IN CONNECTION WITH THE FOSTER CITY LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT (CIP 327-657)

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the City Manager to execute Right of Entry Agreements on behalf of the City of Foster City that would allow the City to enter onto private property to construct portions of public access improvements required in connection with the Foster City Levee Protection Planning and Improvements Project (CIP 327-657) ("Levee Project").

EXECUTIVE SUMMARY

Small portions of the public access improvements required by the Bay Area Conservation and Development Commission (BCDC) in connection with the BCDC permit authorizing the Levee Project fall on private lands that the City currently does not have the right to enter and improve. The enclosed Right of Entry Agreements would grant the City a license to enter portions of these private lands for the limited purposes of constructing, maintaining and repairing the portions of the public access improvements that encroach on these private properties.

BACKGROUND

On November 21, 2019 the BCDC unanimously voted to approve issuance of BCDC Permit Number 2018.005.00.00 authorizing construction of the Levee Project subject to certain conditions. These conditions included the construction of certain public access and amenity improvements, portions of which the City has determined fall on private property which the City currently does not have the right to enter or improve without permission from the owners of this private property. The City Public Works Department staff have been in discussions with the affected private property owners since Fall of 2020 and the City Attorneys' Office has prepared and circulated a proposed form Right of Entry Agreement for the property owners' review and approval. Five of these Right of Entry Agreements (Attachments 2 through 6) have been negotiated to City staff and the City Attorney's satisfaction and have been signed by the following property owners:

1. Williams Landing Homeowner Association (APNs 097-031-999; 097-038-999; 097-026-999; 097-015-999; 097-047-999)
2. Steve and Rachael Ratto (712 Gateshead, Foster City, APN 095-894- 060)
3. Bayfront Court Homeowners Association (APNs 097-091-999; 097-101-999; 097-111-999; 097-121-999; and 097-131-999)
4. Schooner Bay I Associates L.P. and Schooner Bay II Associates, L.P. (300 Timberhead Lane, Foster City, APNs 097-140-080, 097-143-999, 097-150-997, 097-150-999)
5. Lantern Cove Associates (244 Rock Harbor Ln, Foster City APN 097-161-999)

City staff is still in discussions with the property owners of the remaining portions of the private lands impacted by the required public access improvements not covered under the above agreements. We anticipate bringing right of entry agreements with these property owners to the Council at an upcoming meeting agenda.

ANALYSIS

The enclosed Right of Entry Agreements with the above listed property owners grant the City permission to enter these property owners' lands (depicted in Exhibit A to each of the Right of Entry Agreements) to construct the portions of the public access improvements which fall on these private lands pursuant to the BCDC Levee Project permit conditions. In exchange for this permission, the City is constructing the improvements benefitting the owners' properties at the City's sole cost and expense, indemnifying and defending the owners against any claims arising from the City's work, carrying and providing evidence of insurance against such claims, restoring the property upon completion of the work and repairing any damage caused by the work, and maintaining and repairing the improvements on their property in good working order for the life of the improvements.

The City Attorney's Office recommends that the Council approve and authorize the City Manager to sign the attached Right of Entry Agreements. Once signed by the City

Manager, fully executed copies of the Right of Entry Agreements will be delivered to the property owners.

FISCAL IMPACT

No fiscal impact. The City is already required to construct the public access and amenity improvements pursuant to the conditions of the BCDC permit.

CITY COUNCIL VALUE/PRIORITY AREA

The levee project is in alignment with the City Council's adopted Vision and Mission statements. This item is related to the "Facilities and Infrastructure" Value/Priority Area. The key outcome is to make substantial progress toward and improved levee on time and budget to protect the community and critical infrastructure from storms and high tide.

Attachments:

- Attachment 1 – Resolution
- Attachment 2 – Right of Entry Agreement by and between Williams Landing Homeowners Association and the City of Foster City
- Attachment 3 – Right of Entry Agreement by and between Steve and Rachael Ratto and the City of Foster City
- Attachment 4 – Right of Entry Agreement by and between Bayfront Court Homeowners Association and the City of Foster City
- Attachment 5 – Right of Entry Agreement by and between Schooner Bay I Associates L.P. and Schooner Bay II Associates, L.P. and the City of Foster City
- Attachment 6 - Right of Entry Agreement by and between Lantern Cove Associates and the City of Foster City