



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: December 3, 2019
TO: Christine Daniel, City Manager
FROM: Christine Daniel, Acting Director of Public Works
SUBJECT: **South Bayfront Pedestrian-Bicycle Bridge and Horton Landing Park:**

**Resolution Of The City Council Of The City of Emeryville Authorizing
The City Manager To Execute The Second Amendment To Temporary
Construction Access Agreement With BRE-BMR 53RD, LP**

**Resolution Of The City Council Of The City of Emeryville Authorizing
The City Manager To Execute The Second Amendment To Grant Of
Easement Agreement With BRE-BMR 53RD, LP**

RECOMMENDATION

Staff recommends that the City Council of the City of Emeryville:

- (i) Adopt the above-entitled resolution related to the 2nd Amendment To Temporary Construction Access Agreement With BRE-BMR 53RD, LP.
- (ii) Adopt the above entitled resolution related to the Second Amendment To Grant of Easement Agreement With BRE-BMR 53RD, LP.

BACKGROUND

Construction is beginning on the South Bayfront Pedestrian Bicycle Bridge Project. Implementing the project requires the use of easements on adjacent property owned by Bio-Med Realty, Grifols, Union Pacific Railroad, and Bay Street Investors. Easement agreements previously executed by Novartis included terms regarding time of use. Bio-Med Realty acquired the property from Novartis and is honoring the agreement terms as their successor in interest. The current agreements previously executed by Novartis expire on December 31, 2019 unless extended. The City has worked with BioMed Realty staff to update and extend two specific agreements related to easements for the project. The draft agreements under consideration are (1) the Second Amendment to Temporary Construction Access Agreement and (2) the Second Amendment to Grant of Easement Agreement. The purpose of this item is to recommend approval of these amendments to the agreements with BioMed Realty.

DISCUSSION

Second Amendment to the Temporary Construction Access Agreement:

This second amendment modifies the previous agreement terms as follows:

- 1) Names BRE-BMR 53RD, LP as the Grantor, replacing Novartis
- 2) Extends the term of the Agreement to December 31, 2021, from December 31, 2019
- 3) Adds Section 2(e) related to Hazardous Material, prohibiting staging, storing, stockpiling or otherwise placing hazardous materials on the easement areas. Retains reasonable access rights by Grantor's contractors and agents for environmental testing and remediation.
- 4) Adds verbiage to Section 3(a) related to Indemnification of claims with respect to hazardous materials or hazardous materials conditions from property other than Grantor's property.

Second Amendment to the Grant of Easement Agreement:

This second amendment modifies the previous agreement terms as follows:

- Names BRE-BMR 53RD, LP as the Grantor, replacing Novartis
- Extends term of Agreement to December 31, 2021, from December 31, 2019
- Adds Section 2(e) related to Hazardous Material, prohibiting staging, storing, stockpiling or otherwise placing hazardous materials on the easement areas. Retains reasonable access rights by Grantor's contractors and agents for environmental testing and remediation.
- Adds verbiage to Section 3(a) related to Indemnification of claims with respect to hazardous materials or hazardous materials conditions from property other than Grantor's property.

The Amended Agreements are attached for reference. These Agreements relate to Agreements executed in the late 1990's and early 2000's with Chiron to enable the development of the research campuses now owned by Grifols and BioMed Realty.

FISCAL IMPACT

No Additional Fiscal Impact

STAFF COMMUNICATION WITH THE PUBLIC

None

CONCLUSION

Executing these amendments is essential to provide space for construction activities to proceed as planned. Staff recommends it is in the public's interest for the City Council to adopt the above described resolution authorizing Easement Agreement Amendments

PREPARED BY: Todd Teachout, P.E. Project Manager, South Bayfront Pedestrian Bicycle Bridge

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Christine Daniel, City Manager

ATTACHMENTS

- Draft Resolution Of The City Council Of The City of Emeryville Authorizing The City Manager To Execute 2nd Amendment To Temporary Construction Access Agreement With BRE-BMR 53RD, LP
- Draft Resolution Of The City Council Of The City of Emeryville Authorizing The City Manager To Execute Second Amendment To Grant Of Easement Agreement With BRE-BMR 53RD, LP
- Second Amendment To Temporary Access Agreement With BRE-BMR 53RD, LP
- Second Amendment To Grant Of Easement Agreement With BRE-BMR 53RD, LP
- Map of Easement Area owned by BRE-BMR-53RD, LP