



## Legislation Details (With Text)

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<b>Type:</b>	Consent	<b>Status:</b>		Agenda Ready	
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<b>On agenda:</b>	9/7/2021	<b>Final action:</b>			
<b>Title:</b>	CONSIDER RESOLUTION NO. 21-114 APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A RIGHT OF WAY CONTRACT AGREEMENT BY AND BETWEEN THE CITY OF CARSON AND THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR TEMPORARY USE OF A PORTION OF CITY PROPERTY ON E. 223RD STREET (APN: 7315-012-900) FOR TEMPORARY STORAGE OF EQUIPMENT AND CONSTRUCTION ACCESS EASEMENT TO RETROFIT THE ADJACENT DOLORES YARD OVERHEAD BRIDGE PROJECT (CITY COUNCIL)				
<b>Sponsors:</b>					
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. Exhibit No. 1 - June 1, 2021 Right of Way Contract Agreement, 2. Exhibit No. 2 - Proposed Updated Right of Way Agreement, 3. Exhibit No. 3 - Resolution No. 21-114, 4. Exhibit No. 4 - Vicinity Map (2403 E. 223rd Street)				

Date	Ver.	Action By	Action	Result
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## Report to Mayor and City Council

Tuesday, September 07, 2021

Consent

### SUBJECT:

**CONSIDER RESOLUTION NO. 21-114 APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A RIGHT OF WAY CONTRACT AGREEMENT BY AND BETWEEN THE CITY OF CARSON AND THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR TEMPORARY USE OF A PORTION OF CITY PROPERTY ON E. 223RD STREET (APN: 7315-012-900) FOR TEMPORARY STORAGE OF EQUIPMENT AND CONSTRUCTION ACCESS EASEMENT TO RETROFIT THE ADJACENT DOLORES YARD OVERHEAD BRIDGE PROJECT (CITY COUNCIL)**

### I. SUMMARY

On June 1, 2021, the City Council approved the draft Right of Way Contract Agreement (Exhibit No. 1) in concept with the State of California Department of Transportation ("Caltrans") for the temporary use of City Property on 223<sup>rd</sup> Street (APN: 7315-012-900) ("Property") to store construction equipment in connection to its Dolores Yard Overhead Bridge ("Bridge") retrofitting project. This Bridge is the portion of E. 223<sup>rd</sup> Street that

extends over the Alameda Rail Corridor and is adjacent to the Property. The City also adopted Resolution No. 21-068 authorizing the City Manager to make and/ or accept minor modifications to finalize the agreement. Subsequently, the City Attorney's Office negotiated the final terms of the agreement with Caltrans that resulted in the following notable updates:

- **Rent.** Caltrans did not agree to the City's proposed compensation amount of \$768,684 for the 28-month term ("Term"). Caltrans had appraised the 28-month lease rate of the Property for \$534,000 earlier this year. The parties have agreed to split the difference, which would make the compensation amount \$651,342 for the Term.
- **Holdover.** Caltrans did not agree to the City's holdover penalty rate of 200% that would be prorated daily each day if Caltrans failed to vacate the Property by the end of the Term. While both parties are aware that Caltrans has no right to extend the Term beyond the end date, the City and Caltrans have not agreed to any specific compensation amount at this time and the Agreement is currently silent on this issue. However, if Caltrans does hold over, it would be required to compensate the City at the same rate that has been substantially increased as noted above.
- **Noticing Requirements for third party testing.** Caltrans understands that the City is intending to sell the Property and will need to allow prospective buyers and their agent (s) to enter the Property to conduct testing/investigations. Caltrans was concerned that potential testing and/or remediation may have adverse effect to its personnel if it resulted in the release of harmful hazardous substances from the ground. The agreement has been revised to clarify that third parties will be allowed on Caltrans leased area for investigation and remediation with prior notice. Investigation activities such as investigation of soils, geological studies, ALTA survey require four (4) business days' notice and must not unreasonably interfere with Caltrans's use of its leased areas. Remediation activities would require eight (8) business days' notice and must also not interfere with Caltrans use. Additionally, any remediation activities that take place on Caltrans's leased portion shall take place within a footprint not to exceed 22' x 12' with access/drive path to the sampling location to be as directed by Caltrans's contractor.

Caltrans is on a tight timeline to complete the Bridge's retrofitting project. The updated Right of Way Contract Agreement (Exhibit No. 2) ("Updated Agreement") includes the above provision and other minor updates to the original June draft agreement. As negotiations have progressed, staff and the City Attorney's Office believe the Updated Agreement is in its final form. However, to ensure the process continues to be expedited, Staff recommends the City Council grant the City Manager the authority to make and/or accept minor modifications to finalize the Agreement (if requested by Caltrans) and take any other related actions in a form acceptable to the City Attorney. The adoption of Resolution No. 21-114 (Exhibit No. 3) grants the City Manager this authority. This authority was previously granted in June; however, the outcome of recent discussions has resulted in considerable changes to deal terms and staff is bringing this item back for reauthorization.

## **II. RECOMMENDATION**

TAKE the following actions:

1. WAIVE further reading and ADOPT Resolution No. 21-114, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO RIGHT OF WAY CONTRACT AGREEMENT BETWEEN THE CITY OF CARSON AND THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR STORAGE AND CONSTRUCTION EASEMENTS OF A PORTION OF CITY-OWNED REAL PROPERTY LOCATED ON E. 223RD STREET (APN 7315-012-900)"

### III. ALTERNATIVES

TAKE any other action(s) the City Council deems appropriate.

### IV. BACKGROUND

Property's Value. The City originally acquired the Property from the Carson Successor Agency in January 2015. In 2014, Caltrans leased the Property from the Carson Successor Agency for a similar purpose. At that time, the Agency leased the Property to Caltrans at a leasing rate of \$2.50 per square foot per year based on an appraised value rate of \$25.00 per square foot for purchasing the property.

Earlier this year, Caltrans conducted another appraisal for the Property and concluded that the total fair market value for the property is now \$50.00 per square foot to purchase. Annual lease rates are typically based off 10% of the Property's appraised fair market value rate. This means the lease rate should be \$5.00 per square foot, per year, which would amount to \$534,000 (rounded) for twenty-eight months [(\$5.00 per sq. ft. year X 45,755 sq. ft.) / (12 months)] X (28 months). Staff and the City Attorney's Office previously believed Caltrans was willing to pay up to \$768,684 (\$7.20 per sq. ft. per year) to compensate the City's time and efforts in accommodating Caltrans urgent needs. However, the outcome of the recent negotiations has resulted in a lease rate of \$651,342, which is a split of the difference.

This amount is still favorable to the City considering: (1) It is above the Caltrans appraised value, (2) Caltrans ultimately has rights to exercise its power of eminent domain to use the Property for its purposes, and (3) the amount of time, effort and risk to both parties to go through the eminent domain litigation process is significant and would be avoidable through compromise and settlement.

Leases. Currently, WIN Chevrolet ("WIN") is also storing some of its automobile inventory on the northwest portion of the same Property and would continue to do so pursuant to its License Agreement. Under the current License Agreement, the City Manager is authorized to extend the Term from time to time.

The Term of the Agreement with Caltrans commences when easements are recorded, and funds are transferred. Caltrans stated that its operations would not interfere with WIN's operations. If the Agreement with Caltrans is approved by the City Council, the City will have two temporary tenants on the Property.

The Caltrans lease area is further depicted under Exhibit No. 4. Caltrans is proposing to occupy the eastern portion of the Property near the Bridge project and the Alameda Rail Corridor. This area would be for construction and storage purposes by Caltrans. Caltrans would also have an access easement connecting the storage area to the main entrance.

*Surplus Land Act Update.* This Property is also being solicited for sale pursuant to the recently enacted Surplus Land Act (“Act”) requirements. The Notice of Availability for the Property was published on April 7, and proposals were due to the City by June 9. Ultimately, the City was not able to agree on the price and terms from the proposal(s) received from priority entity/entities (e.g., housing developers(s)). The City is now working with the State of California Housing and Community Development Department (“HCD”) on the submittal of post-negotiation notice and disposition summary as part of the final steps of complying with the Act’s requirements. After this step, the Property can be available for sale to all potential offerors. Given the current schedule, staff estimates the disposition of the Property to be completed in 2022.

## **V. FISCAL IMPACT**

The City will now receive approximately \$651,342 upfront for the 28-month term (\$23,262.21 per month). Revenues collected will be deposited to the City’s General Fund Account Number (Lease Agreements): 101-99-999-999-4400.

## **VI. EXHIBITS**

1. June 1, 2021 Right of Way Contract Agreement (pgs. 5-14)
2. Proposed Updated Right of Way Contract Agreement (pgs. 15-23)
3. Resolution No. 21-114 (pgs. 24-37)
4. Vicinity Map for Leased Caltrans Area (pg. 38)

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