



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** January 28, 2014

**TO:** Mayor and Councilmembers

**FROM:** Engineering Division, Public Works Department

**SUBJECT:** Right Of Entry For The Possession And Use Of Real Property, Interim Vacancy Agreement, And Reimbursement Agreement At 13 East Cabrillo Boulevard For The Cabrillo Boulevard Bridge Replacement Project

**RECOMMENDATION:** That Council:

- A. Adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Authorizing the Acting Public Works Director to Accept and Execute a Right of Entry For The Possession and Use of Certain Real Property Located at 13 (Otherwise Known as 15) East Cabrillo Boulevard (Assessor's Parcel No.: 033-111-012), 21 Helena Avenue (Assessor's Parcel No.: 033-111-004), and 6 State Street (Assessor's Parcel No.: 033-111-011), and Such Other Agreements and Related Documents as May Be Required, all Relating to the Cabrillo Boulevard Bridge Replacement Project; and Consenting to the Recordation of a Memorandum of Right of Entry in the Official Records, County of Santa Barbara; and
- B. Authorize the Acting Public Works Director to Execute an Interim Vacancy Agreement, Reimbursement Agreement and Related Documents, subject to approval as to form by the Acting City Attorney, that may be required regarding certain real property located at 13 (otherwise known as 15) East Cabrillo Boulevard (Assessor's Parcel No.: 033-111-012) and 21 Helena Avenue (Assessor's Parcel No.: 033-111-004), all relating to the Cabrillo Boulevard Bridge Replacement Project.

### **DISCUSSION:**

The Cabrillo Boulevard Bridge Replacement Project (Project) involves the replacement of the structurally deficient bridge over Lower Mission Creek which requires the removal of a portion of the restaurant building located at 13 (otherwise known as 15) East Cabrillo Boulevard. The Project is part of the grant-funded Federal Highway Administration Bridge Program (FHWA Bridge Program) with engineering and real

property oversight provided to the City through the California Department of Transportation (Caltrans).

On October 15, 2013, the City made a written offer to the Property Owner, to purchase certain permanent and temporary construction easements over 6 State Street (APN: 033-111-011), 13 (otherwise known as 15) East Cabrillo Boulevard (APN: 033-111-012), and 21 Helena Avenue (APN: 033-111-004), which temporary and permanent easements are necessary for flood control purposes and for the City to construct the Project. The offer was based on the City's determination of Just Compensation supported by the fee appraisal report prepared for the City. While the Property Owner did not accept the City's offer, the parties are engaged in negotiations regarding the final compensation to be paid the Owner.

#### Right of Entry Agreement:

Obtaining legal possession and use of the real property is on the critical path for the construction of the Project to begin as scheduled in the fall of 2014. A legal mechanism to obtain the necessary possession and use of the real property from the Property Owner is through a Right of Entry Agreement. The Right of Entry enables the City to apply to Caltrans for the Right of Way Certification which is required to bid the project, proceed with construction and obtain funding during the time that the parties are negotiating the final compensation. The acceptance and execution of the Right of Way Agreement requires authorization and approval by Council.

The proposed Resolution will authorize the execution of the Right of Entry by the Acting Public Works Director on behalf of the City and the recordation of the Memorandum of Right of Entry.

#### Interim Vacancy Agreement:

The property located at 13 (otherwise known as 15) East Cabrillo Boulevard (APN: 033-111-012) and 21 Helena Avenue (APN: 033-111-004), was under lease by Rusty's Pizza Parlor, Inc. (Lessee) up through January 13, 2014. The Lessee had previously been notified by the City that it would need to vacate the leased premises at some time in early January 2014 to accommodate the Project schedule. It is in the City's best interest to have the premises remain vacant in preparation for the commencement of the Project construction. The mechanism to do so is by entering into an Interim Vacancy Agreement with the Property Owner. Under this agreement, the City would pay the Property Owner the rental amount that the Property Owner had been receiving under the former lease agreement. In this case, the monthly rent was approximately \$14,000 per month resulting in \$115,000 to be paid over the anticipated eight month period until Project construction commences. This payment is reimbursable at 88.53 percent to the City through the FHWA Bridge Grant Program.

## Council Agenda Report

Right Of Entry For The Possession And Use Of Real Property, Interim Vacancy Agreement, and Reimbursement Agreement At 13 East Cabrillo Boulevard For The Cabrillo Boulevard Bridge Replacement Project

January 28, 2014

Page 3

Once construction begins, the Property Owner will be compensated for use of the Property at the fair market rate, as supported by an appraisal, under a Temporary Construction Easement. Reimbursement Agreement:

In consideration for granting the City the Right of Entry onto its Property and agreeing to the Interim Vacancy Agreement, the Property Owner has requested that the City pay what it considers to be the fair market monthly rental value for the Property during the interim vacancy period. The tenant had been on a month-to-month lease paying below market rent for the lease for several years. The Property Owner maintains that the below market rental was caused by the continuing uncertainties with regard to the Project. The City's appraisal supports that the fair market rent of the Property is higher than the amount paid by the tenant. The difference is approximately \$9,000 per month. Once the Project is underway and the Temporary Construction Easement becomes operative, the Property Owner will be compensated at the fair market value for the temporary use of the Property.. Under the current proposal, the Property Owner will begin to receive payment of the fair market rent approximately eight months before the Temporary Construction Easement commences.

The Property Owner has also requested the reimbursement of certain expenses it has incurred due to the complexity of addressing the Project. Obtaining the Right of Entry and Interim Vacancy Agreement is necessary in order to keep the Project on the critical funding path and enable Project construction to coordinate with several other major construction activities occurring on lower State Street. In order to obtain the Right of Entry and Interim Vacancy Agreement, staff recommends compensating the Property Owner for the rental differential as noted above and reimbursing the Property Owner for certain expenses it incurred. Staff will request Caltrans reimbursement for these items of additional compensation. The terms of the proposed Reimbursement Agreement are subject to approval by the Acting City Attorney.

The City will continue to negotiate with the property owner in an effort to reach agreement on the overall compensation and final purchase price to acquire the permanent easements and temporary construction easements. When the parties reach agreement on the compensation, including the purchase price, Staff will return to Council to authorize the execution of the acquisition agreement and acceptance of the easement deeds.

### BUDGET/FINANCIAL INFORMATION:

The City and Property Owner are currently in negotiations on the final compensation including the purchase price for the easements. FHWA Bridge Program funds should reimburse the City for 88.53 percent of the Project costs with the remaining 11.47 percent being the City's responsibility. Some of the extraordinary costs, as provided in the Reimbursement Agreement, may not be fully reimbursed from the FHWA funds but are considered necessary by staff in order to obtain the Right of Entry and keep the

Council Agenda Report  
Right Of Entry For The Possession And Use Of Real Property, Interim Vacancy  
Agreement, and Reimbursement Agreement At 13 East Cabrillo Boulevard For The  
Cabrillo Boulevard Bridge Replacement Project  
January 28, 2014  
Page 4

Project on the critical funding and construction path for Fall 2014. There are sufficient appropriated funds in the Streets Capital Funds to cover these expenses.

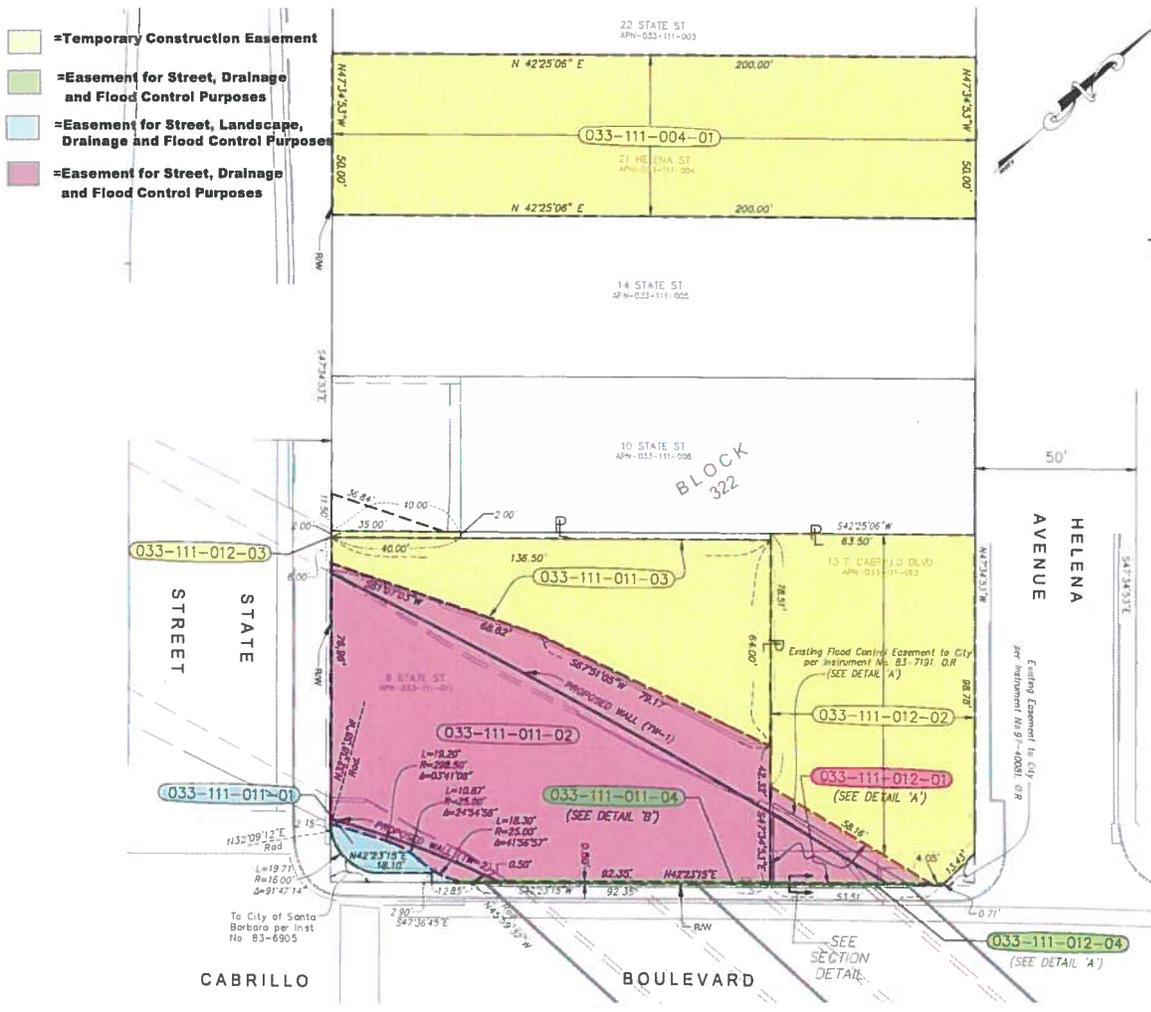
**ATTACHMENT(S):**        1. Parcel Map  
                                  2. Parcel Identification Table

**PREPARED BY:**        Pat Kelly, Assistant Public Works Director/City  
                                  Engineer/MAW/sk

**SUBMITTED BY:**        Rebecca Bjork, Acting Public Works Director

**APPROVED BY:**        City Administrator's Office

PARCEL MAP



## PARCEL IDENTIFICATION TABLE

PARCEL NO.	GRANTOR	AREAS		REMARKS
		REQUIRED (S.F.)	TOTAL PROPERTY (S.F.)	
033-111-011-01	CASTAGNOLA HUNTER, et al.	273	14,446	EASEMENT FOR STREET, LANDSCAPE, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-011-02	"	9,531		EASEMENT FOR STREET, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-011-03	"	4,596		TEMPORARY CONSTRUCTION EASEMENT
033-111-011-04	"	46		EASEMENT FOR STREET, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-012-01	"	745	7,182	EASEMENT FOR STREET, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-012-02	"	6,087		TEMPORARY CONSTRUCTION EASEMENT
033-111-012-03	"	80		TEMPORARY CONSTRUCTION EASEMENT
033-111-012-04	"	27		EASEMENT FOR STREET, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-004-01	"	10,000	10,000	TEMPORARY CONSTRUCTION EASEMENT