

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: February 22, 2011
Reviewed by: BP

SUBJECT: BART-Albany License Agreement regarding Ohlone Greenway

REPORT BY: Ann Chaney, Community Development Director
Rich Cunningham, Public Works Manager

STAFF RECOMMENDATION

Approve a License Agreement between the City of Albany and the San Francisco Bay Area Rapid Transit District (BART) regarding maintenance and use of the BART-owned portion of the Ohlone Greenway, subject to certain conditions (attached).

BACKGROUND

In 1970, BART entered into a Landscaping Agreement with Albany. That agreement addressed BART's construction of landscaping and other improvements currently located beneath the aerial structure. It also states the City's agreement to maintain those improvements. While this agreement has no expiration date, it appears to apply only to the area between the Albany-Berkeley city limits and Solano Avenue. For this reason, both BART and the City concur that a new License Agreement is needed, which would apply only to the BART-owned premises.

BART owns the land west of the east side of the bicycle path (to Masonic Avenue), and Albany owns the land east of the bicycle path (to backyard fences). BART is in the process of entering into new license agreements among all applicable jurisdictions in order to guarantee consistent policies and timelines. As such, BART sent Albany staff a draft agreement for review and comment. The two agencies spent much of 2010 in negotiations, and are now prepared to seek approval of the two governing bodies.

During negotiations, the City Attorneys and Public Works staffs of Albany, Berkeley and El Cerrito discussed issues surrounding the License Agreement, to help ensure consistent maintenance and use policies along this stretch of the Ohlone Greenway. Berkeley and El Cerrito have entered into their agreements.

It should be noted that prior agreements regarding BART's Seismic Retrofit project, are independent of this License Agreement. The License agreement relates to future improvements and long-term maintenance along the Ohlone Greenway, while the seismic retrofit is a capital project.

DISCUSSION/ANALYSIS

Important issues of the License Agreement include allowed and prohibited uses, permitting process, maintenance responsibilities, and expiration date.

Allowed and Prohibited Uses

The overriding focus for BART is that it is a “Mass Transit Corridor”, in accordance with the Department of Transportation, to be used for that purpose. As such, the “pathway is designated by the City as non-recreational in nature...” and any improvements must relate to the bicycle, pedestrian pathway or associated landscaping.

Permanent building, structures or facilities are not permitted without written authorization from BART. Permanent structures are defined as any structure a person can enter (e.g., restroom). Installation of any permanent or non-permanent structure, facility, grading or improvements, will require plans and specifications, and BART approval.

Improvements excluded from requiring BART approval include non-permanent structures such as trash receptacles, benches, and sign installations, and similar structures. Also excluded from BART approval are landscaping and irrigation activities, mulching, minor grade changes for routine landscape maintenance, soil amendments, digging holes for signs and benches, or similar improvements.

Section 14 of the License Agreement addresses Concessionaires and Other Third Parties, and allows the City to afford them the same rights granted to the City, subject to prior written approval by BART. The City would be responsible for ensuring that these parties observed the conditions of this License, and released BART from all liability and claims for damages. Thus, subject to BART approval, temporary activities such as organized community events would be allowed, subject to these conditions.

Albany Fire Department currently responds to emergencies on BART property, including at-grade and elevated track sections. That relationship would continue under this Agreement.

Maintenance

Albany will continue to be responsible for the maintenance and operation of all the facilities and improvements related to the Ohlone Greenway., and adjacent landscaping and pathway lighting. BART will continue to be responsible for graffiti removal on BART’s structures (e.g., support columns for aerial track).

Expiration

The term of the License Agreement “shall expire on December 31, 2036” (25 years). In addition, BART retains the right to use, sell or change areas under their ownership, but does provide for the City’s right of first refusal in the event of a sale.

SUSTAINABILITY IMPACT

Planned improvements to the Ohlone Greenway bicycle/pedestrian path will be part of the BART Seismic Retrofit work slated to begin this summer. This trail will provide commuter and recreational bicyclists a safer route that would lead to a reduction in freeway congestion and thereby have a direct benefit to air quality. The proposed License Agreement outlines responsibilities that will continue to promote a well-maintained Greenway including landscaping, paths, and irrigation systems that lead to a more sustainable environment.

FINANCIAL IMPACT

Approval of this License Agreement will not have a financial impact, in that the City currently maintains the Ohlone Greenway improvements and path lighting.

Attachments

1. License Agreement between BART and the City of Albany
2. Exhibit A (shows the "Premises")