



City of San Leandro

Meeting Date: July 18, 2016

Staff Report

File Number: 16-346

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.F

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Authorizing the City Manager to Approve a Memorandum Of Understanding (MOU) with the San Leandro Improvement Association (SLIA) for the Placement of Items in the Public Right-Of-Way.

SUMMARY AND RECOMMENDATIONS

This Memorandum of Understanding between the City of San Leandro and the San Leandro Improvement Association would memorialize the responsibilities, terms and conditions for placement of items in City-owned public right-of-way or on City-owned properties for the purposes of activating, programming, and beautifying Downtown San Leandro.

BACKGROUND

Title 2, Chapter 2-20 of the San Leandro Municipal Code authorized the City to establish a Community Benefit District (CBD) in the City based on the Property and Business Improvement Law of 1994 (California Streets and Highways Code sections 36600 et seq.), which sets forth the regulations for establishing a property-based benefit assessment district. On May 20, 2013, the City Council adopted a Resolution of Intention (Resolution No. 2013-067) to establish the Downtown Community Benefit District (CBD) as a result of the Steering Committee having received petitions representing over 30% of the weighted assessment within the proposed boundaries of the District and further directed staff to proceed to the balloting process necessary to determine whether the requisite 50% of the weighted ballots of property owners within the proposed CBD supported its establishment. Based on the weighted majority support for the establishment of the Downtown CBD, the City Council approved the formation of the CBD on July 15, 2013.

Later in 2013, the San Leandro Improvement Association (SLIA) was formally incorporated as the management corporation for the CBD. SLIA was subsequently recognized as a tax-exempt non-profit by the State of California and the Internal Revenue Service.

Analysis

The City and SLIA recognize a shared interest in activating, programming, and beautifying Downtown San Leandro. Recent steps have already been taken by SLIA to make the Downtown area more pedestrian-friendly by installing planters on E. 14th Street and patio furniture and umbrellas in public plazas. SLIA also employs a maintenance crew to keep the Downtown area clean and inviting. This MOU enables SLIA to place or install items on City-owned properties, such as sidewalks, plazas and parks without the need to make a formal application for a City encroachment permit, or pay City encroachment fees for each proposed activity, unless the City deems that the proposed activity is not covered by this MOU or requires a higher level of review.

The intent of this policy is to streamline the process so that SLIA can expand its efforts with minimal disruption, while still supporting the City's responsibility to review projects under applicable regulations and safety requirements. A process by which SLIA provides information on, and the City approves, proposed projects and encroachments is outlined in the MOU. Feedback on the Draft MOU was provided by the Public Works, Engineering, and Finance Departments.

Previous Actions

- Formation of the San Leandro Benefit District (Resolution No. 2013-102)
- Approval of the Community Benefit District 2013 Management District Plan

Legal Analysis

The MOU was reviewed by the City Attorney and is approved as to form.

Fiscal Impacts

There is no fiscal impact as a result of this MOU.

ATTACHMENT(S)

Attachment(s) to Related Legislative File

- MOU between SLIA and the City of San Leandro for the Placement of Items in the Public Right-of-Way

PREPARED BY: Lars Halle, Development Coordinator, Community Development



City of San Leandro

Meeting Date: July 18, 2016

Resolution - Council

File Number: 16-345 **Agenda Section:** CONSENT CALENDAR

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TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Authorizing the City Manager to Execute a Memorandum of Understanding With the San Leandro Improvement Association (SLIA) for the Placement of Items in the Public Right-Of-Way

WHEREAS, a Memorandum of Understanding (MOU) between the City of San Leandro and the San Leandro Improvement Association (SLIA) for the placement of items in the public right-of-way, which outlines a process by which SLIA may obtain City approval to place or install items in City-owned public right-of-way or on City-owned properties in the interest of activating, programming, and beautifying downtown San Leandro, a copy of which is attached, is presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said MOU.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said MOU is hereby approved and execution by the City Manager is hereby authorized.

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN
THE SAN LEANDRO IMPROVEMENT ASSOCIATION (SLIA)
AND
THE CITY OF SAN LEANDRO
FOR THE
PLACEMENT OF ITEMS IN THE PUBLIC RIGHT-OF-WAY

This Memorandum of Understanding (MOU) between the San Leandro Improvement Association ("SLIA") and the City of San Leandro ("City"), together referred to as "Parties," is to memorialize the responsibilities, terms and conditions for the placement of items in the City-owned public right-of-way or on City-owned properties, for the purposes of activating, programming, and beautifying Downtown San Leandro, hereinafter referred to as "Project."

I. OVERVIEW

The City and SLIA recognize a shared interest in activating, programming and beautifying Downtown San Leandro. Therefore, this MOU is designed to outline a process by which SLIA may obtain City approval to place or install items in City-owned public right-of-way or on City-owned properties, such as sidewalks, plazas or parks. By complying with the requirements of this MOU, SLIA, in most cases, will not be required to submit for separate City encroachment permit applications or pay City encroachment permit fees with each proposed activity. The City retains the right to require submittal of an application for a City encroachment permit if in the City's opinion the activity is not covered by this MOU, or if circumstances make it appropriate or in the City's best interest.

II. AGREEMENT

The Parties agree to the following:

I. Insurance

Prior to placing any items on City property and/or in the public right-of-way, SLIA shall procure and maintain at its own expense insurance coverage and submit proof of same to the City as follows:

1. General Liability - \$1,000,000 for each occurrence/\$2,000,000 aggregate
 - a. ISO endorsement: Evidence of Primary Insurance
 - b. ISO endorsement naming the City of San Leandro as Additional Insured
 - c. ISO endorsement: Waiver of Subrogation

2. Commercial Automobile Liability - \$1,000,000
 - a. ISO endorsement naming the City of San Leandro as Additional Insured
 - b. ISO endorsement: Evidence of Primary Insurance
 - c. ISO endorsement: Waiver of Subrogation

3. Workers Compensation Liability - \$1,000,000
 - a. ISO endorsement: Waiver of Subrogation

SLIA shall require each and every vendor, supplier, consultant or contractor doing work, providing materials or goods, or occupying City-owned public-right-of-way or City property to obtain the insurance coverages and endorsements described above, including the endorsements that name the City as an Additional Insured. SLIA shall assume the defense, indemnify and hold harmless the City and all of its elected and appointed officials, officers, directors, employees and volunteers from any and all claims filed by third parties against the City related to, associated with or caused by SLIA-sponsored events and/or SLIA-performed work and installations on City property and/or in City-owned public right-of-way.

II. Permitted Locations and Projects

This MOU covers placement or installation of items on sidewalks, public plazas, City owned parks, and the grounds of the Casa Peralta (not otherwise addressed in the Lease Agreement between the City and SLIA). SLIA will not place any items in active roadways at any time unless such activity is permitted pursuant to a Special Event Permit issued by the San Leandro Police Department. SLIA must obtain permits from the State of California (Caltrans) prior to any activity or work performed within State-owned rights-of-way (e.g. East 14th Street, Davis Street).

The Parties recognize that the public right-of-way on East 14th Street (Highway 185) and Davis Street (Highway 61) are controlled by the State of California (Caltrans), and are therefore not subject to this agreement. SLIA must obtain permits from Caltrans for activities within these State highways.

This MOU is not intended to cover construction projects herein defined as any activity or work performed by California-licensed contractors that result in a permanent change in City owned public right-of-way and/or City property. Additionally, the City reserves the right to carefully review, or require prior to any installation, work or placement, proposals that will result in physical changes to City property and/or public right-of-way, including but not limited to drilling, affixing by means of staples, glue, nails, screws, painting, etc. Determinations on whether or not to permit such projects will be made on a case-by-case basis. Return of property to its original condition may be an express condition of such approvals. If a Project affects City-owned public right-of-way or City property, it shall be designed, installed or constructed to meet and maintain all current Americans with Disabilities Act (ADA) standards for accessibility.

III. Quarterly Schedule of Planned Projects

City and SLIA staff shall meet as often as needed, but no less than quarterly to share information and coordinate projects. Before each meeting SLIA shall provide a list of planned placements for every upcoming three-month period this MOU is effective to assist the Parties in Project planning and to expedite any specific approvals.

IV. Local Preference

Although work performed by SLIA will not be subject to the requirements of the San Leandro Local Inclusion Policy, SLIA shall make best efforts to utilize local San Leandro contractors and vendors.

V. Submittal Requirements

At least 30 calendar days prior to any installation or placement, SLIA shall submit the following to the City (specifically to the attention of the Public Works Director, Principal Engineer, Business Development Manager, and Risk Manager):

1. A description (including manufacturer's documentation or cut-sheets if applicable) of the installation Project, including number of items, sizes and materials (including color palettes, where applicable);
2. A scaled drawing indicating the location of the Project. City staff may be available to assist with the development of scaled drawings if requested;
3. Proposed date of installation and duration (specific dates or "indefinite");
4. Description of the installation process specifically noting if any equipment or third-party vendors or contractors will be involved in the installation;
5. Description of the removal or tear-down process specifically noting if any equipment or third-party vendors or contractors will be involved in the process;
6. Whether SLIA requires utility connections as part of the installation. The City may facilitate utility connections, although this may not be feasible in all instances. Additionally, SLIA will be responsible for actual costs related to any electrical, mechanical or plumbing work. Additional review time may be required for projects that require utilities connections;
7. Any work performed by licensed contractors is subject to the insurance and indemnification requirements set forth above;
8. Whether City water will be required to maintain the Project or related activities; and

9. Whether the Project will be of a temporary or semi-permanent nature.

VI. Pre- and Post-Construction Walk-throughs

Prior to installation or placement of any items, the City and SLIA staff will jointly schedule a walk-through of the area. A second walk-through will be scheduled within 7 days after any items are removed. Any damage to City facilities or infrastructure caused by SLIA or its contractors' actions must be promptly repaired by SLIA at SLIA's expense and to the City's satisfaction. If damage is not corrected within 30 days, the City has the right to perform the repair and invoice SLIA for all associated direct and indirect costs including, but not limited to, overhead and administration. If a pre-installation walk-thru is not performed, SLIA waives all rights for determination of potential damage and may be held liable in total for all repairs/replacement deemed necessary by the City.

VII. Special Considerations for Artistic and Park Projects

In 2014 the City Council paneled a City Arts Commission to guide the placement and development of public art. Accordingly, any installations that include an artistic component may require a recommendation of support from the City's Arts Commission. In these instances, SLIA should allow more time for approval by the City.

Any projects that will impact the use or visual character of City parks may require review by the Recreation and Parks Commission. In these instances, SLIA should allow more time for approval by the City.

VIII. Written Approval of Projects

For all placement and installation of items covered under this MOU, the City will provide written requirements and confirmation of approval to SLIA staff. City shall have no less than four weeks advance notice of SLIA activities governed by this MOU. No items shall be placed or installed prior to SLIA receipt of City's written approval. SLIA shall obtain no property rights, including but not limited to fee simple, easements, or obtain rights by adverse possession by or through an installations permitted by the City. The City's permission provides at most a temporary, revocable, non-exclusive license to use City right-of-way and/or City property. Unauthorized installations or placements shall be removed immediately. If such unauthorized installations or placements are not removed immediately, then City shall remove such installations and charge all costs of removal back to SLIA.

IX. Construction Projects

As noted above, construction projects, herein defined as any activity or work performed by California-licensed contractors that result in a permanent change in City-owned public-right-of-way or City property, will require a more detailed review and approval process to be defined on a case-by-case basis. Construction projects at the Casa Peralta shall be defined by the Lease Agreement between the City and SLIA. In addition to the above requirements, construction projects are subject to the following minimum requirements:

The Contractor must be properly licensed pursuant to California Business and Professions Code §7055 et seq. and possess an active City of San Leandro Business License.

Contractor shall provide proof of insurance coverage in accordance with Section I.

Pursuant to California Labor Code Section 1771.1(a), a contractor or subcontractor shall not be qualified to work on a Project, or engage in the performance of any Project work unless currently registered and qualified to perform work pursuant to California Labor Code Section 1725.5.

All construction work is subject to the prevailing wage requirements applicable in Alameda County for each craft, classification or type of worker needed to perform the work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. These prevailing wage rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work must be at least time and one-half. The Contractor will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, pursuant to Labor Code Section 1771.4.

No discrimination shall be made in the employment of persons upon any Project because of the race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, gender, gender identity, or sex of such persons, except as provided in Section 12940 of the Government Code, and every Contractor violating this section is subject to all the penalties imposed..

X. Term of MOU

- a. This MOU is effective 30 days after approval by the City Council or full execution by the Parties, whichever is sooner, and shall remain in full force and effect until amended or terminated.
- b. This MOU may be terminated at any time by either party, with or without cause, by providing at least thirty (30) days advance written notice to the other party.
- c. This MOU may only be amended in a writing executed by both parties.

IN WITNESS WHEREOF, the Parties have executed this MOU on the date set forth above.
AGREED AND EXECUTED BY:

SAN LEANDRO IMPROVEMENT ASSOCIATION

By: _____
Gordon Galvan, President

Date: _____

CITY OF SAN LEANDRO

By: _____
Chris Zapata, City Manager

David Baum, Director of Finance

Date: _____
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Date: _____