

CITY OF HAYWARD RESOLUTION NO. 2015-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD
APPROVING AND AUTHORIZING EXECUTION OF A RIGHT OF ENTRY
AGREEMENT FOR CINEMA PLACE PROPERTY

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Dissolved RDA") owned and was required to remediate "Known Below-Ground Contamination" under the Cinema Place property located at 22695 Foothill Boulevard in Hayward, CA 94541-5007, County of Alameda, California (the "Agency Property") pursuant to the terms set forth in letters from the San Francisco Bay Regional Water Quality Control Board (the "Water Board") dated July 5, 2006 (approving a Risk Management Plan and Requirement for Implementation Report) , July 5, 2006 (approving a Groundwater Investigation Work Plan and Requirement for Report), May 23, 2011 (approving Report of Pilot Test Results and Proposed Final Remedial Alternative and Request for Technical Report), and October 14, 2011 (approving a Remedial Action Implementation Report and Requirement for Report) (collectively the "Risk Management Plan and Groundwater Investigation Work Plan"); and

WHEREAS, the Dissolved RDA entered into a professional services agreement with AMEC E&I, Inc.'s predecessor in interest AMEC GeoMatrix (the "Professional Services Agreement") to perform the remediation work at the Property as required under the Risk Management Plan and Groundwater Investigation Work Plan; and

WHEREAS, on February 1, 2012, the Dissolved RDA was dissolved pursuant to Assembly Bill x1 26, as amended by AB 1484 (collectively, the "Dissolution Statutes"), the Agency Property transferred to the Successor Agency by operation of law, and under the Dissolution Statutes and the Successor Agency is charged with disposing of the properties and other assets of the Dissolved RDA, including the Agency Property; and

WHEREAS, the Dissolved RDA, and by extension the Successor Agency, successfully completed all required activities under the Risk Management Plan and Groundwater Investigation Work Plan related to the Agency Property and the Water Board is prepared to issue a No Further Action Letter with regards to the Agency Property, but prior to issuing this letter, has required that the Successor Agency destroy eight site monitoring wells (MW-5AR, MW-6AR, MW-PFB1, MW-PFB2, MW-PFB3, P-1A, P-2A, and P-3A) (the "Monitoring Wells")

WHEREAS, the City owns certain real property dedicated as a public right of way located in Hayward, CA 94541-5007, County of Alameda, California (the "C Street ROW") where Piezometers P-2A is located; and

WHEREAS, the Dissolved RDA and Hayward Gas Mart ("Gas Mart") had an informal arrangement that allowed Gas Mart access to the Agency Property and use of the Monitoring Wells as part of on-going monitoring to assess the progress of remediation efforts associated with the leaking underground storage tank case (01-2027) located on the

property at 22690 Foothill Boulevard in Hayward, CA 94541-5007, County of Alameda, California (the "Gas Mart Property"); and

WHEREAS, the City of Hayward Fire Department, as the agency responsible for managing the remediation of the underground storage tank, has directed Gas Mart to continue to use specified Monitoring Wells to assess the progress of remediation at the Gas Mart Property; and

WHEREAS, to facilitate and monitor on-going remediation efforts at the Gas Mart Property and to ensure the public safety is served through the restoration and removal of contamination at the Gas Mart Property, the Successor Agency and the City desire to execute the Right of Entry Agreement, in substantially the form attached as Attachment III to the staff report accompanying this Resolution and incorporated into this Resolution by this reference ("Staff Report").

WHEREAS, the accompanying Staff report, Repayment Agreement, the Right of Entry Agreement, the information provided by the environmental consultants (collectively, the "Supporting Documents") provide supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines that the foregoing recitals are true and correct, and together with the Supporting Documents and the information provided by the staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

BE IT FURTHER RESOLVED that the City Council hereby directs the City Manager to enter into the Right of Entry Agreement to grant Gas Mart the right to enter the C Street ROW for the limited purpose of accessing the Monitoring Wells to conduct the Site Assessment Activities (as defined in the Right of Entry).

BE IT FURTHER RESOLVED that the City Council hereby finds and determines that the Right of Entry Agreement, is a legal and valid contract, but shall under no circumstances constitute an "enforceable obligation" or "recognized obligation" for any purposes of the Dissolution Statutes.

BE IT FURTHER RESOLVED that the City Council finds and determines that the Right of Entry Agreement approved in this Resolution: (1) does not increase the liabilities of the City or reduce the net revenues available to taxing entities; and (2) is in the best interests of the taxing entities because the successful completion of remediation work at the Gas will allow for the full completion of the remediation work at the Gas Mart Property .

BE IT FURTHER RESOLVED that and that the City Council authorizes and directs the City Manager to execute the Right of Entry Agreement on behalf of the Successor Agency to effectuate and implement the terms of this Resolution, in a form approved by the City Manager and the City Attorney, such approval to be evidenced by the execution of such agreement.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

HAYWARD, CALIFORNIA, September 22, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward