

RIGHT OF ENTRY AGREEMENT
(Cinema Place)

THIS RIGHT OF ENTRY AGREEMENT (the "Agreement") is made as of this _____ day of August, 2015 (the "Effective Date"), by and between the Hayward Successor Agency, a separate legal entity (the "Successor Agency"), the City of Hayward, a California charter city (the "City") and Hayward Gas Mart, a _____ ("Gas Mart"). The Successor Agency and Gas Mart are referred to in this Agreement collectively as the "Parties" and individually as a "Party."

RECITALS

A. The Successor Agency is the owner of certain real property located at 22695 Foothill Boulevard in Hayward, CA 94541-5007, County of Alameda, California as described in the attached Exhibit A-1 (the "Agency Property"), consisting of Parcel 1 and Parcel 2 as depicted on the Site Map attached here to as Exhibit B, incorporated herein by this reference (the "Site Map").

B. The City is the owner of certain real property dedicated as a public right of way located in Hayward, CA 94541-5007, County of Alameda, California as described in the attached Exhibit A-1 (the "C Street ROW"), as depicted on the Site Map.

C. Gas Mart is the owner of certain real property located at City of Hayward, 22690 Foothill Boulevard in Hayward, CA 94541-5007, County of Alameda, California as described in the attached Exhibit A-3 (the "Gas Mart Property").

D. The Agency Property is subject to that certain Second Amended and Restated Disposition, Development Agreement dated as of July 11th, 2007 as amended from time to time (the "Disposition Agreement"). Under the Disposition Agreement, the Successor Agency had an obligation to conduct ongoing monitoring, sampling, pumping of ground water and other related activities required by the San Francisco Bay Regional Water Quality Control Board (the "Water Board") to monitor "Known Below-Ground Contamination" and remove any identified "Un-Known Below-Ground Contamination" sufficient to allow for the development of the Agency Property as described in the Disposition Agreement.

E. The Agency Property is also subject to that certain First Amended Ground Lease, dated as of July 11th, 2007, according to which the Successor Agency's predecessor in interest the Redevelopment Agency of the City of Hayward (the "Dissolved Agency") remediated the "Known Below-Ground Contamination" to the satisfaction of the Water Board as set forth in letters from 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).

F. In addition to the Disposition Agreement and Lease, Parcel 1 of the Successor Agency Property is subject to that certain Cinema Place Parking Maintenance and Easement Agreement dated as of June 11th, 2007, setting forth the Successor Agency's duties and responsibilities for maintenance and operation of the parking structure that is constructed on a portion of Parcel 1 for the benefit of the tenant under the Lease.

G. The Dissolved RDA, and by extension Successor Agency, successfully completed all required activities under the Risk Management Plan and Groundwater Investigation Work Plan related to the Agency Property. As of the date of this Agreement, 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 all eight site monitoring wells (MW-5AR, MW-6AR, MW-PFB1, MW-PFB2, MW-PFB3, P-1A, P-2A, and P-3A). However, representatives from Gas Mart have requested that the Successor Agency make monitoring wells identified on the Site Map as monitoring wells MW-5AR, MW-6AR, and piezometers P-1A and P-2A (collectively, the "Monitoring Wells") available to Gas Mart 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 Gas Mart Property pursuant to directives from the City of Hayward Fire Department.

H. In order to conduct on-going monitoring, Gas Mart will need to periodically enter the Agency Property and the C Street ROW (collectively, the "Cinema Place Site") for the purposes of conducting groundwater assessment activities, which will include measurements and sampling of groundwater monitoring wells as more specifically described in the attached Exhibit C, incorporated herein by this reference (hereinafter "Site Assessment Activities").

I. The Parties desire to enter into this Agreement to permit Gas Mart to enter the Cinema Place Site to continue to perform groundwater Site Assessment Activities.

NOW THEREFORE, the Parties agree as follows:

Section 1. Right of Entry on to the Property.

(a) The Successor Agency grants to Gas Mart the right to enter the Agency Property (the "Agency Right of Entry") for the limited purpose of accessing the Monitoring Wells to conduct the Site Assessment Activities. The Right of Entry may be exercised by Gas Mart and its employees, agents, contractors, subcontractors, and consultants to the extent necessary to perform the Site Assessment Activities.

(b) The City grants to Gas Mart the right to enter the C Street ROW (the "City Right of Entry", and collectively with Agency Right of Entry, the "Right of Entry")) for the limited purpose of accessing the Monitoring Wells to conduct the Site Assessment Activities. The Right of Entry may be exercised by Gas Mart and its employees, agents, contractors, subcontractors, and consultants to the extent necessary to perform the Site Assessment Activities

(c) Gas Mart shall be responsible to the Successor Agency and the City for acts and omissions of Gas Mart's employees, agents, contractors, subcontractors, and consultants,

and other persons or entities performing portions of the Site Assessment Activities for or on behalf of Gas Mart, and for any damages, losses, costs, expenses resulting from such acts and omissions.

(d) Time is of the essence in the performance of all obligations under this Agreement. Gas Mart shall perform all work related to the Site Assessment Activities as expeditiously as is consistent with professional skill and care and consistent with the City and the Successor Agency's interest so as to avoid interruption or delay to the maintenance and operation of the Cinema Place Site, and shall perform the Site Assessment Activities pursuant to the schedule to be provided to and approved by the City and the Successor Agency (the "Project Schedule"). To the extent applicable, the Project Schedule may be revised by the City and the Successor Agency at appropriate intervals as required by the conditions of the Site Assessment Activities, while providing for expeditious and practicable execution of the Site Assessment Activities.

Section 2. Performance of Work. All work undertaken by Gas Mart pursuant to the Right of Entry shall be in compliance with: (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; (ii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction; and (iii) in compliance with directives from the City of Hayward Fire Department for the Gas Mart Property.

Section 3. Notice. Gas Mart shall give the Successor Agency forty-eight (48) hours' notice prior to exercising the Right of Entry to conduct the Site Assessment Activities.

Section 4. Term.

(a) The term (the "Term") of this Agreement and the Right of Entry granted hereunder shall be effective as of the date the Water Board issues a No Further Action Letter to the Successor Agency for the Agency Property and shall terminate upon the sooner to occur of: (i) issuance by the City of Hayward Fire Department of a No Further Action Letter for the Gas Mart Property; (ii) issuance by the City of Hayward Fire Department of a letter stating that the Monitoring Wells are no longer necessary to complete the monitoring activities for the underground storage tank case (01-2027); or (iii) the occurrence of an event of default under this Agreement.

(b) Upon termination of the Term or when so directed by the City of Hayward Fire Department or any other environmental agency which acquires jurisdiction of the subject investigation and cleanup, Gas Mart shall perform the legal abandonment and backfilling of the Monitoring Wells on the Cinema Place Site at Gas Mart's sole responsibility. The abandonment of the Monitoring Wells shall be performed under permit from the administering agency, the Alameda County Public Works Agency. Upon abandoning and backfilling the Monitoring Wells, Gas Mart, at its sole expense, will restore each well location to ground level elevation, and will leave the Cinema Place Site in "broom clean" condition.

Section 5. Investigation of the Property. Gas Mart warrants and represents that, prior to the commencement of the Site Assessment Activities, to the extent applicable to the Site Assessment Activities to be performed hereunder, Gas Mart has: (i) made a visual inspection of the existing conditions of the Cinema Place Site and the Monitoring Wells; (ii) made a visual inspection of all surrounding and local conditions; (iii) reviewed site surveys, existing record documents, and other any other documentation furnished by the City and the Successor Agency; (iv) taken field measurements or reviewed reports of all existing conditions; and (v) examined all federal, state and local laws and regulations, applicable to the performance of the Site Assessment Activities. Gas Mart shall also perform such inspections, examinations, and take such measurements as warranted during the performance of the Site Assessment Activities. Gas Mart shall promptly report in writing to the City and the Successor Agency any discovered previously unknown condition (e.g., the presence of light non-aqueous phase liquid), defects, errors, ambiguity or discrepancy which Gas Mart may discover as a result of its inspections.

Section 6. Standard of Care. Gas Mart and its employees, contractors, subcontractors, consultants and other persons or entities performing portions of the Site Assessment Activities for or on behalf of Gas Mart, shall perform all Work in a manner consistent with the standard of professional skill and care under California law, applicable to those who specialize in providing such services, under circumstances similar to that of the Site Assessment Activities which are the subject of this Agreement.

Section 7. Use of the Property. In accessing the Cinema Place Site, Gas Mart and its employees, contractors, subcontractors, consultants and other persons or entities performing portions of the Site Assessment Activities the following conditions shall apply:

(a) Equipment. Gas Mart shall confine operations at the Cinema Place Site to the Monitoring Wells and areas permitted by applicable permits and as indicated by the City and the Successor Agency, and shall not unreasonably encumber the Cinema Place Site with materials or equipment. Only materials and equipment that are to be used directly in the Site Assessment Activities shall be brought to the Cinema Place Site by Gas Mart. After equipment is no longer required for the Site Assessment Activities, the materials and equipment shall be promptly removed from the Cinema Place Site. Gas Mart shall not store any materials or equipment at Cinema Place Site. Protection of materials and equipment placed at the Cinema Place Site from weather, theft, damage, and all other adversity is solely the responsibility of Gas Mart.

(b) Access. Gas Mart shall ensure that the Site Assessment Activities, at all times, are performed in a manner that affords reasonable and safe access, both vehicular and pedestrian, to the Cinema Place Site and all adjacent areas including necessary emergency ingress and egress and in a manner that will not interfere with the City, the Successor Agency, and public's access or use of the Cinema Place Site or the Tenant's use of the Successor Agency Property under the Disposition Agreement, the Lease or the Easement. The Work shall be performed, to the fullest extent reasonably possible, in such manner that public areas adjacent to the Monitoring Wells shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

(c) Occupants. Gas Mart acknowledges that the Cinema Place Site may be accessed by the City, the Successor Agency, the Tenant of the Agency Property, and members of the public while Gas Mart is performing the Site Assessment Activities. Gas Mart shall take all necessary precautions to ensure that the Site Assessment Activities are performed in such a manner so as not to endanger, threaten, or impair the safety of the City, the Successor Agency, the Tenant of the Agency Property, their personnel, guests, and invitees to the Cinema Place Site or to materially interfere with their use and access to the Cinema Place Site, and shall construct and maintain reasonable safeguards as required by the condition and progress of the Site Assessment Activities. Gas Mart shall take all reasonably available efforts to eliminate unnecessary noise, dust, or obstructions during the performance of Site Assessment Activities.

(d) Waste. Gas Mart agrees that it will not store or dispose of any wastes on, under, about or within the Cinema Place Site.

(e) Safety Precautions and Programs. Safety is of prime importance to the City and the Successor Agency. During the performance of Work on the Cinema Place Site Gas Mart shall ensure that all Applicable Law requirements relative to safety and the safe performance of work are being met. Gas Mart shall erect and maintain, as required by existing conditions and performance of Site Assessment Activities, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying all persons at the Cinema Place Site.

(f) Protection of Work Area. Gas Mart shall take care to protect the areas surrounding Site Assessment Activities areas including but not limited to existing utilities, equipment, vegetation, interior flooring and walls to the extent impacted by the performance of Site Assessment Activities, and shall utilize protective coverings as appropriate. Gas Mart shall patch any openings caused by the performance of Site Assessment Activities which exposes the interior of the buildings to the elements. Gas Mart shall be responsible for repairing any damage to the areas surrounding Site Assessment Activities including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing Site Assessment Activities. If Gas Mart fails or refuses to repair the damage promptly, the Successor Agency may have the necessary work performed and charge the cost to Gas Mart.

Section 8. Indemnity.

(a) Gas Mart shall indemnify, defend (with counsel reasonably acceptable to the Successor Agency and the City) and hold harmless the Successor Agency, the City and their board members, council members, officers, officials, employees, volunteers and agents (collectively, the "Indemnitees"), against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) and personal or property damage caused by or arising out of the Site Assessment Activities of Gas Mart or its contractors, subcontractors, consultants, subconsultants, agents, or employees concerning the work on the Cinema Place Site during the Term of the Right of Entry or created as a result of the exercise of the Right of Entry. The foregoing indemnity shall not extend to any

claim arising from the gross negligence or intentional wrongdoing of the City or the Successor Agency.

(b) Gas Mart agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Cinema Place Site in violation of any law or regulation and Gas Mart shall indemnify and hold harmless the Indemnitees from and against any and all losses, liabilities, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorney's fees, remediation costs and consulting, engineering and construction costs) arising from or as a result of a breach of this warranty and representation or as a result of the disposal, storage, generation or release on the Cinema Place Site at any time during the Term of any Hazardous Materials, by Gas Mart or its contractors, subcontractors, agents, or employees. Should any discharge, leakage, spillage, emission, or pollution or any type occur upon or from the Cinema Place Site due to Gas Mart's entry onto the Cinema Place Site, Gas Mart at it's expense, shall clean all property affected thereby to the reasonable satisfaction of the Indemnitees and any governmental body having jurisdiction there over.

(c) As used in this paragraph, "Hazardous Materials" shall mean any substance, chemical or waste that is identified as hazardous material, hazardous substance, hazardous waste or toxic substance in any federal, state or local law or regulation. The term "Hazardous Materials" shall not include: construction materials or gardening materials customarily used in the construction of residential property or associated buildings and grounds.

(d) The indemnifications provided pursuant to this Section 8 shall survive the termination of this Agreement.

Section 9. Gas Mart Insurance. Gas Mart shall maintain, and shall require its contractors and subcontractors to maintain, insurance coverage meeting the general insurance requirements set forth below. Prior to exercising the Right of Entry, Gas Mart shall provide the City and the Successor Agency evidence of such insurance coverage.

(a) Gas Mart shall, throughout the duration of this Agreement, shall maintain insurance to cover Gas Mart (including its agents, representatives, contractors, subcontractors, consultants and employees) in connection with the performance of Site Assessment Activities under this Agreement. This Agreement identifies the minimum insurance levels with which Gas Mart shall comply; however, the minimum insurance levels shall not relieve Gas Mart of any other performance responsibilities under this Agreement (including the indemnity requirements), and Gas Mart may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by Gas Mart, and prior to the commencement of Site Assessment Activities, Gas Mart shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the Successor Agency. Gas Mart shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

(i) Workers' Compensation Insurance. Coverage as required by California law and Employer's Liability with a limit not less than \$1,000,000 per occurrence.

(ii) Commercial General Liability Insurance. Coverage in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage (with coverage at least as broad as ISO form CG 00 01 01 96).

(iii) Comprehensive Automobile Liability Insurance. Coverage in an amount not less than \$1,000,000 per accident for bodily injury and property damage (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto").

(iv) Professional Liability Insurance. Coverage for damages that may be the result of errors, omissions, or negligent acts of Gas Mart in an amount not less than \$2,000,000 per claim.

(b) The City and the Successor Agency and their Indemnitees shall be named as additional insureds under the policies required by Sections 9(a)(ii) and 4.1(a)(iii) above, by way of endorsement form equivalent to ISO form CG 20 10 11 85. The additional insured endorsement shall provide coverage arising out of both ongoing and completed operations. The endorsement must specify Gas Mart as the named insured and shall include the policy number and expiration date. The additional insured endorsement shall provide that the insurance is primary insurance with respect to the interests of such additional insureds, and that any other insurance or self-insurance maintained by or available to the additional insured shall be excess and non-contributory with the insurance provided hereunder. The coverage provided to the additional insureds must be at least as broad as that provided to Gas Mart and may not contain any additional exclusionary language or limitations applicable to the additional insureds. The endorsement shall provide that no act or omission of an additional insured shall affect or limit the coverage otherwise provided.

(c) All insurance companies providing coverage to Gas Mart shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VII."

(d) In no event shall any failure of the Successor Agency to receive certified copies or certificates of policies required under this Section 9 or to demand receipt of such certified copies or certificates prior to Gas Mart's commencing Site Assessment Activities be construed as a waiver by the Successor Agency of Gas Mart's obligations to obtain insurance pursuant to this Section 9. The obligation to procure and maintain any insurance required by this Section 9 is a separate responsibility of Gas Mart and independent of the duty to furnish a certified copy or certificate of such insurance policies.

(e) If Gas Mart fails to purchase and maintain, or require to be purchased or maintained, any insurance required under this Section 9, the Successor Agency may terminate this Agreement, and Successor Agency shall retain all remedies for breach of this Agreement. If Gas Mart fails to obtain insurance required by this Agreement, Gas Mart shall fully indemnify, defend and hold harmless the Successor Agency and its officers, directors, employees, and agents from any and all claims for which the required insurance would have provided coverage.

(f) Any aggregate limit under Gas Mart's liability insurance shall, by endorsement, apply to Site Assessment Activities separately.

(g) If any of the above insurance is written on a claims-made form, it shall be maintained continuously for no less than three (3) years following termination of, or completion of services, under this Agreement and shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Agreement.

(h) None of the requirements contained herein as to types, limits and acceptability of insurance coverages to be maintained by Gas Mart are intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Gas Mart under this Agreement or at law, including without limitation, Gas Mart's indemnification obligations and liability in excess of the limits and coverages required herein. Neither receipt of certificates, endorsements, or policies showing less or different coverage than required, nor any other forbearance or omission by or for the Successor Agency, shall be deemed a waiver of, or estoppel to assert, any right or obligation regarding the insurance requirements herein. Gas Mart shall be solely responsible to pay any amount that lies within the deductible or self-insured retention of Gas Mart's insurance policies, regardless of the amount of the deductible or self-insured retention and regardless of the cause of the loss, injury or damage.

(i) The City and the Successor Agency and their board members, council members, officers, officials, directors, employees, volunteers, and agents shall not be liable or accountable in any manner for: (i) loss or damage that may happen to Site Assessment Activities or any part thereof; (ii) loss or damage to materials or other things used or employed in performing Site Assessment Activities; (iii) injury, sickness, disease, or death of any person, including, but not limited to, workers and the public; or (iv) damage to property, resulting from any cause whatsoever except their sole negligence or active negligence, attributable to performance or character of Site Assessment Activities. Gas Mart releases said parties from any and all such claims.

Section 10. No Liens. Gas Mart shall take such actions as are necessary to prevent any liens or encumbrances from attaching to the Cinema Place Site as a result of any work carried out on the Cinema Place Site by or on behalf of Gas Mart or its contractors, subcontractors, agents or employees pursuant to this Agreement; or, if any liens are attached in connection with the work, Gas Mart shall act promptly to have them removed at its sole cost and expense. Gas Mart shall provide whatever documentation (including any estoppels and indemnification agreements), deposits or surety is reasonably required by the title company upon transfer of the Cinema Place Site from the Successor Agency to Gas Mart in order for the Successor Agency Deed of Trust to be senior in lien priority to any mechanics liens recorded in connection with this early start of construction.

Section 11. No Liability. In no event shall the Successor Agency and the City have any liability to Gas Mart or any of its contractors, subcontractors, agents or employees, or to any other party performing for the actions of Gas Mart pursuant to this Right of Entry.

Section 12. Entire Understanding of the Parties. This Agreement constitutes the entire understanding of the Parties with respect to the Right of Entry granted to Gas Mart for performance of the Site Assessment Activities.

Section 13. Modification. This Agreement shall not be modified except by a written instrument executed by the parties.

Section 14. Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the state of California.

Section 15. Multiple Originals; Counterparts. This Agreement may be execute in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 16. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered with a delivery receipt, delivered by a private delivery service with a delivery receipt, or shall be sent by certified U.S. mail, return receipt requested, first class and postage prepaid, addressed to each Party at the following address or such other address as may be designated by a notice pursuant to this Section:

If to the Successor Agency:

Hayward Successor Agency
777 B Street
Hayward, CA 94541
Attn: Executive Director

If to the City:

City of Hayward
777 B Street
Hayward, CA 94541
Attn: City Manager

If to Gas Mart:

Hayward Gas Mart
22690 Foothill Blvd.
Hayward, CA 94541
Attn: Mr. Tarsem Signh Dosanjh

Any notice given in accordance with this Section shall be deemed to have been given on the delivery date, the date delivery was refused, or the date the notice was returned as undeliverable, as shown on the delivery receipt.

Section 17. Assignment; Subcontract. Gas Mart shall not assign this Agreement or subcontract any portion of Site Assessment Activities without the prior written consent of the City and the Successor Agency, which consent the City and the Successor Agency may withhold in their sole discretion.

Section 18. Rights of Third Parties. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity, others than the parties hereto, any right or remedies under or by reason of this Agreement.

Section 19. No Partnership or Joint Venture.

(a) Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and the Successor Agency and Gas Mart or its agents, employees, contractors, subcontractors, consultants or subconsultants, and Gas Mart shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Gas Mart has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under this Agreement. In regards to the performance of Site Assessment Activities, Gas Mart shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractor and subcontractors, consultant and subconsultants shall be solely responsible for similar matters relating to their employees. Gas Mart shall be solely responsible for its own acts and those of its contractor and subcontractors, consultant and subconsultants, agents and employees. Gas Mart is not authorized to act on behalf of the City or the Successor Agency with respect to any matters except those specifically set forth in this Agreement. The City and the Successor Agency shall not have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of Gas Mart, whether arising from actions under this Agreement or otherwise.

(b) Nothing contained in this Agreement shall create or justify any claim against the City or the Successor Agency by any person that Gas Mart may have employed or with whom Gas Mart may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the performance of Site Assessment Activities, and Gas Mart shall include similar requirements in any contracts entered into for the performance of Site Assessment Activities.

(c) Gas Mart shall pay, when and as due, any and all taxes incurred as a result of Gas Mart's compensation under this Agreement and shall provide the Successor Agency proof of such payment upon request.

(d) To the extent that Gas Mart obtains permission to and does use any City or Successor Agency facilities, space, equipment or support services in the performance of this Agreement, this use shall be at Gas Mart's sole discretion.

Section 20. No Waiver. No waiver of any provision or breach of this Agreement shall constitute a waiver of any other provision or breach of this Agreement.

Section 21. Attorneys' Fees. In the event of any action, arbitration, or proceeding at law or in equity between the City and the Successor Agency and Gas Mart to enforce any provisions of this Agreement or to protect or establish any right or remedy of either Party, the unsuccessful party to the litigation shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred by the prevailing party, and if the prevailing party recovers judgement in any action, proceeding, or arbitration, the costs, expenses, and attorneys' fees shall be included in and as a part of the judgment.

Section 22. Successors and Assigns. Subject to Section 17 above, This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

Section 23. Estoppel. Each of the parties hereto agrees to cooperate with the other in consummating the transaction contemplated hereunder, and agrees without further consideration to execute such further documents and take such further action as may be reasonably necessary or appropriate to effectively consummate the transactions contemplated hereunder.

Section 24. Not Real Property Interest. It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Cinema Place Site to Gas Mart. This Right of Entry is not exclusive and the City and Successor Agency specifically reserve the right to grant other rights of entry within the vicinity of the Cinema Place Site.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the first date written above.

GAS MART:

HAYWARD GAS MART

By: _____

Name: _____

Its: _____

[Signature Page continues]

SUCCESSOR AGENCY:

HAYWARD SUCCESSOR AGENCY, a separate legal entity

By: _____
Frances David, Executive Director

APPROVED AS TO FORM:

By: _____
Michael S. Lawson, Successor Agency Counsel

ATTEST:

By: _____
Miriam Lens, Successor Agency Secretary

CITY:

CITY OF HAYWARD, a California charter city

By: _____
Frances David, City Manager

APPROVED AS TO FORM:

By: _____
Michael S. Lawson, City Attorney

ATTEST:

By: _____
Miriam Lens, City Clerk

EXHIBIT A-1

LEGAL DESCRIPTION
AGENCY PROPERTY

EXHIBIT A-2

LEGAL DESCRIPTION
C STREET ROW

EXHIBIT A-3

LEGAL DESCRIPTION
GAS MART PROPERTY:

EXHIBIT B

SITE MAP OF WELLS

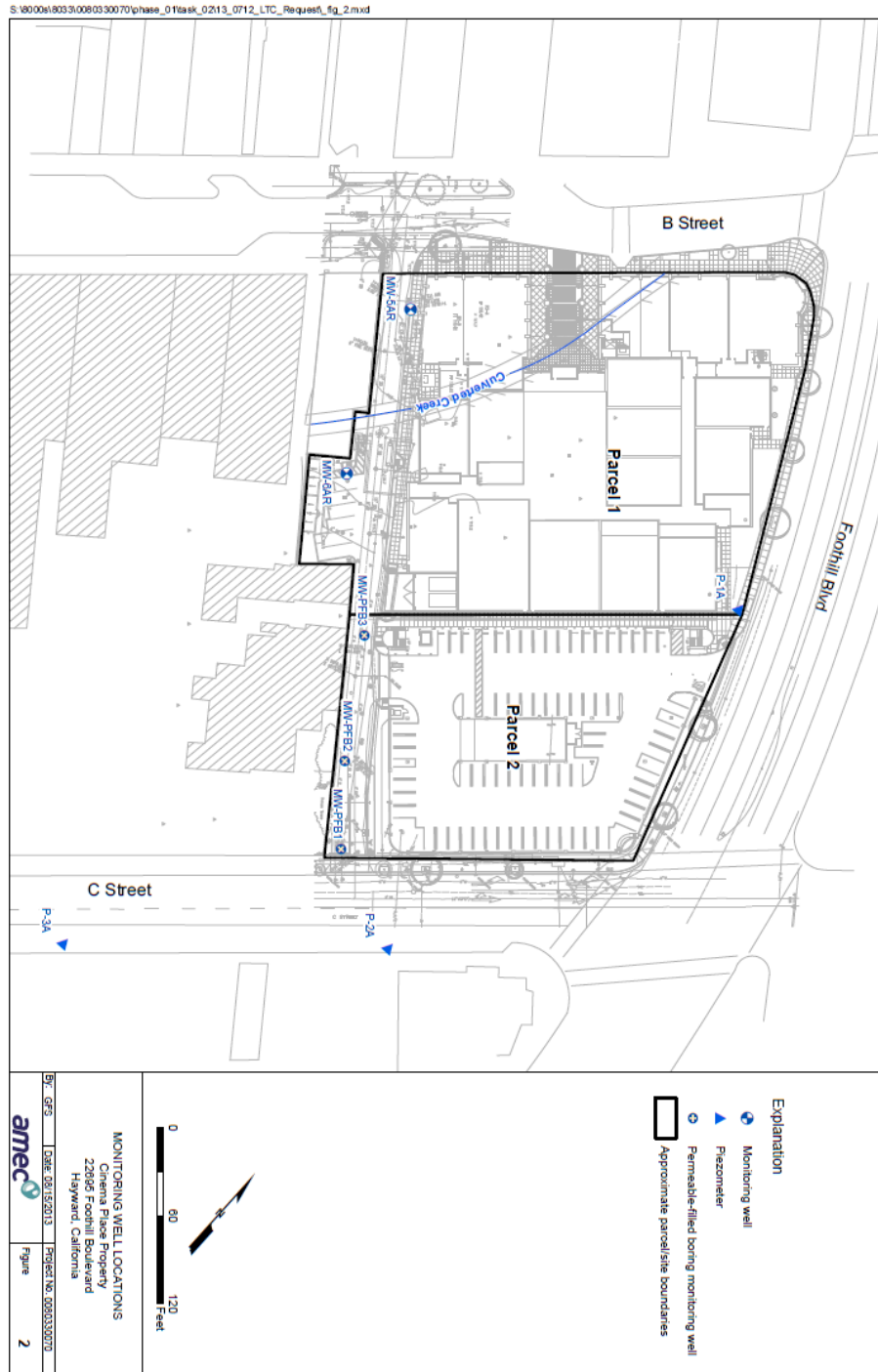


EXHIBIT C

SCOPE OF MONITORING ACTIVITIES

The Site Assessment Activities will be performed pursuant to the Project Schedule which the Parties anticipate will usually occur once every three months, or as may be required by the City of Hayward Fire Department. Gas Mart will give the City and the Successor Agency forty-eight (48) hours prior notice by email of any Site Assessment Activities which require access onto the Cinema Place Site.

Site Assessment Activities include:

1. Performing visual inspection of the condition of each of the Monitoring Wells.
2. Measurement of depth to groundwater and, if present, light non-aqueous phase liquid (LNAPL).
3. Collection of groundwater samples for laboratory analysis consistent with directives from the City of Hayward Fire Department.
4. Monitoring during the collection of samples to verify that different components or materials are not uncovered that may not have been exposed earlier.
5. Providing the Successor Agency and City copies of reports and documentation of on-going Site Assessment Activities and a final case closure report upon the termination of Site Assessment Activities.
6. Documentation and completion of legal abandonment and backfilling of the Monitoring Wells on the Cinema Place Site.