



CITY OF HAYWARD

Hayward City Hall
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Hayward, CA 94541
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Cover Memo

File #: CONS 15-187, **Version:** 1

DATE: September 22, 2015

TO: Mayor and City Council
Chair and Successor Agency Board Members

FROM: Assistant City Manager

SUBJECT

Approval of Right of Entry to the Cinema Place Property and City Property to Monitor Remediation Efforts at Hayward Gas Mart Property

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) authorizing the execution of a Right of Entry Agreement.

That the Successor Agency's Governing Board adopts the attached resolution (Attachment II) authorizing the execution of a Right of Entry Agreement.

BACKGROUND

In September 2006, Hayward Redevelopment Agency (the "Dissolved RDA") staff identified to the Dissolved RDA's governing board that there were contaminated soil and groundwater issues associated with chlorinated solvents from historic on-site dry cleaning operations at the Cinema Place project located at 22695 Foothill Boulevard in Hayward, CA 94541-5007, County of Alameda, California (the "Agency Property").

The San Francisco Bay Regional Water Quality Control Board (the "Water Board") sent letters 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"), which allowed construction of the project on the Agency Property, but which also required remediation of contamination in the soil and groundwater.

The Dissolved RDA entered into a professional services agreement with 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. Between 2008 and 2010, AMEC Geomatrix worked with staff on a pilot program to test the proposed remediation and to determine how best to implement the final groundwater remediation. In December 2010, AMEC Geomatrix presented

the draft *Results of Pilot Test and Proposed Final Remedial Action* for City review. Following submission of this draft report, AMEC Geomatrix then submitted a scope of services and cost estimate to perform the activities necessary to implement the Final Remedial Action Plan. This consisted of the installation of zero-valent ion (ZVI) permeable filled borings (PEBs) to treat chlorinated volatile organic compound (COVC)-affected groundwater beneath Parcel 2 of the Agency Property.

In March of 2011, the City Council, acting as the Redevelopment Agency Board, approved an agreement with AMEC Geomatrix to perform this remediation work, including the semiannual required groundwater monitoring to assess the performance of the groundwater remedy and to satisfy the groundwater monitoring requirement of the June 2006 Revised Risk Management Plan (RMP) for the site. AMEC Geomatrix subsequently underwent a corporate name change to AMEC E&I, Inc.

All required activities under the Risk Management Plan and Groundwater Investigation Work Plan related to the Agency Property were successfully completed and the Water Board is prepared to issue a No Further Action Letter with regards to the Agency Property. Prior to issuing this letter, the Water Board 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).

DISCUSSION

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 (the "Gas Mart Property") that is the subject of remediation efforts associated with the leaking underground storage tank case (01-2027).

The City of Hayward Fire Department is the agency responsible for managing the remediation of the underground storage tanks and serves as the Certified Unified Program Agency (CUPA). The City of Hayward Fire Department fully regulates through the Hazardous Materials Office underground storage tanks (UST) containing hazardous materials, including petroleum products and used oil.

The City of Hayward Fire Department has directed that Gas Mart continue to use monitoring wells identified as monitoring wells MW-5AR, MW-6AR, and piezometers P-1A and P-2A (collectively, 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 Gas Mart Property. At least two of these are wells associated with the requirement of the State Water Board order to destroy the eight wells identified above.

Monitoring wells MW-5AR, MW-6AR, and piezometers P-1A are located on the Agency Property. 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 (the "C Street ROW"), where Piezometers P-2A is located. Therefore, the City and Successor Agency must grant permission for Gas Mart and its agents to access the wells located on City and Successor Agency property.

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 II. This will allow Gas Mart to access the City and Successor Agency wells in order to complete their required remediation. The parties expect that the Right of Entry will not delay

the issuance of the No Further Action Letter for the Agency Property.

Upon termination of the term of the Right of Entry 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 will be required to perform the legal abandonment and backfilling of the City and Successor Agency Monitoring Wells 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 City and Successor Agency well location to ground level elevation, and will leave the City and Successor Agency properties in "broom clean" condition.

The Right of Entry Agreement does not constitute a transfer of property in that the agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Agency Property or the City Property. The City/Successor Agency owns all of the wells. This right of entry allows the Gas Mart to use the City/SA wells and makes Gas Mart ultimately responsible for the closure and backfill of these wells when they are done with the remediation on their property.

The Right of Entry will not interfere in the Successor Agency efforts to expeditiously wind down the affairs of the Dissolved RDA and will not create any liability for the Successor Agency.

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 Water Board. The Agency Property is also subject to that certain First Amended Ground Lease, dated as of July 11th, 2007, according to which the Dissolved RDA remediated the "Known Below-Ground Contamination" to the satisfaction of the Water Board.

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. 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. The Water Board is prepared to issue a No Further Action Letter with regards to the Agency Property.

The execution of the contract is in the best interests of the City, the Successor Agency and the taxing entities because the document will facilitate the full completion of the remediation work at the Gas Mart Property. The successful remediation of the Gas Mart Property will prevent fluctuations in property values resulting from exposure to migrating contaminants that may result from a failure to adequately clean-up the Gas Mart Property.

ECONOMIC AND FISCAL IMPACT

The execution of the Right of Entry Agreement will not increase the liabilities of the City or the Successor Agency or otherwise reduce the net revenues available to taxing entities.

None of the activities to be undertaken by Gas Mart pursuant to the right of entry will be paid for by the Successor Agency or the City. Under the Right of Entry, Gas Mart will maintain, and shall require its contractors and subcontractors to maintain, insurance coverage meeting the general insurance requirements set forth in the Right of Entry Agreement. In addition, Gas Mart will indemnify and hold the City and Successor Agency harmless from and 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, sub-consultants, 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.

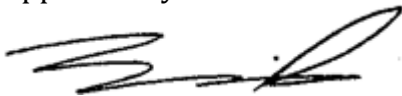
NEXT STEPS

Upon approval of the agreement by the Oversight Board, the Successor Agency's Executive Director will execute the Right of Entry and Gas Mart will be allowed to perform the site assessment activities under the Right of Entry. Gas Mart will be required to perform the legal abandonment and backfilling of the Monitoring Wells at Gas Mart's sole cost and expense.

Prepared by: John Stefanski, Management Analyst

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

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| Attachment I | City Council Resolution Approving and Authorizing Execution of Right of Entry Agreement |
| Attachment II | Successor Agency Resolution Approving and Authorizing Execution of Right of Entry Agreement |
| Attachment III | Right of Entry Agreement |