



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 5625
November 4, 2019
Consent Calendar

AGENDA BILL INFORMATION

TITLE:	AB 5625: Due Diligence Costs for the City's Proposed Commuter Parking & Mixed-Use Project	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Appropriate funds for continued due diligence costs related to providing long-term transit commuter parking.	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	City Manager
STAFF:	Kirsten Taylor, Senior Project Manager
COUNCIL LIAISON:	n/a
EXHIBITS:	n/a
CITY COUNCIL PRIORITY:	2. Prepare for Light Rail and Improve Mobility

AMOUNT OF EXPENDITURE	\$ 1,029,046
AMOUNT BUDGETED	\$ 965,991
APPROPRIATION REQUIRED	\$ 63,055

SUMMARY

The purpose of this agenda bill is to appropriate funds for due diligence work related to the Purchase and Sale Agreement ("PSA") of the property located at 7810 SE 27th Street, also known as the BP/ARCO (f/k/a Tully's) property. This includes:

- Environmental work, specifically an amendment to the site delineation study approved on July 16, 2019 to resolve data gaps based on the results of prior environmental studies to determine the extent of the BP/ARCO contamination, and
- Property rental with Parkway Center Management Group for the BP/ARCO property through the extended due diligence period ending November 22, 2019.

BACKGROUND

As part of the PSA between the City of Mercer Island and the Parkway Management Group approved by the City Council on June 5, 2018 (see [AB 5434](#)), a due diligence period was set to expire on December 18, 2018. During the due diligence period, the City's environmental consultants conducted a second phase of environmental site investigation to determine the vertical and horizontal extent of the site contamination from known polluter BP/ARCO. City staff and outside legal counsel have been engaging in negotiations with the prior owner/operator known to have contaminated the site, BP/ARCO, in efforts to obtain recovery of site remediation costs.

On December 18, 2018, the due diligence period was extended to April 30, 2019 with an optional two month extension through July 1, 2019 (see [AB 5518](#)). On June 18, 2019, the due diligence period was extended by Council through November 1, 2019 (see [AB 5581](#)), and on October 25, 2019, the due diligence period was further extended by Council through November 22, 2019 (action was taken following an Executive Session at a Special Council Meeting) due to site investigation and negotiations taking longer than anticipated.

ENVIRONMENTAL WORK

Aspect Consulting has provided phased site delineation work to provide the data needed to inform negotiations for reimbursement of cleanup costs from the known, prior polluter of the site, BP/ARCO.

To date, Aspect Consulting has provided the following:

- Phase II Environmental Site Assessment Work Plan (“Work Plan”) for the BP/ARCO Property and the adjacent portion of Sunset Highway to the north (collectively, “Site”) which provided information regarding the Site background, geology, hydrogeology, and the nature and extent of documented contamination at the Site to facilitate a better understanding of the potential cleanup costs.
- Further site delineation work to characterize the contamination, determine limits to contamination, and provide cost estimates for remediation of the contamination.

The cleanup objective for the Site is to obtain a No Further Action (“NFA”) opinion from the Washington State Department of Ecology. In order to achieve an NFA, contamination levels may not exceed the requirements set forth in state law, specifically the Model Toxics Control Act.

Additional Site Delineation Study Scope of Work and Fee Estimate

Aspect Consulting proposes to install three supplemental groundwater monitoring wells at the I-90 offramp to Exit 7B to delineate the lateral and vertical extent of potential petroleum contamination in soil and groundwater beneath I-90 that originated from the former BP Arco Property. This work is sited in an area not previously tested.

Aspect Consulting has prepared this additional scope of work and fee estimate for amending the Site Delineation Study to address data gaps north of the BP Arco Property and strengthen the City’s position in negotiations with BP/ARCO.

Staff is requesting an appropriation of \$56,855 for the amended contract for Site Delineation Study. The costs for the Site Delineation Study will be recovered from the BP/ARCO settlement and/or Sound Transit Settlement Agreement funds.

BP/ARCO (F/K/A TULLY’S) PROPERTY RENT

On October 25, 2019, Council approved the Fourth Amendment to the Purchase and Sale Agreement of the BP/ARCO property with the Parkway Management Group to extend the due diligence period through November 22, 2019, requiring appropriation of \$6,200 for rent for this period.

DUE DILIGENCE COSTS

A detailed breakdown of the actual costs incurred in 2018 through the third quarter of 2019, the estimated costs in the fourth quarter of 2019, the total estimated costs in 2018-2019, the current project budget, and the appropriation needed is provided in the table below.

Detailed Breakdown of Due Diligence & Negotiation Costs	Actual Costs (2018 thru Q3 2019)	Plus Estimated Costs (Q4 2019)	Total Estimated Costs (2018-2019)	Less Current Project Budget	Appropriation Needed
Environmental Work (assumes no litigation)	\$323,946	\$205,697	\$529,643	\$472,788	\$56,855
Professional Services (appraisal, survey, etc.)	12,361	11,739	24,100	24,100	
Legal (MOU & Development Agreement)	62,610	50,180	112,790	112,790	
Rent to Parkway Management per PSA	116,733	6,200	122,933	116,733	6,200
Negotiations	100,995	81,885	182,880	182,880	
City Project Management/Direct Expenses	31,929	24,771	56,700	56,700	
Total	\$648,573	\$380,472	\$1,029,046	\$965,991	\$63,055

To fund the additional work in the fourth quarter of 2019, an additional \$63,055 needs to be appropriated. Staff recommends funding the \$63,055 from the Contingency Fund, which has surplus funding available (i.e., above the 12.5 percent target balance) as a result of the Council-approved deficit spending reductions to the 2019-2020 General Fund budget. Ultimately, all environmental due diligence and negotiation costs will be reimbursed by the BP/ARCO settlement and all other costs will be reimbursed by Sound Transit once the long-term commuter parking project is constructed (per the ST Settlement Agreement).

RECOMMENDATION

1. Authorize the City Manager to (a) Amend the professional services agreement with Aspect Consulting to provide additional site delineation work at the former BP/ARCO property; (b) Transfer \$56,855 from the Contingency Fund to the Town Center Parking Facilities Fund; and (c) Appropriate \$56,855 for additional due diligence and negotiation costs related to the environmental cleanup of the City's proposed commuter parking project, which will be reimbursed by known contaminator BP/ARCO.
2. Authorize the City Manager to (a) Transfer \$6,200 from the Contingency Fund to the Town Center Parking Facilities Fund; and (b) Appropriate \$6,200 for additional property rental costs related to the City's proposed commuter parking project, which will be reimbursed by Sound Transit when the project is constructed.