



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5634
November 19, 2019
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5634: Reimbursement Agreement for Environmental Remediation with Atlantic Richfield Company and Seller of the 7810 SE 27 th Street (ARCO) Property for the City’s Proposed Commuter Parking & Mixed-Use Project.	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Authorize the Interim City Manager to execute the environmental remediation Reimbursement Agreement in substantially the form attached as Exhibit 1	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	City Attorney
STAFF:	Bio Park, Interim City Attorney
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Reimbursement Agreement and attached Figure A
CITY COUNCIL PRIORITY:	2. Prepare for Light Rail and Improve Mobility

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

The purpose of this agenda bill is to authorize a Reimbursement Agreement (“Agreement”) for environmental remediation with Atlantic Richfield Company (“ARC”) and the current owners (collectively, “Seller”) of the 7810 SE 27th Street property, also known as the ARCO (f/k/a Tully’s) property (“Property”), and surrounding areas. City staff and outside legal counsel have been engaged in negotiations with ARC’s representatives at BP/ARCO, in efforts to obtain an Agreement for ARC to pay certain past and future costs related to environmental cleanup. ARC is a prior owner known to have operated a gasoline service station on the Property. The Agreement represents a positive step forward for the City’s proposed Commuter Parking & Mixed-Use Project to serve the future Sound Transit East Link light rail station.

BACKGROUND

On June 5, 2018, the City Council approved a Purchase and Sale Agreement (“PSA”) between the City of Mercer Island and the Seller of the Property. Since then, the City has been actively engaged in environmental due diligence. The Seller has extended the due diligence period several times to allow time for the City’s environmental consultant, Aspect Consulting, LLC, to conduct Phase I and Phase II environmental assessment work. The purpose of the environmental assessment work was to determine the vertical and horizontal

extent of contamination on the Property, on an adjacent portion of Sunset Highway to the north that the City owns, and on certain WSDOT-owned property to the east and north beyond Sunset Highway. During the due diligence period, the City’s environmental legal counsel, Jeff Kray of Marten Law L.L.P., and outside counsel, Kari Sand of Ogden Murphy Wallace P.L.L.C. (former Mercer Island City Attorney), worked with Seller’s legal counsel to engage in negotiations with BP/ARCO, which culminated in this Reimbursement Agreement.

KEY TERMS OF THE REIMBURSEMENT AGREEMENT

Operations at the former ARCO gasoline service station routinely used petroleum hydrocarbons (contaminants) at the Property between approximately 1955 and 1992. These contaminants impacted the Property and migrated to surrounding areas, including the SE 27th Street right-of-way (“ROW”)¹, which areas are collectively referred to as “the Site.” State environmental law requires sitewide remediation, not just the portion of a site contemplated for redevelopment. As the proposed future owner of the ARCO Property, the City is therefore required to prepare a cleanup action plan for the entire Site and cannot limit the cleanup effort to the City’s proposed redevelopment footprint. Currently, the City’s proposed Commuter Parking & Mixed-Use Project (“Project”) footprint includes all the Site areas (including potentially areas A-2 and B-2 that WSDOT now owns), except for areas B-1, B-3, and the I-90 right-of-way, which are located outside of the City’s proposed Project footprint.

Following extensive negotiations to address Site contamination, the Reimbursement Agreement provides that ARC will reimburse certain “incremental costs”² arising from excavation, segregation, transport and disposal of contaminated soil at the Site in the following percentages for the areas shown in Figure A of the Agreement:

Area of Site	Current Owner	Contaminated Soil Reimbursement
ARCO (Tully’s)	Seller (Burton / Buty)	100%
SE 27 th Street ROW	Seller (Burton / Buty)	100%
A-1 (Parcel 12)	City of Mercer Island	75%
A-2	WSDOT	35%
*B-1 (Parcel 12)	City of Mercer Island	0%
B-2	WSDOT	100%
B-3	WSDOT	0%

*Indicates an area outside of the City’s proposed Project footprint.

In addition to the above, ARC will reimburse the following:

- (1) 85% of incremental costs arising from remediation and monitoring of soil gas (vapor) and groundwater contamination³ at the Site;
- (2) 90% of the incremental costs arising from general investigation, assessment, delineation, reporting, and similar Site-wide tasks; and

¹ The City’s proposed purchase of the ARCO Property includes the abutting SE 27th Street ROW. Street rights-of-way are primarily easements for public travel and serve other secondary street purposes, such as utilities. As the proposed, future owner of the ARCO Property abutting SE 27th Street, the City and / or its developer partner may need to perform utility work in the SE 27th Street ROW and clean up any contaminants potentially encountered there.

² “Incremental Costs” is a defined term in the Reimbursement Agreement (Section 5.1); for brevity’s sake, the term essentially means only the increase above and beyond the costs that the City or a Developer would have incurred in the absence of contamination.

³ Because soil gas (vapor) and groundwater are not solid materials, percentages were not applied to specific areas within the Site.

(3) 100% of “past costs”⁴ incurred by the City and Seller, supported with reasonable documentation.

The reimbursement percentages for contaminated soil are based on the likelihood of contaminants in the soil having originated from the former ARCO station operations. For example, the contaminated soil reimbursements for the ARCO and abutting SE 27th Street ROW areas reflect 100% reimbursement because no other viable potential sources of these contaminants have been identified; by contrast, the A-2 area reflects a more modest reimbursement of 35% because the data shows the contaminants are downgradient of the adjacent property to the west, a former Exxon-Mobil Station. The reimbursement percentages for Site-wide tasks (90%) and soil gas (vapor) and groundwater contamination (85%) reflect that the vast majority of cleanup costs are attributable to the former ARCO station operations.

The City intends to pursue additional funding sources, such as potential recovery from insurance, in order to bridge any gap between what ARC is paying and the full cost of the Site cleanup effort. Aspect estimates the Site cleanup will cost between approximately \$9M with redevelopment and approximately \$19M without redevelopment.

NEXT STEPS

The City intends to complete the acquisition of the Property pursuant to the PSA with the Seller by year-end. The City’s goal remains to redevelop the Property, together with the adjacent portion of Sunset Highway (a/k/a Parcel 12) that the City already owns, and a small portion of WSDOT property in order to provide long-term transit commuter parking underground and a mixed-use development above ground. It is anticipated that the City’s development partner (MainStreet Property Group) will construct the Project, including subgrade excavation activities. If the Project does not proceed, the City may consider alternative uses for the Property, which may or may not include subgrade excavation activities. In either scenario, the Property and surrounding areas affected by petroleum contamination will be cleaned up with ARC funding according to the above-listed reimbursement percentages and with oversight from the Washington State Department of Ecology (“Ecology”).

As the current owner of Parcel 12 and future owner of the ARCO Property, the City takes seriously its responsibility to develop and implement a cleanup action plan for the Site. Based on the detected concentrations of gasoline-range petroleum hydrocarbons and general groundwater flow direction (to the northeast), contaminated groundwater may have migrated onto the north-adjacent I-90 right-of-way. Additional data is needed to bound the extent of contamination in groundwater along the Site’s northern boundary. Aspect proposes installing three supplemental groundwater monitoring wells in the I-90 offramp for 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 ARCO station. Aspect is in the process of obtaining a permit from WSDOT for installation of these wells to obtain additional data and expects to have the results in the first quarter of 2020.

The City’s environmental cleanup objective for the Site is to achieve regulatory closure in the form of a written determination from either Ecology or the Washington Pollution Liability Insurance Agency (“PLIA”), stating that no further remedial action is necessary. The City plans to achieve regulatory closure under either

⁴ “Past Costs” is a defined term in the Reimbursement Agreement (Section 6) and includes, among other things, environmental consultants’ fees and attorneys’ fees incurred prior to the effective date of the Reimbursement Agreement. The City’s estimate of its Past Costs is \$400,000 to \$500,000, which ARC will reimburse within 45 days of the City providing supporting documentation. The ARC reimbursement will be distributed between the City’s General Fund and Contingency Fund to restore the original appropriations from those funds.

an agreed order or consent decree with Ecology or PLIA. The remedial work will be conducted in accordance with applicable laws and regulations, including but not limited to the Washington Model Toxics Control Act, chapter 70.105D RCW and chapter 173-340 WAC.

With the ARC Reimbursement Agreement in place and the Property acquired, the City will be in position to continue development planning and to initiate regulatory oversight discussions with Ecology or PLIA.

RECOMMENDATION

Authorize the Interim City Manager to execute the environmental remediation Reimbursement Agreement with the Atlantic Richfield Company and the Seller of the 7810 SE 27th Street property, in substantially the form attached as Exhibit 1, for the City's proposed Commuter Parking & Mixed-Use Project.