

Request for City Council Committee Action from the Department of Community Planning and Economic Development

Date: June 22, 2010

To: Council Member Lisa Goodman, Chair, Community Development
Committee

Subject: Closure of Parcel E Liner Remediation Agreements with Hennepin County
Regional Rail Authority

Recommendation: Authorize appropriate City officials to amend the Environmental Remediation Escrow Agreement and the Memorandum of Understanding Regarding Liner Parcel Environmental Remediation (both between the City of Minneapolis and Hennepin County Regional Rail Authority) to relieve the two parties of any remaining obligations.

Previous Directives:

- January 29, 2010, City Council authorized staff to enter into a temporary license agreement, and other agreements as necessary, with Forecast Public Art for a temporary art installation to be attached to the Washington Avenue and Chicago Avenue facades of the City-owned Riverfront Parking Ramp.
- From approximately 2002-2006, the City Council approved a number of actions related to a development proposal from Rottlund Homes for the Parcel E Liner site; the redevelopment contract for that proposal has since expired.
- November 22, 2002, City Council authorized execution of a purchase agreement between the City and Hennepin County Regional Rail Authority to acquire the Parcel E property as part of the implementation of the Guthrie Theater development.

Department Information

Prepared by: Ann Calvert, Principal Project Coordinator, 673-5023

Approved by: Charles T. Lutz, Deputy Director CPED _____

Catherine A. Polasky, Director of Economic Policy & Development _____

Presenters in Committee: Ann Calvert, Principal Project Coordinator, 673-5023

Financial Impact

- No near-term financial impact
- Action is within the Business Plan

Community Impact

- Neighborhood Notification: Not applicable
- City Goals: Not applicable
- Comprehensive Plan: Not applicable
- Zoning Code: Not applicable
- Other: Not applicable

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Supporting Information

In 2003 and 2004, the City acquired (in two phased transactions) a piece of property in the Mill District known as "Parcel E" from the Hennepin County Regional Rail Authority (HCRRA) as part of the activities related to the Guthrie Theater project. A map showing Parcel E is included as Exhibit A. As part of that transaction, HCRRA agreed to retain responsibility for extraordinary costs of environmental remediation. An escrow agreement outlined the terms of that agreement and guided the reimbursement for the remediation related to the Riverfront Ramp and then the two new streets – Chicago and Ninth. During that phase of the work, the City (and the Guthrie as the City's design/build agent for the ramp) completed the cleanup and received reimbursement from HCRRA.

When it came time to remediate the Liner development parcel, it was decided that HCRRA would do the remediation rather than the City or its selected developer at that time. A 2006 Memorandum of Understanding outlined the terms of that revised approach. Under that second agreement, the developer was to reimburse HCRRA for that portion of the cost that would have related to "normal" construction costs to excavate the site and remove materials. HCRRA completed most of the Liner remediation, but it was decided to leave one deeper pocket of contamination until the actual Liner development construction.

Earlier this year, the City received the completed report from HCRRA outlining the remediation implementation HCRRA had completed. HCRRA has calculated that the City (since the original selected developer is no longer involved) owes them \$36,267.50 for the portion of the work that would have related to normal construction costs. Under the existing agreements, HCRRA remains obligated to remediate the known remaining pocket of contamination (which HCRRA estimates will cost \$26,325 to \$35,100), plus any other unexpected contamination discovered during the actual development construction. CPED Engineering staff has reviewed these cost estimates and agrees they are reasonable.

HCRRA has proposed that the two parties consider the amount the City owes them for work already done to be equivalent to what HCRRA will owe the City for future work and that the remaining obligations under the two Parcel E remediation agreements between the City and HCRRA be effectively closed out. The benefits of this proposal are that: a) the City will not need to reimburse HCRRA the \$36,267.50 for costs incurred to date, and b) it allows the City to move forward in working with the selected Liner developer(s) without the complications of a third party. The con is that, if additional unexpected contamination is discovered during development, the City or developer will be responsible for the cost, not HCRRA. The known remaining pocket of contamination is the same clinker ash that has been found elsewhere in the area. Since the recommended Liner development (see companion report) does not include extensive additional excavation, it may not be necessary to excavate this additional material.

Staff feels that the pros of proceeding with this approach outweigh the con and recommends that the City accept HCRRA's proposal and amend the two agreements to relieve the two parties of any remaining obligations.

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EXHIBIT A
MAP OF PARCEL E AT TIME OF ACQUISITION