



Legislation Text

File #: 10-0044, **Version:** 1

Recommendation to authorize City Manager to enter into a Stipulated Agreement and any related documents with the State Water Resources Control Board for the settlement of penalties related to prior non-compliance of the City's Underground Storage Tank (UST) systems; and

Increase appropriations by \$1,700,000 in the General Fund (GP 100) in the Citywide Department (XC) for the negotiated UST settlement costs. (Citywide)

Historically, the City managed approximately 66 USTs and waste oil tanks at approximately 46 locations throughout the City. A plan to reduce and regionalize fueling facilities was contemplated as far back as 1995, though regionalization had not been completed until recently. The effort to pursue reduction and regionalization was based on potential liability related to leaking USTs and increasing regulations related to integrity testing and upgrades to UST fueling facilities. The City, through its Fleet Services Bureau in the Department of Public Works, now manages 26 USTs at 15 locations.

Regulations requiring periodic testing of secondary containment systems on all USTs became effective January 1, 2003. At that time, all USTs installed prior to January 1, 2001 were required to have been tested to ensure that the secondary containment systems were uncompromised and did not leak. Additionally, secondary containment systems were required to be tested every three years thereafter.

In April 2003, City staff devised a plan to test the secondary containment systems of the City's USTs. Some USTs were tested and most of those failed. It was later confirmed that the majority of the City's USTs were not in compliance. There is one Notice of Violation in file, dated October 2003, regarding failure to test the secondary containment system at a specific site (4320 Olympic Plaza). No evidence is available that indicates any effort to address this Notice of Violation, nor any other UST compliance issue, until mid-2006. At that time, efforts were re-energized to again reduce, regionalize and repair the City's UST fueling facilities and to comply with the secondary containment testing requirement.

On April 10, 2007, the Board communicated in writing to the City Attorney's office that "...the City has failed to conduct timely secondary containment testing on most of its...UST systems." Additionally, the Board referenced the October 2003 Notice of Violation and that, to date, no repairs appear to have been made. The Board reiterated and broadened the identification of pervasive failures to test, repair and retest the City's UST systems and informed the City the Board would refer this case to the California Office of the Attorney General (AG) for prosecution on their behalf. As a result of this extended period of non-compliance related to secondary containment testing, the City was faced with significant monetary penalties.

Beginning on February 27, 2008, the City team, including the City Attorney's office, the Director of Public Works, the Fleet Services Bureau Manager and certain consultants, met with representatives of the Board, focusing on the pathway to compliance and appropriate penalties for the period of non-compliance. The period of noncompliance at issue, for each violation, for each day, and for each UST

totaled 229,152 days. Under the Health and Safety code, penalties for noncompliance may be assessed between \$500 to \$5,000, per violation, per day, per UST. This established a potential range for a penalty between \$114 million and \$1.14 billion for the City.

Since the first meeting, the City's UST facilities have been brought into compliance either by temporary or permanent closures, or by repairs that resulted in successful testing. It is important to understand that, throughout this period of non-compliance, there has been no resulting impact to groundwater and minimal impacts to soils, which have been addressed through removal and disposal. Further, the City has prepared a comprehensive UST compliance program, which will ensure ongoing environmentally safe and sound practices.

Negotiations with the Board were conducted for over 18 months. The parties negotiated a significantly reduced fine of \$6 million, \$1.5 million of which is a cash penalty, \$2 million of which is directed toward enhanced UST improvements, and \$2.5 million of which is suspended, contingent upon the City's ongoing UST compliance for five years. Further, the City will reimburse the Board \$200,000 for its legal and related expenses. Additionally, the City will place a full page advertisement reflecting a mutually prepared statement.

Terms of the proposed settlement have been previously presented to the City Council in closed session on July 7, 2009 and tentatively approved. Staff believes that the most favorable terms of settlement have been negotiated and recommends that terms as discussed in detail in closed session be accepted.

This matter was reviewed by Deputy City Attorney Gary Anderson on December 15, 2009 and Budget and Performance Management Bureau Manager David Wodynski on December 16, 2009.

City Council action to approve the Stipulated Agreement is requested on January 12, 2010, before the tolling agreement between the City and the Board expires and the City is exposed to litigation.

The immediate cost of the negotiated settlement is \$1,700,000, which will be funded from a UST reserve in the General Fund (GP) in the Citywide Department (XC). An appropriation increase is required to expend these reserved funds, which has been included in the recommended action.

Approve recommendation.

Michael P. Conway
Director of Public Works

NAME
TITLE

APPROVED:

PATRICK H. WEST
CITY MANAGER