


TO: Michael C. Van Milligen, City Manager
FROM: Gus Psihoyos, City Engineer 
DATE: December 14, 2016
SUBJECT: Bee Branch Creek Restoration Project, Acquisition of 411 E. 15th Street (CIP#3402609)

INTRODUCTION

The purpose of this memorandum is to request approval to amend the purchase agreement for the acquisition of 411 E. 15th Street to reflect the sharing of costs associated with the environmental cleanup required for the City's intended use of the property. The seller has agreed to a reduced purchase price if the City places funds in a designated account that would be utilized to help cover cleanup costs. Any funds remaining in the account after completing the cleanup will be paid to the seller. The City would agree to apply for U.S. EPA Brownfields Cleanup Grant funding.

BACKGROUND

In 2011, Preston Engineering, Inc. (Preston) was retained to conduct a Phase I Environmental Site Assessment (Phase I ESA) at 411 East 15th Street in Dubuque, Dubuque County, Iowa (the Property). The Phase I ESA was performed in conformance with the scope and limitations of ASTM Practice E 1527-05. The ESA revealed evidence of "the presence or likely presence of hazardous substances or petroleum products on the Property under conditions that indicate an existing release, a past release or a material threat of a release of hazardous substances or petroleum products into structures on the subject site or into the ground, groundwater or surface water of the Property." Based on the Phase I ESA, a further investigation is necessary to quantify the actual extent and concentration of any contamination on the Property. Of concern are the former tannery area, the area with lead spoil, and a buried underground storage tank. A Phase II site investigation would verify if contamination is located on the Property, and what, if any, cleanup activities would be required.

In 2011, Preston Engineering, Inc. (Preston) was retained to conduct a Phase II Environmental Site Assessment (Phase II ESA) at the Property. In summary, the Phase II ESA identified "fairly widespread contamination by oil and lead on the property in excess of the statewide standards. This does not indicate a regulatory exceedance, but it provides an indication' of the areas of concern. Depending on the future use of the property, areas of concern might need to be remediated." The composite sampling provides an indication as to the areas and extent of contamination. The Phase II ESA also indicated that "additional

sampling at specific areas of concern would provide a more definitive analysis of the types and extent of contamination.”

In February of 2014, the City Council adopted Resolution 31-14, authorizing the execution of an agreement with the Iowa Flood Mitigation Board necessary for the City's receipt of \$98,494,178.00 in sales tax increment funds for the Bee Branch Watershed Project. Per the agreement, the City must construct the Flood Mitigation Maintenance Facility (Phase 9 of the Bee Branch Watershed Flood Mitigation Project).

In June of 2014, the City Council adopted Resolution 172-14, approving the acquisition of 411 E. 15th Street for \$500,000.00. The City's interest in 411 E. 15th Street is related to the City's desire to establish the Flood Mitigation Maintenance Facility.

In June of 2016, utilizing funding through an EPA Brownfields Assessment Grant, HR Green completed a Phase I ESA of the Property. In contrast to the 2011 ESA's which were concentrated on recognized environmental conditions (RECs) associated with the soil and groundwater, the 2016 ESAs identified RECs associated with the buildings and contents therein such as "several 76-pound steel flask shipping containers of liquid mercury in the first-floor office space of the main building . . . (that) were heavily corroded . . . batteries, transformers, motors, and other automobile parts stored in multiple locations on the subject property with associated staining on the ground, . . . (and) hydraulic machinery that may contain PCBs (no "PCB-Free" labels were visible) with associated staining on the subject property."

In October of 2016, again utilizing funding through an EPA Brownfields Assessment Grant, HR Green completed a Phase II ESA of the Property. While the 2011 and 2016 ESA's both report on the presence of petroleum/waste oil and metal related pollutants, the 2016 ESA indicated the presence of Polychlorinated Biphenyl (PCBs). As a result, the 2016 Phase II ESA performed a Cumulative Risk Evaluation determining that the cumulative cancer risk for a site resident and a site worker and non-cancer risk for a site resident, site worker, and construction worker are unacceptable. In other words, there is a cancer risk for the employees of the scrap metal and industrial reclamation business currently operating at the Property. And there are potential non-cancer related health risks to anyone who would routinely enter onto the property.

DISCUSSION

Ultimately, the cleanup cost depends on the method used to address the environmental issues. The soil is contaminated and poses a health risk to anyone who routinely uses the site. Eliminating the possibility of exposure is how to address the issues. This can be done in two ways: cap the material in place to create a protective barrier or remove the soil and dispose of it at the landfill. If the City is able to avoid hauling the material to the landfill, the estimated environmental cleanup cost is \$500,000. If the City was forced to removal all of the soil, the estimated environmental cleanup cost is \$1,000,000. Based on a recent conversation with the Iowa Department of Natural Resources (IDNR), capping the material in place would be allowed as a prerequisite for the issuance of a No Further Action Certificate from the IDNR. Therefore, the current estimated environmental cleanup cost is \$500,000. Based on the 2011 environmental assessment, the estimated cleanup cost was

REQUESTED ACTION

I respectfully request adoption of the attached resolution amending the purchase agreement for 411 E. 15th Street and authorizing the City's application for U. S. EPA Brownfields Cleanup Grant funding in 2016 and 2017.

Attach.

Prepared by Deron Muehring

Cc: Crenna Brumwell, City Attorney
Barry Lindahl, Senior Counsel
Steve Brown, Project Manager
Deron Muehring, Civil Engineer II

\$100,000. Due to the increase, the City approached the owner, Blum Properties, Inc. (Mr. Alvin Blum), seeking a partner to help address environmental cleanup costs.

Mr. Blum has agreed to the following terms:

- 1) The City will pay Mr. Blum \$100,000 for the real estate at 411 East 15th Street, Dubuque, IA versus the previously agreed upon price of \$500,000;
- 2) The City will apply for U.S. EPA Brownfields Cleanup Grants in 2016 and in 2017 in an attempt to secure federal funding assistance to perform the environmental cleanup required for the City's use of the property. The City was successful in securing \$200,000 in U.S. EPA Brownfields Cleanup Grant funding for 501 E. 15th Street purchased from Mr. Blum in 2015 and is optimistic a similar grant will be awarded for 411 E. 15th Street;
- 3) The City will hold \$400,000, previously intended for Mr. Blum, in a designated account. The funds will be drawn by the City to pay for up to 50% of the cost of environmental cleanup activities required, \$300,000 unrelated to the buildings and \$100,000 related to the buildings, but only after any and all state or federal grant funds secured by the City specifically for environmental cleanup activities are exhausted. If there is a balance remaining in the designated account upon the issuance of a No Further Action Certificate from the Iowa Department of Natural Resources the balance will be paid to Mr. Blum. Regardless of the status of cleanup activities, any remaining balance on October 1, 2020 will be paid to Mr. Blum.
- 4) The closing/sale of the property would occur by December 21, 2016. The deadline to apply for U.S. EPA Brownfields Cleanup Grants in 2016 is December 22, 2016;
- 5) All Mr. Blum's personal property and inventory will be removed by July 1, 2017; and
- 6) The City would take possession of the property by July 1, 2017.

RECOMMENDATION

I recommend that the City proceed with the acquisition of 411 E. 15th Street per the terms of the First Amendment to the Purchase Agreement with the owner Mr. Blum and that the City apply for U.S. EPA Brownfields Cleanup Grant funding in order to secure private (Mr. Blum) and public funds (U.S. EPA) to be utilized by the City to clean up the property for the City's intended use.

BUDGET IMPACT

The proposed amendment will result in up to an additional \$400,000 from the owner of 411 E. 15th Street for the City's use to perform the environmental cleanup activities required for the City's intended use of the property. In addition, the City's application for U.S. EPA Brownfields Cleanup Grant funding could provide up to an additional \$200,000 in 2017 and \$400,000 in 2018 to perform the environmental cleanup activities.