

COUNCIL COMMUNICATION

	Number:	20-389	Meeting:	September 14, 2020
	Agenda Item:	73I	Roll Call:	20-1490
	Submitted by:	Scott E. Sanders, City Manager		

AGENDA HEADING:

Approve Consent Decree regarding the Des Moines TCE Superfund Site to accept title to the Dico Property and assume responsibility for performance of certain response actions.

SYNOPSIS:

Recommend approval of Consent Decree between with the United States Department of Justice (DOJ), and Environmental Protection Agency (EPA), Dico, Inc., Titan Tire Corporation, Titan International, Inc. and the City of Des Moines. This agreement settles the longstanding dispute on the property between DOJ/EPA and the Dico/Titan entities and represents the best opportunity to improve the blighted conditions, replace the groundwater remediation system and position the property for possible re-use.

FISCAL IMPACT:

Amount:

- \$500,000 estimated cost to demolish Production and Office Buildings
- \$250,000 estimated initial annual cost to operate, maintain and secure property

Funding Source: FY2020-2021 Operating Budget, Finance Department, Page 90, ND405643, General Fund- Non Departmental for initial costs. Costs will be paid by TIF pending amendment of the Metro Center Urban Renewal Plan.

ADDITIONAL INFORMATION:

- A consent decree has been prepared between the DOJ, EPA, Dico/Titan and the City of Des Moines. The City was asked to be a party in the agreement to become the ultimate owner of the Dico Property located near the intersection of Fleur Drive and Martin Luther King Jr. Parkway.
- Through discussions with EPA, DOJ, and the City's legal representatives at Shuttleworth & Ingersoll Law Firm, the following terms have been negotiated for consideration:
 - The EPA will:
 - Demolish and dispose of Buildings 1, 2, and 3.
 - Remediate the South Pond.

- Replace the aging air stripper tower with an optimized tray stripper system. This will include new piping, electrical service, connection to new and existing extraction wells and a building to house the system.
- Dico/Titan is responsible for:
 - Pay to EPA \$11.5 million, plus interest, according to the established schedule.
 - Transfer the Dico Property (approximately 43-acres) to the City via donation.
- In exchange for accepting the Dico Property, the City will:
 - Operate and maintain the existing groundwater treatment system, including sampling and reporting.
 - Operate and maintain the replacement optimized groundwater treatment system to be placed by EPA, including sampling and reporting.
 - Operate and maintain the existing asphalt cap, including annual inspections. Subject to EPA approval, the City may choose to grade the site with clean fill material over the asphalt cap.
 - Prepare the following for EPA approval:
 - Soil/Materials Management Plan in the event the cap is breached
 - Quality Assurance Project Plan
 - Health and Safety Plan
 - Operation and Maintenance Plans
 - Execute, record and comply with environmental covenant that places limitation on activity and use on the Dico property.
- In anticipation of the property being transferred, professional services have been attained to conduct Phase I Environmental Site Assessment. Additional professional services will be attained to prepare the above-referenced required plans for EPA approval and preparing for City responsibilities related to sampling and reporting.
- Demolition of the Production and Office Buildings by the City is planned. This activity will be coordinated with the EPA replacement of the groundwater treatment system. The existing electric service for the groundwater treatment system is in the Production Building and one (1) of the extraction wells for the optimized system is planned to be located within the same area.
- Future use of the site will be limited by the environmental covenants, which include limitations on certain residential use and by physical site constraints. The building slabs and foundations will be left in place. The asphalt cap and buildings slabs and foundations currently cap the site and known contamination. Placing fill material across the site could further improve the required cap and provide possible embankment for future improvements.
- Once the Dico Property is transferred to the City, the City is responsible for property security and maintenance, including mowing and necessary cleanup and repairs.
- As a Superfund site under the jurisdiction of the EPA, modifications to the Dico Property will need to be coordinated and approved by the EPA.

PREVIOUS COUNCIL ACTION(S):

Date: July 9, 2018

Roll Call Number: [18-1154](#)

Action: [Approving](#) the retention of Steven Pace and Kelly Cwiertny and the Shuttleworth & Ingersoll Law Firm on issues relating to the possible acquisition of the DICO property near the intersection of Fleur Drive and Martin Luther King Jr. Pkwy. Moved by Gatto to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Actions related to acquisition, building demolition, security, and operation of property.

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