MEMORANDUM

June 11, 2007

TO:	THE LOS ANGELES COUNTY CLAIMS BOARD
FROM:	FREDERICK W. PFAEFFLE Principal Deputy County Counsel Public Works Division
RE:	**<u>In the matter of Victoria Golf Course Site</u>** **HSA-CO 05/06-114**
DATE OF INCIDENT:	1940s to 1950s
AUTHORITY REQUESTED:	Accept payment of: $125,000 from the City of Carson; and $200,000 from the City of Los Angeles
COUNTY DEPARTMENT:	Chief Administrative Office

CLAIMS BOARD ACTION:

☐ Approve ☐ Disapprove ☒ Recommend to Board of Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on June 18, 2007

HOA.450774.2

SUMMARY

This is a recommendation to accept individual offers from the City of Carson ("Carson") and the City of Los Angeles ("City of LA") to settle their obligations to reimburse the County for each of the cities' respective share of the costs to comply with the Settlement Agreement and Consent Order ("Consent Order"), which the County entered into with the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC").

The Board of Supervisors authorized the County's execution of the Consent Order in May 2006. The Consent Order obligates the County to perform the needed investigation of potential environmental contamination at the former BKK Main Street Landfill in the City of Carson ("Site"), with a right to recover part of the costs from others.

The first settlement proposal, from Carson, is in the amount of $125,000. The second settlement proposal, from the City of LA, involves an initial non-refundable payment to the County of $200,000, with possible additional payments should DTSC, in the future, allocate a greater percentage of responsibility to the City of LA.

LEGAL PRINCIPLES

Under Superfund law, owners of contaminated land and generators, transporters, or arrangers of the contamination ("Responsible Parties") can be held liable, jointly and severally, for the cost to investigate and clean up a site.

As owner of contaminated land located at a site under DTSC's jurisdiction, the County can be held responsible for remediation of the property and the affected surrounding area, regardless of whether the County caused any of the contamination. If initially required to pay more than its share, the County has the right to seek reimbursement from other Responsible Parties.

SUMMARY OF FACTS

The County owns 200 of the 275 acres that comprise the Site where private parties operated a municipal landfill (the BKK Main Street Landfill) from the 1940s to the 1950s. The County currently operates the Victoria Golf Course, Park and Cricket Fields on the County's portion of the Site. In addition, the County issued permits for past waste disposal activities at the Site and some County Garbage Disposal Districts may have arranged for disposal of waste at the Site in the early 1950s.

Based on preliminary soil and groundwater testing at the Site, the United States Environmental Protection Agency determined that the Site is potentially contaminated and transferred jurisdiction for oversight of the investigation and cleanup to DTSC. In April of 2006, DTSC issued a Consent Order naming the County and other parties, including Carson and the City of LA, as responsible for funding investigation activities at the Site.

The County agreed to the Consent Order in order to avoid being issued a more stringent unilateral order by DTSC that staff believed would prove more costly to the County and obligate the County to perform work beyond that required under the Consent Order.

In the Consent Order the County agreed to fund and complete a Remedial Investigation/Feasibility Study ("RI/FS"), and a plan for remediation, referred to as a Remedial Action Plan ("RAP"). In addition, the County and other responsible parties must reimburse DTSC's past and future costs of implementing the Consent Order. The County's consultants have estimated that the work under the Consent Order will cost approximately $5 million. Additionally, DTSC's oversight costs related to the Consent Order are currently estimated to be at minimum $500,000. The costs for any clean-up to be performed under the RAP do not fall under the Consent Order and will be subject to future orders of DTSC.

DAMAGES

Carson currently owns two acres at the Site, on which Carson operates two local roads. As an owner of less than 1 percent of the Site, Carson could initially be held responsible for the entire cost of the Consent Order and be required to recover its expenses from other responsible parties. Carson opted instead to make a one-time payment to the County of $125,000 and to assign Carson's rights of recovery from others to the County.

The City of LA is not an owner at the Site. Rather, records indicate that the City disposed of an estimated 42,000 tons of waste at the Landfill, equaling approximately 2.9 percent of the total waste deposited at the Site. The City of LA's proposed settlement would require it to pay the County $200,000, as a "Settlement Deposit," which sum would exceed 2.9 percent ($145,000) of the total estimated cost for compliance with the Consent Order. The Settlement Deposit would be subject to increase under a true-up adjustment ("True-up") based on DTSC's statutory non-binding preliminary allocation of responsibility among the responsible parties to whom DTSC allocates liability for

completion of the RAP. Notwithstanding the True-up, the County would not be obligated to refund any of the Settlement Deposit to the City of LA should the True-up result in a percentage that would allocate Consent Order costs of less than $200,000 to the City of LA.

STATUS OF CASE

The County's experts believe that the County ultimately should be allocated a share of responsibility that is less than the full cost being expended by the County to comply with the Consent Order. Therefore, the County is working with DTSC to obtain contributions from other Responsible Parties to pay for the work being done under the Consent Order.

Although the County is actively engaged in complying with the Consent Order, the County has not filed litigation to recover its costs from other responsible parties. Instead, the County has filed preliminary claims and is negotiating contributions from the potentially Responsible Parties identified by DTSC, including Watson Land Company, Shell Oil Company and Goodyear Tire and Rubber Company. The County's consultants have identified ten other local municipalities that records indicate deposited waste at the Site. The County has worked with DTSC to request their participation. The consultant is also investigating other private parties that may have contributed to the contamination at the Site.

In addition, together with the City of LA, the County recently sent correspondence to the federal government seeking the federal government's participation in the cost of the Consent Order under the theory that the federal government, through a contractor, owned and operated a synthetic rubber complex which produced hazardous substances disposed at the Site through a drain owned by the contractor. Chemicals identified to date in the soil and groundwater at the Site are consistent with the chemicals used at the rubber facility.

It is anticipated that the parties identified as responsible parties in the Consent Order will also be issued future orders by DTSC to implement any needed clean-up work identified under the RAP. Should the County be unable to obtain satisfactory contributions from other responsible parties, County Counsel will seek permission from the Board of Supervisors to file a lawsuit against the recalcitrant responsible parties for contribution of their fair share.

EVALUATION

The proposed settlements with the cities would avoid significant litigation costs for the cities and the County and provide immediate funding to the County to aid in the cost of complying with the Consent Order.

Based on the available data, we expect that the ultimate allocation of liability to Carson and the City of LA under the Consent Order will not exceed the amounts of the proposed settlements.

For Carson and the City of LA, the proposed settlements will save the significant costs of directly complying with the Consent Order and the need to pursue cost-recovery from others.

The governing body of each city has approved these settlement payments.

The proposed settlements would cover the two cities' share of costs under the Consent Order, which cover only investigation of the Site. The proposed settlements would not settle any obligations of the cities under future DTSC orders to fund any clean-up of contamination that may be required following completion of the investigation.

We recommend that the County accept the settlement offers of Carson and the City of LA in the respective sums of $125,000 and $200,000, with a possible increased payment by the City of LA based on the True-up and with the assignment to the County of the cities' rights for cost-recovery against third parties. The Chief Administrative Office concurs in this recommendation.

APPROVED:

KAREN A. LICHTENBERG
Assistant County Counsel
Public Works Division

KAL:FWP:LD:rfm