

REPORT TO THE GOVERNING BOARD

ON

FINAL TERMS FOR THE CLEANTECH MANUFACTURING CENTER SITE'S
ENVIRONMENTAL MATTERS PLAN

AUGUST 23, 2012

PURPOSE

To update the CRA/LA Governing Board (“Board”) on the disposition of the 20.6 acre CleanTech Manufacturing Center (“CTMC”) site located at 2425-2455 East Washington Boulevard (the “Site”, Attachment A) and the final terms of sale.

REPORT

On April 19, 2012, the Governing Board approved actions related to the disposition of the CTMC Site to TC LA Development, Inc (“Buyer”). These actions, also approved by the Oversight Board on June 14, 2012, included authorizing the Chief Executive Officer or designee, “to negotiate as to environmental issues and any related escrow instructions.” This request pertained to the negotiation of the Environmental Matters Plan, a critical attachment to the Purchase and Sale Agreement.

On August 9, 2012 the CRA/LA and TC LA Development, Inc. opened escrow. On August 13th TC LA Development, Inc. submitted their Opening Deposit of \$500,000 with an instruction to close escrow one day after the outside date of: (1) the end of the 5-day Review Period in the Purchase and Sale Agreement; (2) the end of the 5-day Department of Finance review of the August 9, 2012 Oversight Board approval for the use of the Administration/Litigation Reserve Account to cash flow reimbursements from the State Escrow Account for remediation work; or (3) the date the Governing Board reviews the terms of the Environmental Matters Plan.

Brownfield Site Background

The Community Redevelopment Agency of the City of Los Angeles (“Prior Agency”) purchased the Site from the State of California Department of General Services in 2008. Due to contamination at the Site, it was designated as a Brownfields Demonstration Site by the City in 1997. Under the portion of the California Redevelopment Law known as the “Polanco Act”, redevelopment agencies could acquire contaminated brownfield sites, clean them up under the supervision of the State of California Department of Toxic Substances Control (“DTSC”) and then, following the remediation, sell them to third party developers. If the remediation is completed in accordance with the applicable plan and the DTSC issues a certificate of completion, then the redevelopment agency and the subsequent third party developer are immune from state liability with respect to the environmental contamination covered by the remediation plan. At the time the Prior Agency purchased the Site, it also entered into a Project Environmental Oversight Agreement (“PEOA”) with DTSC, dated January 8, 2007, requiring the Prior Agency to oversee the environmental investigation and cleanup of the Site. State funding in the amount of \$2.5 million was made available for this purpose.

Environmental Remediation Status

The State escrow account’s current balance is approximately \$2.0 million. The obligation under the PEOA to oversee the Site environmental cleanup activities until a No Further Action letter (“NFA”) is issued by the DTSC for the Site is an enforceable obligation that CRA/LA is obliged to complete. In order to ensure enough funding is available to complete remediation and monitoring, the Purchase and Sale Agreement with TC LA Development Inc. includes the use of

excess sale proceeds from their purchase of the CTMC Site (amounting to approximately \$2.3 million) for remediation-related work.

Between 2008 and today, the Prior Agency undertook a long series of environmental investigations and conducted cleanup activities at the CTMC Site, resulting in a “closure” letter from DTSC for the shallow soil contamination (i.e. the upper 30 feet of soil). The remaining deep soil gases have been characterized and a long-term remediation plan that will allow development to proceed is currently being negotiated with the DTSC. According to current consultant and developer estimates, the timeline for obtaining the NFA could be as long as four years and could cost up to \$4 million.

Environmental Matters Plan

The Environmental Matters Plan is considered a key component to closing escrow on the Site and is a critical element that all top bidders on the CTMC Site required for approval from their investors and insurers. The purpose of the Environmental Matters Plan is to clarify the responsibilities and obligations of the parties in the remediation of the Site and allow for the Site redevelopment to occur concurrently with the Site remediation. The dealpoints of the Environmental Matters Plan were detailed in bullet form in the Purchase and Sale Agreement provided to the Governing Board in April 2012, however, the Environmental Matters Plan had not been finalized. The final Environmental Matters Plan is consistent with those dealpoints with few exceptions. The critical elements of the Final Environmental Plan are as follows (with new dealpoints in italics):

- Seller retains sole ongoing responsibility for site investigation, remediation and post-closure monitoring of any Hazardous Substances on, under or emanating from the property that were discharged or released on or before Buyer takes title to the property.
- Seller is required to take all actions necessary as approved by DTSC and defined in this EMP to obtain the No Further Action Letter and the Polanco Act liability protections for the benefit of Buyer, its successors and assigns.
- Seller will indemnify, protect, defend and hold harmless Buyer, its members, successors and assigns including subsequent owners of the property from losses or liabilities related to existing Hazardous Substances, Seller’s investigation and remediation, and any breach by Seller of its obligations.
- Seller will conduct its remediation obligation in accordance with a DTSC approved Clean Up Plan and will procure a No Further Action Letter. *Modifications to the Draft Clean Up Plan are subject to Buyer’s approval, which approval shall not be unreasonably withheld.*
- Seller agrees to use Buyer’s Grading Contingency Plan to manage potential environmental exposure risks during site grading and development.
- Vapor intrusion exposure will be evaluated via risk modeling using soil vapor data collected by Seller’s environmental consultant. If preliminary risk modeling indicates negligible vapor intrusion risk, then the preliminary finding will be formalized into a Human Health Risk Assessment and submitted to DTSC for approval. Alternatively, if a vapor intrusion risk is deemed to be present, then a Vapor Intrusion Mitigation System will be incorporated into the affected design of buildings.
- *All costs incurred by Buyer to design, construct and test a Vapor Intrusion Mitigation System will be reimbursed by Seller, but only to the extent any balance of Excess Sale Proceeds are remaining after Seller’s performance of all other obligations under the Environmental Matters Plan.*
- Buyer will allow Seller onsite in order to conduct remediation and monitoring work. Seller shall provide a minimum of 48-hour notice for access to the site.

- Seller will pay for all necessary modifications to the existing SVE system in order to accommodate approved Site Plan layout for new buildings and relocate existing SVE treatment equipment and equipment compound to mutually agreeable location. *Seller will remove and decommission all components of the remediation system upon completion of all investigation and remediation.*
- *Seller shall provide notice to Buyer of all meetings to be held with DTSC and afford Buyer a reasonable opportunity to attend those meetings.*
- *Seller shall provide Buyer with copies of all reports, correspondence and documents provided to or received from DTSC.*
- *Seller shall provide Buyer with a quarterly accounting of all expenditures from the Environmental Escrow Holdback Account.*
- *Buyer has a "Self-Help" provision allowing Buyer access to the Environmental Escrow Holdback Account if Seller fails to timely perform and does not cure such failure to perform during the 60-day cure period.*

New dealpoints incorporated in the final Environmental Matters Plan are the result of a more fully developed Clean Up Plan which provides clarity on the approach to remediation and is consistent with methodologies utilized when remediation is conducted concurrently with development of a property. Additional points related to self-help were included to ensure the Buyer and its investors that any unwarranted delay in remediating the Site would not impact the Buyer's construction schedule. Lastly, Buyer's request for access to the Environmental Escrow Holdback Account for potential reimbursement of costs associated with the installation of a Vapor Intrusion Mitigation System ("VIMS") was granted as the result of both parties' interest in seeing the Site developed in a timely fashion and with the knowledge that Excess Sale Proceeds funds are not guaranteed and may not be available in part or whole. The Developer's current cost estimates for a VIMS, if one is determined to be necessary, range between \$1.4 and \$1.5 million.

Christine Essel
Chief Executive Officer

By:



David Riccitiello
Chief Operating Officer

ATTACHMENT

Attachment A: CTMC (Crown Coach) Site Map

Central Industrial Redevelopment Project **CRA/LA**

- Central Industrial Redevelopment Project
- Crown Coach Site

Attachment A

