



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Authorize City Attorney to Issue "Comfort Letter" to and Authorize City Manager to Execute License Agreement with RH Mullen Company, L.P., for Installation of Monitoring Wells at 1431 South Stockton Street

**MEETING DATE:** June 5, 2013

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Authorize City Attorney to Issue "Comfort Letter" to and authorize City Manager to execute License Agreement with RH Mullen Company, L.P., for installation of monitoring wells at 1431 South Stockton Street.

**BACKGROUND INFORMATION:** The *Groundwater Monitoring Plan for the Western and Southern Plume Areas*, prepared February 2011 by Treadwell and Rollo, established a groundwater monitoring and reporting plan for the Western and Southern Plume areas. Using the City's groundwater model prepared by Treadwell and Rollo, combined with the results of previous investigations, locations and depths were identified for additional monitoring facilities.

One of the monitoring wells is located on private property located at 1431 South Stockton Street owned by the RH Mullen Company, L.P. Staff is requesting the City Council authorize the requested actions to complete the process for acquiring access to the site.

The "Comfort Letter" has been requested by the property owner and is provided as Attachment A. Similar letters have been issued in the past to property owners located in the Lodi Central Plume Area.

The license agreement provides the City and its contractor(s) access to the site for an undefined period of time for the construction, monitoring activities and de-commissioning of the monitoring wells. The license agreement is provided as Attachment B.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** Not applicable.

  
\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

FWS/pmf  
Attachments

APPROVED: \_\_\_\_\_

  
\_\_\_\_\_  
Konradt Bartlam, City Manager

CITY HALL  
221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6701  
(209) 333-6807 FAX

CITY OF LODI  
CITY ATTORNEY'S OFFICE



D. STEPHEN SCHWABAUER  
City Attorney  
JANICE D. MAGDICH  
Deputy City Attorney

June 15, 2013

Kay Bice  
RH Mullen Company, L.P.  
dba Lodi Stor-All  
1431 S. Stockton Street  
Lodi, CA 95240

SUBJECT: 1431 South Stockton Street, Lodi, CA

Dear Mr. Bice:

RH Mullen Company, L.P. ("Mullen") owns property located at 1431 South Stockton Street in Lodi situated within the Lodi Southern Plume Area ("SPA"). The SPA is a groundwater plume containing Tetrachloroethene (PCE). Mullen and its predecessors in interest are not known to have contributed to the contamination of the SPA and the City of Lodi has entered into settlements with all of the parties who are known to have contributed contamination to the SPA and has undertaken the obligation to clean up the contaminated soil and groundwater in the SPA.

This letter will confirm that the City Council authorized me at its meeting on June 5, 2013 to affirm that the City of Lodi will not pursue environmental claims against the RH Mullen Company, LP dba Lodi Stor-All or their successors or assigns under CERCLA, or under any other environmental liability theory (such as nuisance) for the contamination in the SPA. This statement of intent does not apply to liabilities that could arise if Mullen or its successors or assigns actually contribute at some future date to the contamination.

If you have any questions or concerns regarding this matter, please contact me.

Sincerely,

D. Stephen Schwabauer  
City Attorney

cc: City Council  
City Clerk

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )  
 )  
 Public Works )  
 City of Lodi, City Hall )  
 221 W. Pine Street )  
 Lodi, CA 95241 )  
 Attn: Engineering Division )

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APN: 062-510-02 (Space Above for Recorder's Use Only)  
 Address: 1431 S. Stockton Street

**LICENSE AGREEMENT FOR INSTALLATION OF MONITORING WELLS AND  
 RELATED AMENITIES ON PRIVATE PROPERTY**

**THIS LICENSE AGREEMENT** ("Agreement") is made and entered into and effective as of June \_\_, 2013 by and between the **CITY OF LODI**, a municipal corporation, ("CITY") and **R H Mullen Company LP doing business as Lodi Stor-All**, ("OWNER") each being referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, OWNER owns certain real property located at 1431 S. Stockton Street, Lodi, San Joaquin County, California, more specifically known as Assessor's Parcel Number 062-510-02 (the "Property"); and

**WHEREAS**, CITY and it's contractors are installing the monitoring well; and

**WHEREAS**, it is in the CITY's interest as a part of the groundwater remediation process on the OWNER's property; and,

**WHEREAS**, in order for CITY to accomplish this work, it will be necessary to access the Property and to install, construct , replace, operate and maintain the Facilities and Equipment as described in Exhibit A attached hereto and made a part hereof, on a portion of the Property; and

**WHEREAS**, CITY seeks authorization from OWNER to gain access to the Property and OWNER is willing to cooperate with CITY in order to facilitate the groundwater remediation process; and

**WHEREAS**, OWNER desires to grant CITY a right of access to the Property for the purpose installing, constructing, replacing, operating and maintaining the Facilities and Equipment on that portion of the Property identified in Exhibit A attached hereto and made a part hereof; and

**WHEREAS**, OWNER desires to grant CITY a non-revocable exclusive license, to install and maintain the monitoring wells, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, incorporating the foregoing recitals, the Parties agree as follows:

1. **Term of Agreement.** This Agreement shall be and remain in effect from the date of this Agreement, as set forth above, until the Central Valley Regional Water Quality Control Board permits the CITY to remove the monitoring wells, unless otherwise terminated as provided in this Agreement.

1.1 **Purpose.** The purpose of this Agreement placement of a monitoring wells and for the unrestricted ingress and egress to the Property for the purpose of installing, maintaining and monitoring the monitoring well. During construction and closure of the monitoring wells the ingress and egress will be permitted from 7:00am until 7:00pm Monday through Friday. Following construction and during the sampling period the ingress and egress will be permitted from 9:00am until 4:00pm Monday through Friday and 9:00am until 12:00pm Saturdays.

2. **License.** OWNER hereby grants to City on its behalf and on behalf of City's elected officials, officers, employees, contractors, subcontractors, authorized agents, successors and assigns, a non-revocable license to gain access to the Property for the purpose of installing, constructing and maintaining the monitoring well until such time the monitoring well is removed by CITY. CITY shall replace all landscaping, fencing and any other damaged improvements both immediately after the installation and after the ultimate removal to the satisfaction of OWNER. The Parties acknowledge that this Agreement will be recorded with the Office of the San Joaquin County Recorder.

3. **Covenants.**

4.1 **General.** CITY agrees to install, inspect, maintain or remove the monitoring well in accordance with this Agreement, at CITY's sole expense.

4.2 **License Fees.** CITY shall pay \$100 per month for easement to OWNER for the installation and maintenance of the monitoring wells.

4.3 **Installation and Maintenance.** CITY shall install the monitoring wells within the monitoring wells location and thereafter maintain the monitoring wells at all times while this Agreement is in effect. CITY shall maintain the monitoring well in accordance with generally prevailing standards of maintenance, and pay all costs incurred in doing so.

4. **Termination.** CITY may terminate this Agreement at any time upon 30-calendar days written notice to OWNER. Upon such termination, CITY shall remove the monitoring wells and restore the monitoring wells location to its former condition at CITY's sole cost and expense. Written notice to OWNER shall be made pursuant to Paragraph 9 herein.

5. **Material Breach.** In the event any party breaches any material provision of this Agreement, the other party at its option may, in addition to the other legal remedies available to it, terminate this Agreement and the License granted hereunder. Termination because of breach shall be upon a minimum of ten (10) calendar days

notice, with the notice specifying the date of termination. Written notice shall be made pursuant to Paragraph 9 herein.

**6. Indemnity.** CITY agrees to indemnify, defend, and hold harmless OWNER, its officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by CITY or anyone acting on its behalf in the performance of, or in any way arising from, the terms and provisions of this Agreement, except for any such claims, damage or liabilities caused by OWNER's negligence or willful misconduct or that of OWNER's officers, agents or employees.

**7. Insurance.** CITY shall, at its sole expense, maintain in force and effect comprehensive public liability coverage naming OWNER as an additional insured and insuring against claims for bodily injury, death or property damage occurring on or in connection with the monitoring well.

**8. Notices.** Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or in three (3) calendar days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective Parties as follows:

To CITY:                      City of Lodi  
   221 West Pine Street  
   Lodi, CA 95240  
   Attention: Engineering Division

To OWNER:                    Mr. Kay Bice  
   Lodi Stor-All  
   1431 S. Stockton Street  
   Lodi, CA 95240

Copy To:                      D. Stephen Schwabauer  
   City Attorney, City of Lodi  
   221 West Pine Street  
   Lodi, CA 95240

Any Party may, at any time, change the address to which notice shall be given by giving written notice thereof to the other party as provided hereinabove.

**9. Miscellaneous Provisions.**

**9.1 Assignment.** Neither this Agreement, nor any interest in it, may be assigned or transferred by any Party without the prior written consent of the Parties, which shall not be unreasonably withheld.

**9.2 Attorney's Fees.** In the event any dispute between the Parties arises under or regarding this Agreement, the prevailing party in any litigation of the

dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by a judge of the San Joaquin County Superior Court.

**9.3 Authority.** The undersigned hereby represent and warrant that they are authorized by the parties they purport to represent to execute this Agreement.

**9.4 Disclaimer.** It is understood and agreed that OWNER shall in no event be construed or held to be a partner, associate or joint venturer with CITY in the installation, construction, replacement, operation or maintenance of the well.

**9.5 Binding Effect.** The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the Parties to the Agreement and their administrators, representatives, successors and assigns.

**9.6 Captions.** The captions of the sections and subsections of this Agreement are for the convenience of the parties hereto only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**9.7 Further Assurances.** Each Party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

**9.8 Governing Law and Venue.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Venue for any court proceeding brought under this Agreement will be with the San Joaquin County Superior Court.

**9.9 Integration and Modification.** This Agreement represents the entire agreement between the Parties; supersedes all prior negotiations, representations, or agreements, whether written or oral, between the Parties; and may be amended only by written instrument signed by each of the Parties hereto.

**9.10 Terms of Agreement Prevail.** All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**In Witness Whereof**, the Parties hereto being in agreement with the terms of this writing, have executed this Agreement as follows:

OWNER

Dated: \_\_\_\_\_

CITY OF LODI, a municipal corporation

\_\_\_\_\_  
Konradt Bartlam  
City Manager

Attest:

\_\_\_\_\_  
RANDI JOHL, City Clerk

Approved as form:

\_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney 

Attachment: Exhibit A – Site Location



# CITY OF LODI

PUBLIC WORKS DEPARTMENT

Lodi Stor-All  
1431 S Stockton St  
Exhibit A

