

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

March 12, 2024

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

BRETT GODOWN, Director, Department of Airports

SUBJECT

Acquisition of Easements from Chino Center, Inc., a Delaware Corporation, for the Chino Airport Groundwater Remedial Project in Chino

RECOMMENDATION(S)

1. Authorize the acquisition of three permanent easements totaling approximately 10,126 square feet for well facility, access, and periodic staging purposes, and one temporary construction easement of approximately 5,996 square feet, over portions of certain real property located at 16388 Fern Avenue in Chino (portions of Assessor's Parcel Number 1056-371-08) from Chino Center, Inc., a Delaware corporation, for the Chino Airport Groundwater Remedial Project in the City of Chino, for the total purchase price of \$836,731 plus escrow and title fees estimated to be \$5,000.
2. Approve Acquisition Agreement and Escrow Instructions (**Agreement No. 24-241**) with Chino Center, Inc., a Delaware corporation, for the acquisition of three permanent easements totaling approximately 10,126 square feet for well facility, access, and periodic staging purposes, and one temporary construction easement of approximately 5,996 square feet, over portions of certain real property located at 16388 Fern Avenue in Chino (portions of Assessor's Parcel Number 1056-371-08) for the Chino Airport Groundwater Remedial Project in the City of Chino, for the total purchase price of \$836,731 plus escrow and title fees estimated to be \$5,000.
3. Approve **Grant of Easement and Agreement No. 24-242** with Chino Center, Inc., a Delaware corporation, for three permanent easements totaling approximately 10,126 square feet for well facility, access, and periodic staging purposes over portions of certain real property located at 16388 Fern Avenue in Chino (portions of Assessor's Parcel Number 1056-371-08) for the Chino Airport Groundwater Remedial Project in the City of Chino.
4. Approve Temporary Construction Easement (**Agreement No. 24-243**) with Chino Center, Inc., a Delaware corporation, for one temporary construction easement of approximately 5,996 square feet over a portion of certain real property located at 16388 Fern Avenue in Chino (portion of Assessor's Parcel Number 1056-371-08) for one six-month period during the three-year term, commencing on mutual execution, for the Chino Airport Groundwater Remedial Project in the City of Chino.
5. Authorize the Director of the Real Estate Services Department to execute escrow instructions and any other documents necessary to complete this transaction, subject to County Counsel review.

(Presenter: Terry W. Thompson, Director, 387-5000)

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March 12, 2024

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). On August 9, 2022 (Item No. 18), the Board of Supervisors (Board) approved the use of \$15,000,000 from the Chino Plume Needs Reserve (Reserve) to fund the Chino Airport Groundwater Remedial Project (Project) for property acquisitions and consultant services, leaving \$10,000,000 in the Reserve for future use. The total cost to acquire the three permanent easements and one temporary construction easement is \$836,731, plus escrow and title fees estimated to be \$5,000. Sufficient appropriation exists in the 2023-24 Project budget (WBSE 10.10.0556) and will be included in future recommended budgets, as necessary.

BACKGROUND INFORMATION

The recommended actions will approve the acquisition of three permanent easements totaling approximately 10,126 square feet (sf) for well facility, access, and periodic staging purposes and one temporary construction easement of approximately 5,996 sf over portions of certain real property in Chino [portions of Assessor's Parcel Number (APN) 1056-371-08] located at 16388 Fern Avenue in the City of Chino (Property), from Chino Center, Inc., a Delaware corporation (Chino Center) for the Project, for the total purchase price of \$836,731, plus escrow and title fees estimated to be \$5,000. The acquisition will allow for the construction and maintenance of an extraction well (identified as EW-10) in support of the Project.

The County is under Santa Ana Regional Water Quality Control Board (RWQCB) Cleanup and Abatement Order No. R8-2017-0011 (Order) to treat and remediate groundwater contaminated by volatile organic compounds (VOCs) proximate to Chino Airport. VOCs are a group of chemical compounds that are volatile at room temperature and include substances such as gasoline, diesel, paints, paint strippers, aerosol sprays, degreasers, cleansers, and disinfectants. In compliance with the RWQCB Order, the Project consists of the County implementing an Interim Remedial Action Plan (IRAP) for groundwater treatment. The IRAP was approved by the Board on January 29, 2019 (Item No. 24) and was approved by the RWQCB on November 4, 2020. The IRAP calls for remediation of the VOCs through a pump-and-treat system to provide hydraulic containment of groundwater contamination utilizing groundwater extraction wells both onsite and offsite of the Airport, including conveyance piping to transport water to a treatment plant. Construction, installation, and maintenance of offsite extraction wells requires easement acquisitions offsite of County property.

On April 20, 2021 (Item No. 65), due to the Project timeline, the Board conducted a public hearing and adopted the Resolution of Necessity No. 2021-47 (RON), authorizing the use of eminent domain to acquire permanent and temporary easements on portions of three privately-owned properties and one State of California-owned property to implement the groundwater remediation for the Project.

After the RON was adopted, the Project timeline changed, which allowed time for the acquisitions to occur by routine negotiations. Accordingly, the Board rescinded the RON on October 5, 2021 (Item No. 45).

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March 12, 2024

Negotiations are now complete with Chino Center for an Acquisition Agreement and Escrow Instructions, Grant of Easement and Agreement, and Temporary Construction Easement for the easements over portions of APN 1056-371-08. The permanent easements total approximately 10,126 sf and consist of 4,073 sf for the well facility, 3,705 sf for periodic staging, and 2,348 sf for access. The temporary easement totals approximately 5,996 sf for temporary construction.

The extraction well will be situated within the well facility easement area. The County and its contractors may use the temporary construction easement area for one six-month period during the three-year term, commencing on mutual execution, to construct the well. Subsequently, the County and its contractor may place necessary equipment and vehicles on the periodic staging easement area to perform well maintenance, provided that, except in the case of emergencies, this area is used once every three years for up to eight consecutive weeks (which may be extended by mutual agreement of the parties).

The Grant of Easement and Agreement and the Temporary Construction Easement each contain the following non-standard term:

1. The County will indemnify and defend Chino Center from any liabilities and damages caused by the County due to its entry on the easement areas and its improvements thereon.
 - The County standard contract requires the contractor to agree to indemnify the County in accordance with County Policy 11-07.
 - Potential Impact: By agreeing to indemnify Chino Center, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against the indemnitees without such limitations and the County would be responsible to reimburse the indemnitees for costs, expenses, and damages, which could be excessive.

Approval of Recommendation No. 5 will authorize the Director of the Real Estate Services Department (RES D) to execute escrow documents and any other documents necessary to complete this transaction, including amended escrow instructions. The Director of RES D will not be authorized to execute any documents that would bind the County to any actions not contemplated by, or arising from, the transaction which is the subject of these recommendations.

Negotiations for permanent and temporary easements are ongoing with the remaining property owners and RES D will return to the Board for approval of those easements once negotiations are complete.

The Board adopted a Mitigated Negative Declaration for the Project on January 29, 2019 (Item No. 24). The Project contemplates the construction and maintenance of extraction wells. Therefore, no further action is required under the California Environmental Quality Act.

PROCUREMENT

RES D can make offers and acquire the necessary easements in conformance with all applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, Government Code section 7260 et seq., corresponding regulations, and County Policy No. 12-20. RES D has complied with the publication requirements of Government Code section 6063.

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March 12, 2024

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng and Maria Insixiengmay, Deputies County Counsel, 387-5455) on January 30, 2024; Airports (Brett Godown, Director, and Maureen Snelgrove, Assistant Director, 387-8812) on January 17, 2024; Risk Management (Greg Ustaszewski, Staff Analyst, 386-9008) on February 8, 2024; Purchasing (Ariel Gill, Lead Buyer, 387-2573) on January 9, 2024; Finance (Elias Duenas, Administrative Analyst, 387-4052, and Yael Verduzco, Principal Administrative Analyst, 387-5285) on February 23, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on February 26, 2024.

(TJS: 893-0340)

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Jesse Armendarez
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 12, 2024



cc: RESD - Thompson w/ agrees for sign.
Contractor c/o RESD w/ agrees
File w/ agree
JLL 03/20/2024