



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: SEE BELOW

DATE: April 30, 2012

Approved

Date

5/6/12

COUNCIL DISTRICT: 2

SUBJECT: REVOCABLE LICENSE AND MAINTENANCE AGREEMENT WITH METCALF ENERGY CENTER, LLC

RECOMMENDATION

Approve a Revocable License and Maintenance Agreement with Metcalf Energy Center, LLC (Metcalf) for the purpose of assigning responsibility for maintenance of enhanced landscape improvements within and along Monterey Road, near Blanchard Road.

OUTCOME

Approval of this Revocable License and Maintenance Agreement will secure the long term financial maintenance responsibilities for this portion of public landscaping.

BACKGROUND

On November 26, 2001, the Director of Public Works executed a construction agreement with the Metcalf Energy Center, LLC for the construction of certain public improvements associated with the development of the Metcalf Energy Center (MEC) at Monterey Road, near Blanchard Road. The improvements included the construction of a temporary public off-ramp from Monterey Road to Blanchard Road to facilitate safe access of large construction vehicles and equipment to the MEC. In addition, per conditions of MEC's California Energy Commission (CEC) approval, Metcalf proposed the construction of public landscape improvements within the off-ramp area to help beautify Monterey Road and provide a buffer between the MEC and Monterey Road. In late 2004, Metcalf proposed that the temporary off-ramp be made permanent as Metcalf believes the off-ramp provides safer access to the MEC than the original configuration without the off-ramp. After significant discussion, Metcalf and staff tentatively agreed to allow the off-ramp to remain permanent under certain conditions. One of the conditions requires that Metcalf provide for the long-term maintenance of the public landscaping improvements installed with the project. Staff recommends that this be accomplished by requiring that Metcalf enter into a Revocable License and Maintenance Agreement (Agreement) with the City for Metcalf's private maintenance of the above mentioned landscaped area.

ANALYSIS

To ensure the ongoing maintenance of the landscaping currently present within the above mentioned off-ramp from Monterey Road to Blanchard Road, it is necessary for Metcalf to enter into an Agreement with the City. This agreement assigns responsibility regarding the maintenance of these landscape features and will allow Metcalf to enter the public right-of-way to maintain, repair, and replace the landscape features as necessary.

It is the intent of the City that Metcalf shall provide all labor and materials necessary to install and maintain the landscape improvements in an acceptable level of quality at no cost to the City and that Metcalf shall be liable for any damages or injuries caused by Metcalf improvements or maintenance work. Per the Agreement, Metcalf will be responsible for: (1) weekly weed, litter, and debris removal, (2) twice a year fertilization of woody plant material, (3) replacement of any dead plant material, (4) pest control in landscaped area, (5) repairs to the public irrigation system, and (6) monthly inspections of the landscaped area. City staff will perform an annual inspection of the public landscaped area and will inform Metcalf in writing if any deficiencies or repairs need to be addressed.

In the event that Metcalf defaults on its maintenance obligations, the landscape improvements may be removed or modified, to a level that is consistent with the City's Type I standards. Metcalf has posted a \$70,000 bond in favor of the City, if per the conditions of the Agreement, the City needs to remove the public landscaping and restore the area to a safe and satisfactory condition. Additionally, the Agreement provides for additional financial remedy to the City if the City bears any cost to maintain, inspect, or improve the landscaped area.

Of important note is that the construction and maintenance of these landscape improvements are also requirements of the CEC approval of MEC and these requirements will remain during the life of the MEC.

EVALUATION AND FOLLOW-UP

Upon execution of the proposed Agreement, the City will perform annual inspections to ensure that the terms of the Agreement are being fulfilled.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or

April 30, 2012

Subject: Revocable License and Maintenance Agreement With Metcalf Energy Center, LLC

Page 3

a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the criteria above. The public is afforded the opportunity to comment on the proposed Agreement during this Council meeting. This memorandum will be posted to the City's website for the May 22, 2012 Council agenda.

COORDINATION

The preparation of the Agreement has been coordinated with the City Attorney's Office and the Department of Transportation.

FISCAL/POLICY ALIGNMENT

If approved, this Agreement will provide for the on-going maintenance of a public landscaped area at no cost to the City. In addition, this Agreement allows Metcalf to comply with the MEC's CEC approval which in turn allows the MEC to remain compliant and in operation.

COST SUMMARY/IMPLICATIONS

As mentioned previously, approval of this Agreement will be of no cost to the City. Additionally, the Agreement provides for financial remedy if the City were to incur any costs related to the maintenance of the landscaped area.

CEQA

CEQA: Final Staff Assessment issued by the California Energy Commission.

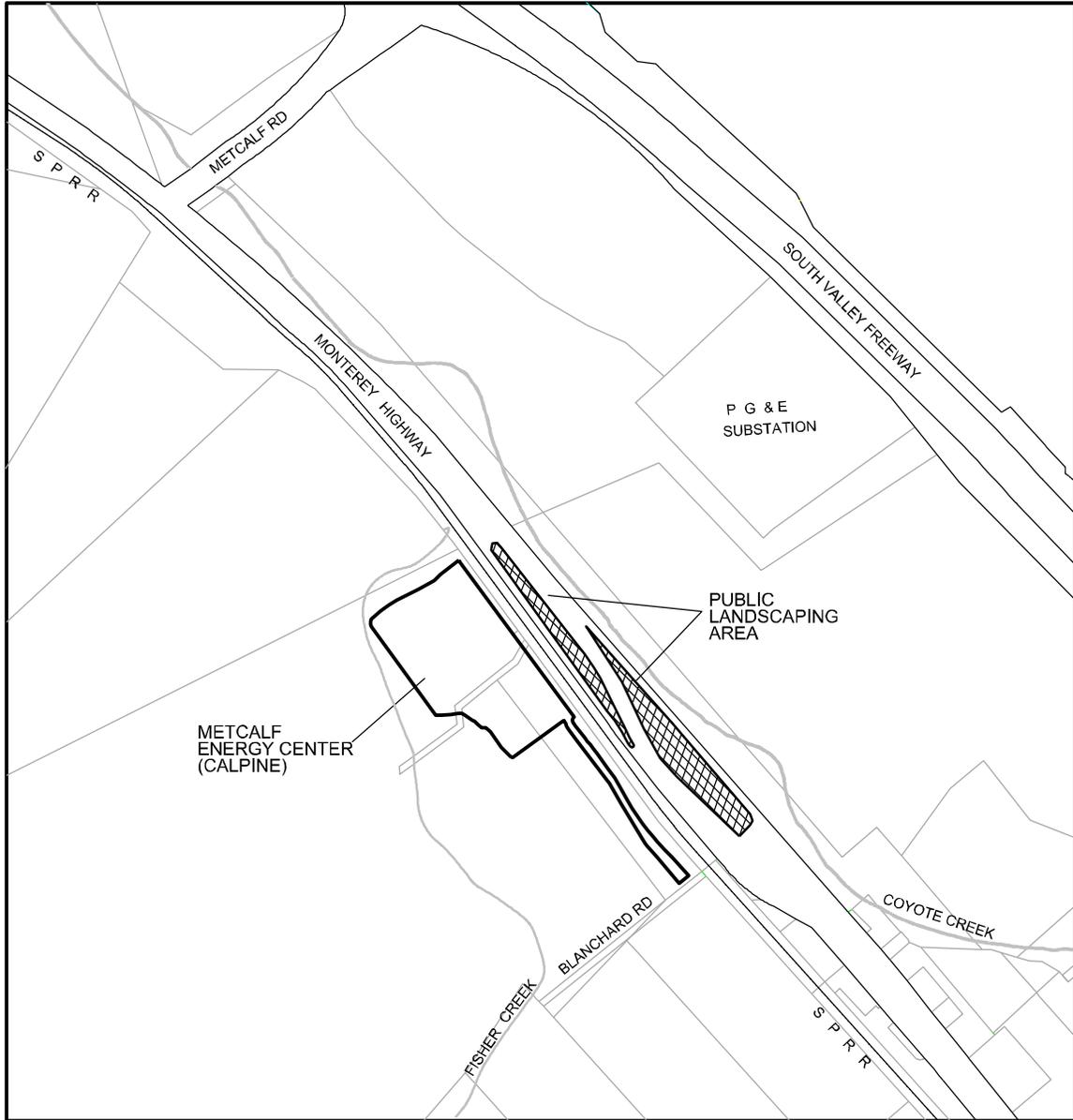
/s/
DAVID SYKES
Director of Public Works

For questions please contact Harry Freitas, Assistant Director, at 408-535-8300.

Attachment

LOCATION MAP

SHOWING THE PUBLIC LANDSCAPING AREA SUBJECT TO THE PROPOSED REVOCABLE LICENSE AND MAINTENANCE AGREEMENT



-  METCALF ENERGY CENTER (CALPINE)
-  PUBLIC LANDSCAPING AREA

