

**MINUTES OF A SPECIAL MEETING OF THE
CITY COUNCIL OF THE CITY OF HAWTHORNE,
CALIFORNIA HELD OCTOBER 5, 2017.**

Mayor Vargas called the City Council meeting to order jointly and concurrently at 6:00 p.m. in the City Council Chambers of the City Hall, 4455 West 126th Street, Hawthorne, California.

ROLL CALL-Present: Councilmembers Awad, Reyes English, Michelin, Valentine, Mayor Vargas.
Absent: None.

1.

Under oral communications, no one indicated a desire to be heard.

Mayor Vargas ordered oral communications closed.

2 and 3

Mayor Vargas called for oral comments and no one indicated a desire to be heard.

Mayor Vargas recessed the City Council meeting to conduct two **Closed Sessions**: (2) Conference with Real Property Negotiator, Arnold Shadbehrr pursuant to California Government Code Section 54956.8: Property: Granting of an easement for a tunnel project under 120th Street located approximately between Crenshaw Blvd and Hawthorne Blvd in the City of Hawthorne. Agency Negotiator, City Manager; Negotiating Parties: The Boring Company: Under Negotiation: Price and Terms for City's Grant of Easement. (3) **Closed Session** – Conference with Legal Counsel – Anticipated Litigation -Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: (one case)

Mayor Vargas called the City Council meeting back to order following recess with all Councilmembers present. He announced that the **closed session** was to discuss a Conference with Real Property Negotiator, Arnold Shadbehrr pursuant to California Government Code Section 54956.8: Property: Granting of an easement for a tunnel project under 120th Street located approximately between Crenshaw Blvd and Hawthorne Blvd in the City of Hawthorne. Agency Negotiator, City Manager; Negotiating Parties: The Boring Company: Under Negotiation: Price and Terms for City's Grant of Easement (3) **Closed Session** – Conference with Legal Counsel – Anticipated Litigation -Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: (one case) and stated that the City Attorney has been instructed.

4.

Confirmation and Approval of The Boring Company's Guaranty, Insurance Coverage and Payment and Encroachment Permit Fee for either the Entire Length of the Approximate 8,600 foot long Previously Approved Subsurface Easement or a 700 foot Portion Thereof

The City's Special Counsel, Kevin Ennis of Richards, Watson & Gershon, provided the following report of the deal points for the issuance of the encroachment permits as follows:

- City will accept insurance coverage from Final Frontier Insurance Company (the SpaceX Captive) for General Commercial and Pollution Liability. Workers' Compensation and Automobile will be provided by a California admitted insured. The Boring Company will file appropriate insurance endorsement upon filing of application for encroachment permit.
- Before an encroachment permit issued for the first 700 feet of public property, The Boring Company will file with the Public Works Department the following: 1) Fire Department clearance; 2) Hazardous Materials clearance; and 3) Cal-OSHA paperwork.
- The Boring Company will deposit \$20,000 for retention of a third appraiser. The third appraiser will be mutually selected by the City's appraiser and The Boring Company's appraiser. Both the City and The Boring Company will be able to reject the mutually selected appraiser for documented conflicts of interest with either the Boring Company or the City. If the contract amount for third appraiser exceeds \$20,000, the amount of the contract will be subject to prior review and approval by The Boring Company before the amount is incurred. The City and The Boring Company will develop the scope of work for the third party appraiser so as to allow that appraiser to consult with both Cushman and Wakefield and JLL to obtain their input prior to reaching a decision.
- The Boring Company will pay for deputy public works inspector plus the standard encroachment permit fee, upon submittal of invoices to the Boring Company in an amount of \$45,000.

- The Boring Company will file the letter of credit with the City upon submitting application for Encroachment Permit in the amount of \$2.5 million.
- The Boring Company will pay the City for past due consultant invoices pursuant to the Easement Agreement and future invoices based upon agreed upon scope of work for future work.
- The Boring Company will be entitled to a pro-rata refund for the appraiser and deputy public works inspector if the totality of funds are not expended at the time The Boring Company abandons project due to the high valuation determined by the third appraiser.
- The City will issue an Encroachment Permit on Friday, October 6, 2017 provided these items listed in this summary are satisfied.
- Both the City and The Boring Company agree to be bound by the decision of the third party mutually agreed appraiser's appraisal. This means that the City is committed to issuing an encroachment permit beyond 700 feet and for the remaining portion of the Subsurface Easement area at the value indicated by that third party's appraisal and if the Boring Company decides it will not continue past the 700 feet, then The Boring Company will pay the City the pro-rata share of the appraised amount for the 700 foot section.
- The Boring Company must execute the Subsurface Easement Agreement prior to the issuance of the Encroachment Permit.

Council member Michelin asked whether the meeting was being recorded. Staff indicated that the meeting was being recorded by the City Clerk. Granicus set the meeting at 3 hours but the meeting lasted nearly 4 hours. Michelin asked about the captive insurance company and Mr. Ennis said the captive insurance company, which was being financed by SpaceX, is formed and regulated out of the District of Columbia. Mr. Ennis said that the Captive does not offer the same protections as an insurance company admitted in California since there is a risk pool available for such state admitted companies. When asked about appraisals, Mr. Ennis said that both the City's appraiser and the Boring Company's appraiser will mutually agree on a third appraiser. If the Boring Company is not satisfied with the third appraiser's appraisal, the Boring Company would have the option of not completing the tunnel. The Boring Company would be agreeable to pay the pro-rata share of the appraisal for the first 700 feet. Michelin expressed concern that if Captive insurance company goes bankrupt, the City will not have a remedy. Michelin expressed a concern that both The Boring Company and the City should both be bound to the third appraisal amount. Councilmember English asked about the \$20,000 cap on the cost of the appraisal. Councilmember English asked for confirmation that The Boring Company was obligated to provide a \$2.5 million Letter of Credit with a required ten-year term to be posted tomorrow at the time the encroachment permit is pulled in public works. Mayor pro tem Awad expressed concern that the appraisal issue may cause the project to stall at 700 feet. Brett Horton came to the dais who said that the terms and conditions expressed by Mr. Ennis were agreed to by the Boring Company and Mr. Horton felt the proposal was fair. Mr. Horton felt that it was a fair business proposal for the Boring Company to walk away if the appraised value was too high.

ROLL CALL-AYES: Councilmembers Awad, Reyes English, Valentine, Mayor Vargas.

NOES: Michelin

After the vote, Mayor Vargas said he was excited about the tunnel project and hoped that everything would go off without a hitch and that he believes the City and The Boring Company were able to create a project that is safe for the residents, the workers and the community. Mayor Vargas said the City supports their project. Councilmember Valentine said she was glad that the City Council and The Boring Company were finally able to reach an agreement, while protecting the City to the greatest extent possible. Councilmember Valentine hopes it will lead to a great new transportation system. Mayor pro tem Awad said he is happy about the traction with this project and happy with the City team that made this project possible. Vargas assured the community that the City Council reviewed this project in detail before making its decision.

5.

Mayor Vargas adjourned the meeting at 10:07pm.

Norbert Huber
City Clerk