

RESOLUTION NO. 2009-365

Adopted by the Sacramento City Council

June 9, 2009

AUTHORIZING PAYMENT TO THOMAS ENTERPRISES, INC. (TEI) AND CITY VENDORS OWED PAYMENT BY TEI FOR THE RAILYARDS CEQA LITIGATION IN THE TOTAL AMOUNT OF \$124,699.06

BACKGROUND

- A. Thomas Enterprises, Inc. (TEI) has been paying the Sacramento Municipal Utility District (SMUD) for electricity usage at the City's Sacramento Depot since the City acquired this property in December of 2006. TEI recently invoiced the City for the Depot electrical usage over a two year period, from January 2007 through February, 2009, after completion of an energy usage audit by Valley Utility Services under contract to TEI. The audit showed that the Depot building used 73% of the electrical usage from that meter during this period. The amount of TEI's invoice is \$124,966.06. City staff has reviewed and verified this audit and SMUD's billing statements.
- B. TEI has authorized the City to pay a portion of the amount owed to TEI for electrical usage to pay TEI's obligation pay for the Railyards CEQA litigation costs. In addition, TEI owes City vendors and the Redevelopment Agency of the City of Sacramento (Agency) for other costs related to the Railyards CEQA litigation under the terms of the Railyards Development Agreement and the Owner Participation Agreement.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or the City Manager's designee is authorized to deduct and remit the following amounts from the \$124,966.06 that the City owes for Depot electrical usage:
- (a) Stoel Rives in the amount of \$79,983.92.
 - (b) PBS&J in the amount of \$18,943.06.
 - (c) Economic and Planning Systems in the amount of \$2,936.25.
 - (d) Dowling Associates, Inc. in the amount of \$2,160.00.
- Section 2. The City Manager or the City Manager's designee is authorized to make payment of the net remaining amount of \$20,675.83 to Thomas Enterprises, Inc. (TEI) conditioned on either: (1) resolution of the dispute between TEI and the Agency regarding whether TEI owes the Agency \$22,592.89 for the Railyards CEQA litigation administrative record costs for the Railyards Redevelopment Plan EIR in the cases of Castro and Downtown Plaza; or (2)

the court in the Castro and Downtown Plaza cases orders those petitioners to pay the Agency's record costs and that order is not appealed. If TEI and the Agency do not resolve their dispute before the court issues judgment in the above-referenced cases and the petitioners are not required by the court to pay the Agency for the record costs, then City Manager or the City Manager's designee is authorized to make payment of the net remaining amount of \$20,675.83 to the Agency.

Adopted by the City of Sacramento City Council on June 9, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

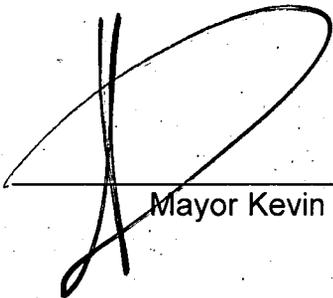
Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk


Mayor Kevin Johnson