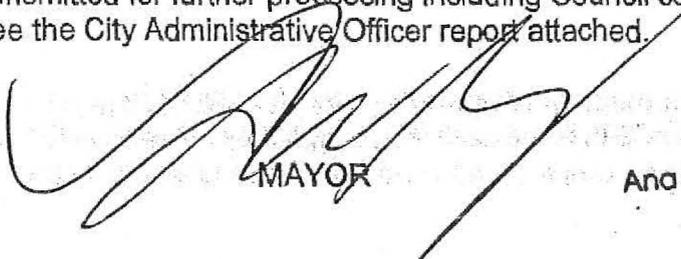


<b>TRANSMITTAL</b>		0150-11542-0000
TO Martin L. Adams, General Manager	DATE JAN 14 2020	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT All	
<b>50 YEAR LICENSE AGREEMENT RELATIVE TO THE NORTH HOLLYWOOD SETTLEMENT AGREEMENT BETWEEN THE LOS ANGELES DEPARTMENT OF WATER AND POWER AND HONEYWELL INTERNATIONAL INC.</b>		
Approved and transmitted for further processing including Council consideration. See the City Administrative Officer report attached.		
 MAYOR		Ana Guerrero
RHL:IR:10200059		

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

---

Date: December 24, 2019

CAO File No. 0150-11542-0000

Council File No.

Council District:

To: The Mayor

From: Richard H. Llewellyn, Jr., City Administrative Officer

Reference: Communication from the Department of Water and Power dated November 20, 2019, Referred by Mayor's Office November 26, 2019.

Subject: **50 YEAR LICENSE AGREEMENT RELATIVE TO THE NORTH HOLLYWOOD HONEYWELL SETTLEMENT AGREEMENT BETWEEN THE LOS ANGELES DEPARTMENT OF WATER AND POWER AND HONEYWELL INTERNATIONAL INC.**

---

### RECOMMENDATION

That the Mayor:

1. Approve the proposed Resolution authorizing the execution of a Fifty Year License Agreement between the Los Angeles Department of Water and Power and Honeywell International Inc.;
  - a. Find that properties to be licensed are not presently needed for departmental purposes; and the granting of the license will not interfere with departmental purposes pursuant to City Charter Section 605 (b);
  - b. Find that a term longer than thirty years is required due to long term access needs relative to implementation of the North Hollywood Honeywell Settlement Agreement and is in the best interest of the City, pursuant to City Charter Section 606 and 607(a);
2. Return the proposed Resolution to the Department for further processing, including City Council consideration.

### SUMMARY

The Los Angeles Department of Water and Power (LADWP) requests authority to execute a Fifty Year License Agreement with Honeywell International Inc. (Honeywell) to provide long term access to certain LADWP owned property, as a condition precedent to implementation of a settlement

agreement between Honeywell and LADWP regarding contamination of LADWP's North Hollywood East Branch (NHEB), Erwin and Whitnall wells fields located in the North Hollywood Operable Unit (NHOU) in the San Fernando Valley. Under the terms of the Settlement, Honeywell is required to build, maintain, and operate a groundwater treatment facility that will pump and treat contaminated groundwater providing 8,500 acre-feet per year (AFY) of drinking water to LADWP. If contamination is detected in the future at LADWP's Whitnall Well Field, and certain other conditions are met, Honeywell will be required to build a second groundwater treatment facility that will pump and treat contaminated groundwater providing an additional 6,500 AFY of drinking water to LADWP. In total, up to 15,000 AFY of drinking water will be provided to LADWP for public use.

Approval of this License Agreement does not have a fiscal impact to LADWP as Honeywell is obligated to pay for the entire project, including operations and maintenance for a term of at least fifty years. The LADWP Board of Water and Power (Board) Commissioners approved in closed session the Settlement on November 19, 2019, which resolves LADWP's legal claims against Honeywell regarding the contamination caused to groundwater in the NHOU by Honeywell's predecessor.

Pursuant to Charter Section 605 (b), 606 and 607(a), approval is required by the City Council. The City Attorney has approved the proposed Resolution and License Agreement as to form and legality.

#### *Background*

Honeywell is the owner and operator of a former aerospace and automotive manufacturing facility (formerly the Bendix Facility) located at 11600 Sherman Way, North Hollywood California. Due to improper storage and the disposal of hazardous chemicals used in such commercial industries, contaminants were released into the ground dating back to the 1940s, including Trichloroethylene (TCE), Perchloroethylene (PCE), and hexavalent chromium. The contamination of local groundwater in the San Fernando Valley Basin was first detected in the early 1980s at various groundwater wells.

Through the Comprehensive Environmental Response, Compensation, and Liability Act enacted in 1980 (CERCLA), the Environmental Protection Agency (EPA) was given power to hold parties accountable and assure their cooperation in cleanup efforts. In 1987, EPA exercised its authority under CERCLA, to order Honeywell, and other Potentially Responsible Parties (PRPs), to implement groundwater cleanup activities in the NHOU under a First Interim Remedy. LADWP worked cooperatively with the EPA and the PRPs on the First Interim Remedy by operating a groundwater treatment facility at the Lankershim Yard (at the PRPs expense) which pumped and treated approximately 1,900 AFY. Despite these efforts to clean up the groundwater in the NHOU, contamination is still present today and prevents LADWP from being able to fully utilize the NHEB Well Field and other wells as a source of drinking water.

In 2009, EPA issued a Record of Decision calling for additional cleanup activities to address Chromium contamination (in addition to the original contaminants) under a Second Interim

Remedy. Under the Second Interim Remedy, EPA contemplated that Honeywell and Lockheed Martin together would provide a combined total of only 4,500 AFY of treated groundwater to LADWP and that LADWP would enter into a consent decree with EPA and the PRPs restricting LADWP's pumping of 31 wells in the vicinity of NHOU. LADWP was of the opinion that the Second Interim Remedy was not in their best interests, and LADWP conducted its own factual and legal investigation to determine a potential cost recovery action, or actions, against the PRP's including Honeywell. After assessing Honeywell's potential liability, which included LADWP's damages and costs associated with the contamination, LADWP approached Honeywell and EPA in late 2012 and recommended that a more robust remedy be developed as part of the Second Interim Remedy, which would not require LADWP to enter into a consent decree.

Subsequently, LADWP and Honeywell, in consultation with EPA, negotiated the key elements of a settlement agreement that would provide LADWP with a greater amount of potable water, not require LADWP to enter into a consent decree; and increase the amount of remedial pumping in the NHOU leading to greater containment of the contaminant plume and faster cleanup of the NHOU returning groundwater there to its beneficial use as drinking water. In August 2016, the Board in closed session approved a non-binding confidential Term Sheet between LADWP and Honeywell setting forth the key terms of a settlement and authorizing LADWP to negotiate a final detailed settlement with Honeywell based on the Term Sheet.

Over the past three years, LADWP and Honeywell, in consultation with EPA, negotiated the details of the final Settlement. On November 19, 2019, the LADWP Board approved the Settlement in closed session. Per the Settlement, Honeywell is required at its expense to build and pay for the operation and maintenance of a groundwater treatment facility and associated infrastructure (known as the Cooperative Containment Concept or CCC) to extract, treat and provide LADWP with 8,500 AFY of groundwater which meets all drinking water quality standards. If contamination is detected in the future subsequent to the construction of the CCC, and other conditions are met, Honeywell will be required to build and pay for an additional groundwater treatment system (known as the Secondary State Concept or SSC) that will provide LADWP with 6,500 acre-feet per year of groundwater. Accordingly, the Second Interim Remedy and the Settlement are consistent and do not require LADWP to enter into a consent decree, yet ensure Honeywell meets its obligations to remediate the NHOU. Separately, EPA and Honeywell continue to work on the terms of a consent decree between them that will operate parallel to, but consistent with this Settlement.

#### *Proposed License Agreement*

Approval of the proposed License Agreement provides Honeywell and its sub-licensees long-term access to certain LADWP property including the Lankershim Yard, located at 11845 Vose Street, Los Angeles, California, where the facility will be built, and other properties and related conveyance lines. The License is for a term of fifty years or until EPA deems the Remedial Action Objectives for the NHOU have been met and cleanup of groundwater is complete, whichever occurs first. It is anticipated that construction on the CCC will begin sometime in the first quarter of 2020, upon full approval by the City Council pursuant to the Charter. Per LADWP, it should be noted that the CCC project will not be subject to CEQA requirements because it is being implemented under order by

the EPA pursuant to CERCLA Section 121 (e).

The License Agreement identifies the LADWP owned real property commonly referred to as the Lankershim Yard and parcels where access will be needed. Some of the parcels are used by LADWP Power for transmission lines and by LADWP water production wells or conveyance lines, all of these uses will continue under the License. LADWP has indicated that construction of a new facility will not impact existing operations, with the exception of existing tenants who will be relocated to nearby areas. As such, LADWP finds that the licensed areas, other than their present use, are not presently needed for other LADWP departmental purposes; the granting of this License will not interfere with departmental purposes; and the grant of the License is necessary to facilitate the NHOU settlement Agreement and is in the best interest of the City.

Upon expiration of the License Agreement, LADWP will operate the facility, conveyance lines and wells, however Honeywell will continue to pay for any costs relative to clean up spills and releases for a period of five years. If the License Agreement expires prior to completion of the cleanup, LADWP and Honeywell could negotiate a replacement License Agreement and the cleanup efforts would continue under the Settlement. Due to the complex nature of the Settlement, LADWP, indicates a time limit for indemnity is not uncommon as the overall benefits of the agreement are in the best interest of the City and LADWP retains all of its statutory and common law claims.

#### *Governance*

Pursuant to City Charter Section 605 (b), 606 and 607(a), City Council approval is required under certain conditions as follows; a) Proprietary Boards have the power to grant a license or enter into a lease concerning property under its control for purposes other than Departmental Purposes, if the Board finds in writing that the property to be leased is not presently needed or will not interfere with Departmental Purposes; b) Propriety Boards are granted authority to enter into a lease by order or resolution, however for a term greater than five years, City Council approval is required; and c) leases entered into for Proprietary Departments shall not exceed 30 years, unless Council makes a finding that a term longer than 30 years would be in the best interest of the City and requires a two-thirds vote.

The City Attorney has approved the proposed Resolution and License Agreement to form and legality.

#### **FISCAL IMPACT STATEMENT**

There is no General Fund impact. Approval of the proposed Resolution and License Agreement will have no new or additional fiscal impact to the Water Revenue Fund. The proposed action complies with the LADWP Financial Policies.

*RHL:IR:10200059*

*Attachments*

