



City of Emeryville

C A L I F O R N I A

MEMORANDUM

DATE: January 17, 2017

TO: Carolyn Lehr, City Manager

FROM: Susan Hsieh, Finance Director
Michael Guina, City Attorney

SUBJECT: Resolution Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Approving And Adopting The Recognized Obligation Payment Schedule For The Period Of July 1, 2017 Through June 30, 2018 (ROPS 17-18) Pursuant To Health And Safety Code Section 34177

RECOMMENDATION

It is recommended that the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") adopt the attached resolution thereby approving the Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2017 through June 30, 2018 (ROPS 17-18) pursuant to Health and Safety Code Section 34177(o).

BACKGROUND

Pursuant to the Dissolution Act¹, the Successor Agency is responsible for preparing and adopting a Recognized Obligation Payment Schedule ("ROPS") that describes payments required pursuant to "enforceable obligations" of the former Redevelopment Agency. The Successor Agency has timely prepared and adopted ROPS for each period beginning as of

¹On December 29, 2011, the California Supreme Court issued its decision in the matter of *California Redevelopment Association et.al. vs. Ana Matosantos et.al.* finding Assembly Bill 26 (the "Dissolution Act") constitutional and ABX1 27 (the "Voluntary Redevelopment Program Act") unconstitutional. The Supreme Court's ruling also postponed all deadlines outlined in the Dissolution Act before May 1, 2012 by four months. As a result, the Emeryville Redevelopment Agency ("Redevelopment Agency") was dissolved on February 1, 2012.

On January 17, 2012 the Emeryville City Council adopted Resolution No. 12-12 electing to have the City of Emeryville serve as the Successor Agency. The Successor Agency is responsible for winding down the affairs of the Redevelopment Agency under the direction of the Emeryville Oversight Board, including paying off the Redevelopment Agency's obligations, preparing administrative budgets and disposing of the former Redevelopment Agency's assets. That same evening the Emeryville City Council adopted Resolution No. 12-15 electing to have the City of Emeryville retain the housing assets and functions previously performed by the former Redevelopment Agency.

January 1, 2012 through June 30, 2012 (“ROPS I”) through the current ROPS period of July 1, 2016 through June 30, 2017 (“ROPS 16-17”). Each ROPS were subsequently reviewed and approved by the Emeryville Oversight Board (“Oversight Board”) and the State Department of Finance (“DOF”) with various modifications.

On September 22, 2015, Senate Bill 107 was enacted which, among other matters, provides for the preparation of an annual ROPS beginning with the current ROPS 16-17 period, as opposed to the customary semi-annual ROPS. ROPS 16-17, governing Successor Agency expenditures in the current fiscal year cycle, was approved in January 2016. The annual ROPS must be presented to and approved by the Oversight Board and transmitted to the DOF on or before February 1st of each year.

ROPS 17-18, governing Successor Agency expenditures for the July 1, 2017 through June 30, 2018 fiscal year, is being presented for the approval of the Successor Agency; thereafter, ROPS 17-18 will be presented to the Oversight Board at their regular meeting on January 24, 2017.

ROPS Approval Process

Since enacting the Dissolution Act in 2011, the California state legislature has regularly amended the Act, generally as budget trailer bills. The most recent being SB 107 in 2015 noted above. Generally, with respect to the ROPS the following requirements apply:

- All ROPS must be completed “in the manner provided for by” the DOF (Section 34177(o)(1)(A))². The DOF Internet Web site has published the form and instructions that are to be used by a successor agency.
- As with the semi-annual ROPS, staff must submit an electronic copy of the proposed ROPS approved by the Successor Agency to the Alameda County Administrative Officer (“CAO”), the Alameda County Auditor-Controller (“A/C”), and the DOF at the same time that the proposed ROPS is submitted to the Oversight Board for approval. (Section 34177(l)(2)(B).)
- For ROPS 17-18, the deadline for the Successor Agency to submit an Oversight Board approved ROPS to DOF, the California State Controller’s Office (“SCO”) and A/C is February 1, 2017. Each successive annual ROPS is due on February 1st of each year. (Section 34177(l)(2)(C) & (o)(1).)

The review process for an Oversight Board approved ROPS has been revised, generally to extend the review period for DOF:

- The deadline for DOF to request review of an Oversight Board action approving a ROPS is five business days (Section 34179(h)). Presumably, if DOF does not

² All citations to “Section” are to Health and Safety Code unless otherwise indicated.

request review during the five business day-period, the ROPS is deemed approved, but the Dissolution Act does not expressly say this.

- DOF is required to make its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations no later than April 15, 2017 and each April 15th thereafter for succeeding years after the ROPS has been submitted by a successor agency (Section 34177(o)(1)).
- DOF has the authority to eliminate or modify any item on the ROPS being reviewed prior to DOF approval (Section 34179(h)).
- A successor agency may request additional review by the DOF and an opportunity to “meet and confer” on disputed items, but such a request must be made within five business days of the successor agency’s receipt of a DOF determination (Section 34177(o)(1)). Given this short time frame, the resolution approving ROPS 17-18 provides staff the authority to request the review and “meet and confer” with the DOF should they reject an item on ROPS 17-18.
- DOF is required to notify a successor agency and the A/C of the outcome of its review at least 15 days before the date of the Redevelopment Property Tax Trust Fund (RPTTF) property tax distribution (presumably by May 17 for the June 1 RPTTF distribution) (Section 34177(o)(1)). Thus, if there is a need for staff to request a meet and confer with the DOF as to ROPS 17-18, then the outside date for receipt of DOF’s determination would be no later than May 17, 2017.
- A successor agency and Oversight Board may approve amendments to a ROPS to reflect the resolution of a dispute with DOF, but such amendments will not affect a past allocation of property taxes or create a liability to any affected taxing entity with respect to past allocations (Section 34179(h)).
- An annual ROPS may be amended once, provided it is processed and approved by the Successor Agency and Oversight Board and submitted to DOF no later than October 1st (Section 34177(o)(1)(E)).

As noted above the CAO must be served an electronic copy of a draft ROPS approved by the Successor Agency, along with the A/C and DOF at the same time the proposed ROPS is submitted to the Oversight Board. (Section 34177(l)(2)(B).) The Oversight Board approved ROPS, however, needs to be submitted to DOF, A/C and the SCO. (Section 34177(l)(2)(C) & (o)(1).) In order to avoid inadvertently failing to provide a copy of the ROPS to any agency, staff is submitting both the “pre-Oversight Board approved” ROPS and “post-Oversight Board approved” ROPS to the CAO, A/C, DOF, and SCO.

The A/C has the authority to review and object to the inclusion of any items that are not demonstrated to be enforceable obligations and/or may object to the funding source of any items on the ROPS. While the A/C may review and object either before or after the

Oversight Board approval of a ROPS, the A/C must give notice of objections at least 60 days prior to the RPTTF distribution date. (Section 34182.5.)

ROPS 17-18 Enforceable Obligations

The enforceable obligations listed in ROPS 17-18 are the same as those listed in ROPS 16-17, as approved by the DOF. The remaining enforceable obligations generally fall within eight (8) broad categories as follows:

Administrative Costs (Items 1, 4)

ROPS item 1 provides for payment to the City of Emeryville for its administrative expenses associated with the oversight of activities in connection with winding down the obligations of the Successor Agency. ROPS item 4 provides for payment to counsel (Renne Sloane Holtzman Sakai) for the Oversight Board.

3706 San Pablo Avenue Remediation (Item 10)

ROPS item 10 relates to the remediation of 3706 San Pablo Avenue under the oversight of the Regional Water Quality Control Board (“RWQCB”). The excavation and off-haul of contaminated soils from this site was completed in November 2015. The completion report was submitted in August 2016 and the RWQCB will require the preparation of a Vapor Mitigation Plan (VMP) in connection with on-site building construction to address potential impacts of residual vapors in soil and groundwater to indoor air within structures in order to achieve regulatory sign off. The City is currently under contract with EAH, Inc., to develop affordable housing on the site; thus once EAH’s construction plans are submitted and processed in connection with an application for a building permit, which include measures outlined in the VMP, and thereafter said measures are implemented by EAH in the construction of the project to the satisfaction of the RWQCB, then this item will be retired. Accordingly, the outstanding obligation relates to preparation of the VMP and obtaining approval of the VMP by the RWQCB, as well as documenting that the measures set forth in the VMP have been implemented and securing RWQCB site closure. While funding of \$50,000 is provided for in ROPS 17-18, as noted above, preparation of the VMP and documenting the implementation of required measures to secure site closure is tied to the development of the site by EAH. Thus in recognition of development timelines, it is likely that this obligation will appear on ROPS 18-19 before it can be retired.

Bay Street Site B Remediation/Cost Recovery (Items 39, 40, 41, 43)

Commencing in approximately 2004 the former Emeryville Redevelopment Agency commenced actions to acquire and remediate the properties known collectively as South Bayfront Site B (i.e. five parcels previously owned by 4 different owners bounded by Shellmound Street to the west, Powell Street to the north, Union Pacific railroad tracks to the east, and the new Hyatt Hotel to the south) for redevelopment into a mixed-use endcap to the Bay Street Site A project.

After an extensive process of environmental investigation and assessment, in June 2008 the Redevelopment Agency awarded a contract for soil remediation of hazardous materials contamination at South Bayfront Site B.

Soil remediation activities were conducted in accordance with the Final Feasibility Study/Remedial Action Plan ("FS/RAP") and Final Remedial Design and Implementation Plan ("RDIP") prepared by Erler & Kalinowski, Inc. ("EKI") and approved by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC). Soil remediation activities were completed in the Fall of 2009 and the Soil Remediation Completion Report was approved by DTSC on June 15, 2010. Upon completion of the soil remediation, the next phase of remediation related to groundwater contamination commenced immediately thereafter in accordance with the FS/RAP and Final RDIP.

With respect to groundwater remediation, the approved FS/RAP anticipated that the Redevelopment Agency would implement a remedy involving the construction of a containment trench around the northeast edge of Site B and then pump the contaminated groundwater and treat it before disposal. The FS/RAP also contained as an alternative a bio-remediation concept. Based on the results of the soil remediation and its favorable impact to groundwater, the Redevelopment Agency and DTSC agreed to pursue the bio-remediation concept rather than the construction of the containment trench and pumping and treating of contaminated groundwater. Accordingly, the Redevelopment Agency undertook a pilot study of enhanced reductive dechlorination ("ERD"), involving injecting organic amendments into the groundwater in order to address tetrachloroethene ("PCE"), trichloroethene ("TCE"), and its breakdown products, including vinyl chloride ("VC"). Thereafter, based on the very favorable results from the pilot study, the RDIP was subsequently amended to authorize the bio-remediation of groundwater contamination.

As part of the eminent domain actions filed to acquire four of the five parcels comprising South Bayfront Site B, the Agency also initiated an action utilizing the Polanco Redevelopment Act to recover its costs of hazardous materials remediation from responsible parties. On July 23, 2010, the Alameda County Superior Court approved an Order On Joint Motion For Good Faith Determination Of Settlement and Settlement Allocations ("Settlement Order") approving the settlements with several defendants and approving the allocation of \$22,400,000 in settlement proceeds. The Settlement Order approved the Chevron USA/Union Oil Settlement Agreement, the Koeckritz Settlement Agreement, the Robinson Settlement Agreement, and the Adam Settlement Agreement. Completion of the soil and groundwater remediation in accordance with the FS/RAP and Final RDIP is an obligation of the Agency pursuant to the terms of the Settlement Order and the settlement agreements approved by the Settlement Order. This obligation is reflected in ROPS line item 40.

The only defendant that did not initially settle was the Sherwin-Williams company. The Redevelopment Agency and Sherwin-Williams went to trial and on October 11, 2011, a judgment was entered in favor of the Redevelopment Agency resulting in a total recovery

of approximately \$3.5 million. Altogether, the Redevelopment Agency recovered approximately \$25.9 million from all defendants.

With respect to groundwater remediation, the concern relates to hazardous material impacts to both the shallow groundwater and deeper groundwater. Generally, impacts to shallow groundwater are of a greater concern because of the possibility that vapors from contaminants can negatively impair indoor air within buildings located on the site. In the summer of 2013, the Successor Agency implemented ERD to address impacts from PCE, TCE and VC to shallow groundwater. Subsequent groundwater monitoring results have shown that ERD has been very effective at reducing the contaminant levels in shallow groundwater of PCE, TC and VC. Given the very favorable results of ERD on shallow groundwater, in the summer of 2016 the DTSC approved the utilization of ERD to address contaminants in the deeper groundwater zone. The injections to deeper groundwater on Site B were completed in the fall of 2016.

During the remainder of the current ROPS 16-17 cycle ending June 30, 2017, it is anticipated that in the spring of 2017 additional groundwater monitoring will be undertaken of the shallow and deep groundwater zones to document the effectiveness of ERD on contaminant levels in groundwater of PCE, TC and VC. Thereafter, a completion report related to remediation of groundwater will be submitted to DTSC for approval in the later part of the ROPS 16-17 cycle, or early part of ROPS 17-18 cycle.

During the ROPS 17-18 cycle, assuming DTSC approval of the completion report related to remediation of groundwater, it is anticipated that the Successor Agency will be able to move forward with preparation of an operations and maintenance plan ("O&M Plan") for Site B that will address on-going groundwater monitoring obligations and the possibility for supplemental injections of ERD. Line item 41 is identified for purposes of preparing the O&M Plan. Further, there will be a need to enter into an operations and maintenance agreement ("O&M Agreement") governing the obligation of the property owner to implement the O&M Plan. Finally, there will also be a need to enter into a land use covenant ("LUC") with the DTSC that will place restrictions on use of groundwater beneath the site, as well as future uses of the site. ROPS line item 39 and a portion of the Administrative Cost Allowance in ROPS line item 1 will be utilized to prepare the O&M Agreement, LUC and obtain confirmation of the immunity from DTSC discussed below. ROPS line item 43 provides funding to reimburse DTSC for its costs of oversight.

Once the Successor Agency completes the groundwater remediation efforts required by the FS/RAP and RDIP, it will obtain immunity from future regulatory actions pursuant to the Polanco Redevelopment Act, which immunity can be transferred to the developer of the site. Further, once the Successor Agency has the DTSC approve the O&M Plan, O&M Agreement, land use covenant, and confirms the application of the immunity pursuant to the Polanco Redevelopment Act, the Site B parcels are to be transferred to the City for future development pursuant to the approved Long Range Property Management Plan. While there is much work to be done, it is possible that these items can be completed by the end of the ROPS 17-18 cycle. Once the Site B parcels have been successfully

transferred to the City in accordance with the LRPMP, then line items 39, 40, 41 and 43 can be retired from the ROPS.

Bay Street Site A Remediation (Items 44, 45, 46, 47)

In 1999, the DTSC approved the final Remedial Action Plan (RAP) prepared by the Redevelopment Agency for Bay Street Site A, which includes the property bound by IKEA to the south, Shellmound Street to the west, Union Pacific railroad tracks to the east, and South Bayfront Site B to the north. Subsequent to the approval of the final RAP, the Agency implemented the cleanup of hazardous materials in soil and groundwater on the site and thereafter prepared an Environmental Risk Management Plan (RMP) for Bay Street Site A, consistent with the requirements of the final RAP. The RMP was approved by DTSC on July 26, 2000.

The approved final RAP and RMP required the implementation of extensive soil removal and a multi-year groundwater and surface water monitoring program (the “RMP Monitoring Program”) on Bay Street Site A. The RMP Monitoring Program approved by DTSC required the installation of 17 groundwater monitoring wells located both north and south of Temescal Creek, two temporary groundwater monitoring wells, surveying of all sampling locations, quarterly sampling at all well locations, and preparation and submittal of a quarterly monitoring report of the sampling results. Currently, the groundwater monitoring required by DTSC has been reduced to annual monitoring and reporting.

As part of the eminent domain actions filed to acquire some of the parcels comprising Bay Street Site A, the Agency also initiated an action utilizing the Polanco Redevelopment Act to recover its costs of hazardous materials remediation from responsible parties. In the matter of *City of Emeryville, Emeryville Redevelopment Agency v. Elementis Pigments, Inc., The Sherwin-Williams Company, Pfizer, Inc., A&J Trucking Company, Inc., Baker Hughes, Inc., Arthur M. Sepulveda and Josephine Sepulveda*, United States District Court, Case No. C99-03719 WHA, the City and Redevelopment Agency entered into a Settlement Agreement with The Sherwin-Williams Company whereby the Redevelopment Agency agreed to pay for the first \$200,000 of costs associated with the RMP Monitoring Program, and the next \$1,314,000 of such costs would be shared equally. Any costs in excess of \$1,514,000 are shared 95% by Sherwin-Williams and 5% by the Redevelopment Agency. This obligation is reflected in ROPS line item 46.

ROPS line item 44 relates to the Professional Services Agreement (PSA) with the firm of Eler & Kalinowski, Inc. (EKI), to provide the services required by the RMP Monitoring Program and to fund the Successor Agency’s share of the first \$1,514,000 of RMP Monitoring Program costs. As of the commencement of the ROPS 17-18 cycle, it is anticipated that the remaining balance under the PSA with EKI will be \$420,000. The costs of annual groundwater monitoring and reporting have been averaging about \$45,000 per year, or \$22,500 per year each for the Successor Agency and Sherwin-Williams. This amount tends to increase in the years coinciding with the Five Year Review which will be required in calendar year 2017 and 2022. Accordingly, at the end of 2022, there will be an

approximate balance of \$300,000 remaining under the EKI contract which should be sufficient to cover any unforeseen requirements of DTSC, as well as allow for additional years of monitoring if still required by DTSC beyond 2022. Note that pursuant to the Settlement Agreement with The Sherwin-Williams Company, any costs in excess of \$1,514,000 are shared 95% by Sherwin-Williams and 5% by the Successor Agency. ROPS line item 45 is used to reimburse DTSC for their costs of oversight.

Finally, when the Redevelopment Agency sold Bay Street Site A to Madison Bay Street LLC, successor-in-interest to the South Bayfront Redevelopment Project Partnership, pursuant to the September 23, 1999 Disposition and Development Agreement (DDA), the Agency retained the responsibility vis-à-vis Madison Bay Street LLC for ongoing groundwater monitoring and remediation pursuant to Section 212 of the DDA. The current owner of Bay Street Site A is 5616 Bay Street Investors LLC, and this obligation of the Successor Agency is reflected in ROPS line item 47.

Corporation Yard Remediation/Cost Recovery (Items 48, 49, 50, 51)

The Redevelopment Agency acquired the Corporation Yard, located at 5679 Horton Street, in July 1999 from the Lozick Trust primarily in order to facilitate the connection of Horton Street with former Landregan Street ("Horton Street Extension Project"). In the period between July 1999 and June 2009, the City utilized the building as a temporary location for the Public Works Department's corporation yard. A portion of the property was subsequently dedicated to the City as part of the Horton Street Extension Project, and the remainder was sold to the City pursuant to a Purchase and Sale Agreement dated June 4, 2009 ("Purchase Agreement").

Section 10 of the Purchase Agreement provides that the Agency is obligated to defend, indemnify, protect and hold harmless the City, including the duty to respond to any governmental inquiry, investigation, claim or demand regarding hazardous materials at the Agency's sole cost.

When the Agency completed the soil remediation of hazardous materials on South Bayfront Site B in 2010, at the direction of the DTSC the Agency thereafter began investigating potential off-site sources of impacts to South Bayfront Site B groundwater. Accordingly, during 2011 the Agency conducted sampling activities upgradient and east of South Bayfront Site B and within the Powell Street right of way between the Union Pacific Railroad line and Horton Street, along Horton Street between Powell Street and Stanford Avenue, and within the parking area and inside the building of the Corporation Yard. These investigations uncovered groundwater impacts within all of these areas. Thereafter, Agency staff and its environmental consultant, EKI, met with representative of the DTSC in December 2011 to share with them the results of these investigations. DTSC's response was that the contamination at the Corporation Yard was of a significant concern that needed to be addressed expeditiously and that an agreement with DTSC to provide oversight would be necessary. In fact, in recognition of impacts to indoor air, the building at the Corporation Yard was vacated in 2012.

On January 27, 2012 the City filed a claim against the Agency seeking to enforce the terms of the indemnification provision set forth in Section 10 of the Purchase Agreement. This obligation of the Successor Agency is reflected in ROPS line item 48. Accordingly, in recognition of its status as a prior owner of the site and exposure under state and federal law for the site conditions, and to comply with the obligation set forth in the Purchase Agreement and address the City's claim, on January 31, 2012 the Redevelopment Agency authorized the submission of an Application for Oversight and to enter into and execute a Voluntary Cleanup Agreement with DTSC to provide oversight for the assessment, remediation, and monitoring of hazardous materials located at the City's Corporation Yard. This obligation of the Successor Agency is reflected in ROPS line item 50.

In addition, at the same meeting the Redevelopment Agency authorized a Professional Services Agreement with the firm of EKI, to provide environmental engineering services for the assessment, remediation and monitoring of hazardous materials located at the Corporation Yard. This obligation of the Successor Agency is reflected in ROPS line item 51.

During the current ROPS 16-17 period the Successor Agency has, through the efforts of EKI, obtained DTSC approval of the Final Remedial Investigation Report ("RI") on July 8, 2016, and the Final Human Health Risk Assessment ("HH/RA") on October 11, 2016. Accordingly, on October 21, 2016, EKI submitted the Final Feasibility Study / Draft Remedial Action Plan ("FS/DRAP") to DTSC for its review. The FS/DRAP submitted to DTSC analyzes four (4) appropriate remedial alternative measures and recommends that one of the alternatives be approved by DTSC as the preferred alternative.

The preferred alternative remedy includes:

1. Institutional Controls with post-remedial land use limited to industrial/commercial purposes (such as a corporation yard), urban residential, and/or park/open space, and requirements for soil vapor evaluation and vapor mitigation, if needed, for any inhabited structures constructed at the FMW Site.
2. Unsaturated Zone Only:
 - A soil vapor evaluation would be conducted and a vapor control system would be installed, if needed, for any inhabited structures constructed at the FMW Site. The need for continuing vapor control would be routinely assessed if warranted. Treatment system for discharges may be required per a Bay Area Air Quality Management District ("BAAQMD") permit.
3. Unsaturated and Saturated Zone:
 - Above grade building demolition, soil excavation, and post-excavation hardscaping. Soil excavation to be performed within: (a) the upper 5 feet bgs (below ground surface) across the FMW Site based on proposed soil and soil vapor remedial goals to primarily address impacts from the presence of total extractable petroleum hydrocarbons ("TEPH") and cadmium and (b) 5 to 10 feet bgs in the vicinity of the northeast corner of the existing building where

SPL (separate phase liquid) was encountered at shallow depths. Post-excavation, cover the Site with hardscape to limit surface water infiltration and to improve effectiveness of soil vapor control. Sequencing of above grade building demolition and soil excavation in relation to other remedial measures to be evaluated during development of the Remedial Design and Implementation Plan (“RDIP”).

- S10, 1032, and 3243 Units³:
 - Thermal Treatment with Multi-Phase Extraction (“MPE”): Thermal treatment of unsaturated and saturated soil and groundwater to remove significant contaminant mass of volatile organic compounds (“VOCs”) in an area of approximately 25,000 square feet (i.e. approximately to the 5 milligram per liter (“mg/L”) TCE groundwater concentration contour while maintaining a 50 foot set back from the railroad tracks and driveway access to the FMW Site and adjacent properties).
 - In-situ Polishing (Post-Thermal): After thermal treatment, in-situ polishing will be conducted to further reduce concentrations of VOCs in groundwater (e.g. at or below the 5 mg/L TCE groundwater concentration contour). Configuration of in-situ polishing subject to change after post-thermal evaluation.
 - MPE (Post-Thermal): Operation of MPE system to control off-site migration of impacted groundwater from the FMW Site and to control on-site migration of upgradient impacted groundwater and to address impacted groundwater remaining between the thermal treatment and in-situ polishing area and the property boundary. Ongoing groundwater monitoring to evaluate necessity and/or configuration of MPE operations.
 - 4360 Unit⁴: Periodic groundwater monitoring for MNA (monitored natural attenuation) with post-thermal in-situ polishing contingency (such as ERD injections to groundwater).
 - 6080 and 80110 Units⁵: Periodic groundwater monitoring for MNA with in-situ polishing contingency (such as ERD injections to groundwater).

In the process of developing the FS/DRAP, EKI evaluated the sequence of remedial activities and the feasibility of the various approaches to in-situ thermal remediation of VOCs in groundwater. The conclusion of this evaluation is that thermal remediation is best conducted *after* soil excavation. The thermal remediation requires drilling approximately two hundred wells. Drilling these wells through the existing slabs inside and outside the building will be extremely complicated and measurably more expensive. Also, there are two slab systems that would need to be pierced as the slab from a historic facility remains

³ S10 means ground surface to 10 feet below ground surface; 1032 means 10 feet below ground surface to 32 feet below ground surface; 3243 means 32 feet below ground surface to 43 feet below ground surface.

⁴ 4360 means 43 feet below ground surface to 60 feet below ground surface.

⁵ 6080 means 60 feet below ground surface to 80 feet below ground surface; 80110 means 80 feet below ground surface to 110 feet below ground surface.

beneath the existing building. In addition, if thermal remediation is conducted *before* soil excavation, the two hundred wells installed to conduct the thermal remediation would need to be abandoned and replaced prior to soil excavation activities at an additional cost well in excess of \$1 million. The MPE system will be operated during and after the thermal remediation and many of these wells will be utilized in connection with the MPE system. Accordingly, for purposes of sequencing, it is anticipated that thermal remediation and its attendant MPE system should be conducted *after* soil excavation.

It is possible that the soil excavation activities could be conducted with the walls and roof of the existing warehouse building remaining in place. However, this would significantly increase the costs of the excavation due to the necessity of working around the foundations (both around the perimeter of the entire building and the numerous footings within the interior of the building) and result in a less than complete excavation of impacted soils, especially in the area of the northeast corner of the building. There are also significant concerns regarding the unknown structural and geotechnical impacts on the building of excavating soil with the building in place and thereafter conducting the in-situ thermal remediation below it. Accordingly, the FS/DRAP proposed remedial alternative provides for the demolition of the existing building in connection with the soil excavation.

During the remaining ROPS 16-17 cycle there is sufficient funding to finalize the processing and obtain approval of the FS/DRAP and a Remedial Design and Implementation Plan ("RDIP") by DTSC. It is anticipated that DTSC will approve the FS/DRAP in February/March 2017 and thereafter the RDIP in April/May 2017. Accordingly, it is anticipated that implementation of the approved remedy would commence at the outset of the ROPS 17-18 cycle in July 2017. The anticipated sequencing of work calls for the demolition of the existing building and excavation across the site which will likely require 4 to 6 months' time to complete at a cost approximating \$14,000,000. Thereafter work will involve the installation and calibrating of the Thermal Treatment with MPE systems which will likely require approximately 6 months to install and refine at a cost approximating \$5,000,000, taking us to the end of the ROPS 17-18 cycle.

During the ROPS 18-19 cycle, it is anticipated that installation of the Thermal Treatment with MPE systems will be completed and operation of the systems will commence at a cost approximating \$9.5 million. During the ROPS 19-20 cycle it is anticipated that the Thermal Treatment with MPE systems will continue to be operated for a portion of the time and then the Thermal Treatment shut down, yet the MPE system will continue to operate; thereafter a completion report will be prepared and the subsurface will be allowed to cool down – costs in ROPS 19-20 cycle will approximate \$6.5 million. During ROPS 20-21 cycle, in-situ ERD polishing will be undertaken along with continued operation of the MPE system at a cost approximating \$4 million. In subsequent ROPS cycles, the MPE system will continue to operate along with groundwater monitoring and reporting at a gradually reducing annual cost initially approximating \$1 million. It is anticipated that at some point in time, based on reducing contaminant levels in groundwater, the MPE system will be allowed to be shut off, subject to on-going groundwater monitoring and reporting.

During calendar year 2015 and 2016 the City and Successor Agency notified potential responsible parties (“PRPs”) of the existence of the contamination at the Corporation Yard and the opportunity to undertake the cleanup themselves. At its meeting of February 3, 2015, the City Council designated the Corporation Yard site as a blighted property in accordance with AB 440 (Gatto – Health and Safety Code Section 25403 *et seq.*) and thereby afforded the City the ability to direct the PRPs to address the contamination at the Corporation Yard site similar to the authority afforded the Successor Agency pursuant to the Polanco Redevelopment Act (Health and Safety Code Section 33459.1 *et seq.*). Notices have been sent by the City and Successor Agency to PRPs in accordance with AB 440 and the Polanco Redevelopment Act on July 1, 2015, December 28, 2015, January 12, 2016 and July 26, 2016. To date none of the PRPs have responded to the City and Successor Agency’s notice with a stated desire to assume the responsibility to clean up the Site. Accordingly, as noted above, on October 21, 2016, EKI submitted the FS/DRAP to DTSC on behalf of the Successor Agency in order to obtain the approval of the FS/DRAP. Furthermore, the Successor Agency and City Council have authorized the filing of a complaint against the PRPs to recover costs of remediation. ROPS line item 49 provides funding to the Successor Agency’s legal counsel to pursue this cost recovery action.

Bond Debt/Finance Professional Services (Items 62, 63, 64, 67, 103, 104, 116, 117)

The former Emeryville Redevelopment Agency entered into loan agreements in 1995, 1998, 2001, 2002 and 2004 which pledged tax increment and low and moderate income housing revenues as security for bonds issued by the Emeryville Public Finance Authority. The bond funds were then used by the Redevelopment Agency to finance redevelopment and affordable housing projects.

Section 34177.5 (a) of the Dissolution Act provides that the Successor Agency may proceed to issue bonds to refund the existing bonds or other indebtedness of its former redevelopment agency to provide savings.

In 2014, Successor Agency staff determined that bond market conditions allowed for the issuance of refunding bonds to refinance all of the former Redevelopment Agency’s outstanding bonds. The estimated average annual debt service savings was anticipated to be approximately \$500,000 per year. Since the debt service on the bonds is not level, the savings will be greater in years 2015 to 2026 and declining in years 2027 to 2034 due to the different final maturities on the existing bonds.

Accordingly, in April 2014 the Successor Agency and Oversight Board approved the transaction to refund the former Redevelopment Agency’s existing bonds.

The refinancing of the outstanding indebtedness of the former Emeryville Redevelopment Agency generated net present value savings of approximately \$6.0 million over the remaining life of the bonds. ROPS line items 116 and 117 reflect the annual debt service payment due for the refunding bonds of \$9,771,750 and \$1,350,829 per year. ROPS line items 103 and 104 relate to professional services for continuing disclosure reporting and

arbitrage calculations required in connection with the refunding bonds. ROPS line item 64 relates to annual fees paid to the bond trustee. These line items will be retired in 2031 and 2034 when the bond debt is fully repaid.

ROPS line items 62, 63 and 67 relate to other financial aspects of the Successor Agency. ROPS line item 62 relates to required financial auditing services for the Successor Agency. ROPS line item 63 relates to bank fees paid to Wells Fargo Bank in connection with the Successor Agency's accounts. The Successor Agency anticipates that it may change auditors and banks, and thus the Notes to the ROPS indicate this possible change in payee. Finally, ROPS line item 67 relates to property tax audit services as needed. These line items will be retired once all Successor Agency obligations have been satisfied and the Successor Agency is dissolved.

Amtrak Station (Items 80, 81, 82, 108)

On March 2, 1993, the Redevelopment Agency and Wareham Development Corporation ("Wareham") entered into a Participation Agreement pertaining to real property acquired by the Redevelopment Agency from Chevron, U.S.A., Inc. A portion of the site has been developed into housing, known as the Terraces, and the remainder is the current day Amtrak Station in Emeryville. Pursuant to the terms of the Participation Agreement, Wareham constructed the Amtrak station improvements and thereafter leased the Amtrak station property and improvements to the Redevelopment Agency pursuant to a Lease dated March 2, 1993 ("Amtrak Station Lease"). The Redevelopment Agency's obligation to make lease payments ended after its last required payment in May 2011. However, during the term of the Amtrak Station Lease, the Successor Agency is obligated to pay for all property taxes in excess of \$15,000 per year, which is reflected in ROPS line item 80, as well as a share of property maintenance expenses, which is reflected in ROPS line item 108.

The Amtrak Station Lease also provides that upon expiration of the Lease term, 25 years after satisfaction of certain conditions which the parties agreed occurred on October 15, 1993, the Redevelopment Agency shall acquire the Amtrak station property and improvements for \$1.00. Thus on October 15, 2018, the Amtrak Station Lease with Wareham will expire and the Successor Agency is obligated to acquire the Amtrak station property and improvements for \$1.00. This obligation is reflected in ROPS line item 81.

At the time the Redevelopment Agency entered into the Amtrak Station Lease with Wareham, it also entered into a Passenger Station Lease/Purchase Agreement with the National Railroad Passenger Corporation ("Amtrak") that was replaced in its entirety with an Amended and Restated Passenger Station Lease/Purchase Agreement dated January 19, 2000 ("Amtrak Sublease"). Pursuant to the Amtrak Sublease, Amtrak makes annual rent payments of \$90,000 through the end of the lease term. This annual rent payment is accounted for as Other Funds of the Successor Agency and utilized to pay for enforceable obligations of the Successor Agency. Pursuant to the Amtrak Sublease, the Successor Agency is obligated to transfer the Amtrak station property and improvements that it

acquires from Wareham to Amtrak. This obligation to dispose of the property to Amtrak is reflected in ROPS line item 82. These line items will be retired from the ROPS in October 2018 when the aforementioned transfers have been completed.

SERAF (Item 120)

Item 120 relates to the SERAF obligation of the Successor Agency to the City's housing asset fund. During the first period of the ROPS 17-18 cycle, the Successor Agency will be able to pay in full the outstanding SERAF obligation owed to the City's housing asset fund in the amount of \$691,834. During ROPS 16-17, a payment of \$8,341,766 was made on the original balance due of \$9,033,600, leaving a balance of \$691,834. Thus, this line item will be retired upon implementation of the payment authorized in ROPS 17-18.

Report of Estimated Available Cash Balances – January 1, 2016 through June 30, 2016

This section of the ROPS requires available cash balances by funding source to be reported over a six-month period.

The report shows that as of June 30, 2016 there are no housing bond proceeds being held by the Successor Agency, as all such housing bond proceeds have been transferred to the City's housing asset fund for use on affordable housing projects. Thus, all Successor Agency housing bond funds have now been completely expended.

The report also shows that as of June 30, 2016, the Reserve Balance and Other Funds are \$8,927,253 and \$827,647, respectively. The Reserve Balance reflects RPTTF funds previously requested on prior ROPS and not fully expended, whereas Other Funds reflect revenues received by the Successor Agency (i.e. Amtrak annual sublease payment, Bay Street Site A Note Repayment, and interest income). Of the \$8,927,253 Reserve Balance, \$8,260,293 is scheduled to be expended on enforceable obligations during the first half of the current ROPS 16-17 period (July 1, 2016 through December 31, 2016), leaving an estimated available Reserve Balance of \$666,960 for the ROPS 17-18 period. The \$827,647 in Other Funds is also available for the ROPS 17-18 period. Note that all available Reserve Balance and Other Funds must be allocated to enforceable obligations before requesting additional RPTTF funds.

ROPS 17-18 Summary

The ROPS 17-18 has a cover sheet called "ROPS 17-18 Summary" which details the amounts requested by the Successor Agency for July 1, 2017 through June 30, 2018. This summary states a request for DOF to approve total obligations of \$33,251,189, with \$666,960 to be funded from Reserve Balance, \$827,647 from Other Funds, and \$31,756,582 from new Redevelopment Property Tax Trust Fund (RPTTF) money. It should be noted that the A/C may also make adjustments during its review of the ROPS.

RECOMMENDATION

It is recommended that the Successor Agency consider the information contained in this report and all public testimony, and thereafter adopt the attached resolution thereby approving the Recognized Obligation Payment Schedule of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency for the period of July 1, 2017 through June 30, 2018 (ROPS 17-18).

Prepared by:

Susan Hsieh, Finance Director

APPROVED AND FORWARDED TO THE EMERYVILLE SUCCESSOR AGENCY



Carolyn Lehr, City Manager

Attachments:

1. Resolution Approving ROPS 17-18
Exhibit A to Resolution – Recognized Obligation Payment Schedule July 1,
2017 through June 30, 2018 (ROPS 17-18)