



MEMORANDUM

DATE: January 21, 2025
TO: Chair Mourra and Board of Directors
FROM: Adam Politzer, Interim Executive Director
SUBJECT: **Resolution Of The City Council Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Approving And Adopting The Administrative Budget And Recognized Obligation Payment Schedule For The Period Of July 1, 2025, Through June 30, 2026 (ROPS 25-26), Pursuant To Section 34177 Of The California Health And Safety Code**

RECOMMENDATION

Staff recommends the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency (“Successor Agency”) adopt the attached resolution approving the Administrative Budget and Recognized Obligation Payment Schedule for the period of July 1, 2025, through June 30, 2026, (25-26) pursuant to Health and Safety Code Sections 34177(j) and 34177(o), respectively.

BACKGROUND

Pursuant to the Dissolution Act¹, the Successor Agency is responsible for preparing and obtaining Alameda County Oversight Board (“Oversight Board”) approval of an Administrative Budget and a Recognized Obligation Payment Schedule (“ROPS”) that describes payments required pursuant to “enforceable obligations” of the former Redevelopment Agency. The annual Administrative Budget and ROPS must be presented to and approved by the Oversight Board and transmitted to the State of California, Department of Finance (“DOF”) on or before February 1st of each year.

¹ On 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 an Oversight Board, including paying off the Redevelopment Agency’s obligations, preparing administrative budgets and disposing of the former Redevelopment Agency’s assets. The Emeryville City Council also 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. Note that the City of Emeryville and Successor Agency are two separate and distinct public entities.

Administrative Budget 25-26 and ROPS 25-26, governing Successor Agency expenditures for the July 1, 2025 through June 30, 2026 fiscal year, is presented for the approval of the Successor Agency at its regular meeting of January 21, 2025; thereafter, Administrative Budget 25-26 and ROPS 25-26 will be presented to the Oversight Board² at their meeting on January 23, 2025.

ROPS Approval Process

Since enacting the Dissolution Act in 2011, the California State Legislature has amended it on several occasions. 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))³. The DOF Internet Web site publishes the form and instructions that are to be used by a successor agency.
- 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 25-26, 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, 2025. 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 by DOF is as follows:

- The deadline for DOF to request review of an Oversight Board action approving a ROPS is five business days (Section 34179(h)).
- 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, 2025 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)).

² Pursuant to Health and Safety Code Section 34179(j), commencing on July 1, 2018, in each county where more than one oversight board was created by operation of the Dissolution Act, such as in Alameda County, there shall be only one oversight board, which will be staffed by the county auditor-controller. Accordingly, as of June 30, 2018, the Emeryville Oversight Board was disbanded and replaced with the Alameda County Oversight Board.

³ All citations to “Section” are to Health and Safety Code unless otherwise indicated.

- 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 Successor Agency resolution approving ROPS 25-26 provides staff the authority to request this review and “meet and confer” with the DOF should they reject an item on ROPS 25-26.
- 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 25-26, then the outside date for receipt of DOF’s determination would be no later than May 17, 2025.
- 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)).

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.)

DISCUSSION

The remaining enforceable obligations of the Successor Agency listed in ROPS 25-26 generally fall within three (3) broad categories as follows: Administrative Costs/Expenses; Bond Debt; and Hazardous Materials Remediation and Monitoring.

I. *Administrative Costs/Expenses (ROPS Item 1)*

ROPS item 1 provides for payment to the City of Emeryville for its administrative costs and expenses outlined in the Administrative Budget associated with the oversight of activities in connection with winding down the obligations of the Successor Agency. The Administrative Budget for ROPS 25-26 is \$431,121.00.

II. *Bond Debt/Financial Services (ROPS Items 62, 63, 64, 103, 104 129, 130)*

- **Item 62: Maze and Associates – Audit Services**
- **Item 63: Wells Fargo Bank – Bank Fees**

- **Item 64: Bank of New York Mellon – Bond Trustee Services**
- **Item 103: Wildan Financial - Bond Annual Continual Disclosure Reporting**
- **Item 104: PFM Group - Bond Arbitrage/Rebate Calculations**
- **Item 129: Bank of New York Mellon – Bond 2024A Annual Debt Service Payment**
- **Item 130: Bank of New York Mellon – Bond 2024B Annual Debt Service Payment**

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 activities and affordable housing projects.

Section 34177.5(a) of the Dissolution Act authorizes a successor agency to issue bonds to refund existing bonds or other indebtedness of its former redevelopment agency to provide savings. In 2014, the Successor Agency refinanced all of the former Redevelopment Agency's outstanding bonds. Accordingly, in April 2014, the Successor Agency and Oversight Board approved the transaction to refund the former Redevelopment Agency's existing bonds resulting in annual debt service savings of approximately \$500,000 per year.

Recently, the Successor Agency and Oversight Board once again authorized the refinancing of the 2014 bonds, and that transaction closed in November 2024 resulting in further debt service savings of over \$2 million during the remaining term of the bonds. Accordingly, ROPS line items 116 and 117, which related to the 2014 bonds, have been retired; thus, new ROPS line items 129 and 130 have been added to reflect the new annual debt service payment due for the 2024 refunding bonds during the ROPS 25-26 cycle.

It is worth noting that the debt service payment schedule for the 2024 Bonds requires a substantial payment in the upcoming ROPS 25-26 cycle of a combined amount of approximately \$20.85 million; in fact, Bond Series 2024B identified on line item 130 will be paid in full as of September 1, 2025. Thereafter, the debt service payment for the remaining term of Bond Series 2024A, through September 1, 2034, identified on line item 129, will decrease significantly, thereby reducing the required amount of RPTTF needed for the debt service payment and increasing the amount of residual property tax available to be distributed to taxing entities, including the City.

ROPS line items 64, 103 and 104 for bond trustee services, annual continuing disclosure reporting and bond arbitrage/rebate calculation services, respectively, will remain as is because they are services required for the new 2024 bonds.

ROPS line items 62 and 63 remain unchanged and 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 in connection with the Successor Agency's accounts. These line items will also be retired once all Successor Agency obligations have been satisfied and the Successor Agency is dissolved.

III. Hazardous Materials Remediation and Monitoring

Actions taken to remediate hazardous materials in soil and groundwater was one of the many appropriate activities that redevelopment agencies could pursue. The City of Emeryville had a long history of industrial activity dating back to the late 1800s which left behind a legacy of contamination in soil and groundwater upon the exodus of industry from the City in the 1960s through the 1980s. The former Emeryville Redevelopment Agency, in close cooperation with the California Environmental Protection Agency (DTSC and RWQCB) and the U.S. Environmental Protection Agency, was very active in the remediation of hazardous materials within the City and the following three (3) projects fall in that category. The map attached to this report as **Attachment A** outlines the boundaries of the three (3) project sites known as South Bayfront Site A, South Bayfront Site B, and the Corporation Yard.

A. South Bayfront Site A Monitoring (ROPS Items 44, 45, 46, 47)

- **Item 44: EKI - Environmental Engineering Services**
- **Item 45: CalEPA DTSC – Environmental Oversight Agreement**
- **Item 46: The Sherwin-Williams Company Settlement Agreement & Order**
- **Item 47: Bay Street CenterCal LLC – Site A Disposition & Development Agreement**

Background

South Bayfront Site A, also known as Bay Street, is bound by the IKEA home furnishings store to the south, Shellmound Street to the west, Union Pacific railroad tracks to the east, and the vacant/unimproved lands of South Bayfront Site B to the north and is bisected by the Temescal Creek channel. Beginning in the mid-1990s, the former Redevelopment Agency commenced the process of acquisition of several parcels of real property making up South Bayfront Site A to bring about the remediation of hazardous materials impacting and curtailing the beneficial use of those parcels and redevelop the site with a mix of retail, theatre, restaurant, hotel and residential uses that currently exist today.

On July 20, 1998, the former Redevelopment Agency and the California Environmental Protection Agency, Department of Toxic Substances Control (“DTSC”) entered into an Oversight and Consultation Agreement (“Oversight Agreement”) governing the preparation and implementation of remedial measures at South Bayfront Site A. The Oversight Agreement was subsequently amended on March 13, 2007, and is an enforceable obligation of the Successor Agency pursuant to Section 34171 (d)(1)(E) and

34171 (d)(1)(F). Thereafter, in 1991, DTSC approved the final Remedial Action Plan (“Site A RAP”) prepared by the Redevelopment Agency for South Bayfront Site A.

The Site A RAP prepared by the Redevelopment Agency did not include a portion of South Bayfront Site A located to the south of the Temescal Creek channel, which was previously owned by the Myers Drum Container Corporation (“Myers Drum”) and remediated by Myers Drum under the oversight of DTSC. After the approval of the Site A RAP by DTSC, the Redevelopment Agency implemented the cleanup of hazardous materials in soil and groundwater. Once the required soil and groundwater remediation under the Site A RAP was completed, the Redevelopment Agency thereafter prepared an Environmental Risk Management Plan (RMP) for South Bayfront Site A, including the former Myers Drum property, consistent with the requirements of the Site A RAP. The RMP was approved by DTSC on July 26, 2000.

The approved final RAP required the implementation of extensive soil removal and the implementation of the RMP, a multi-year groundwater and surface water monitoring program (the “RMP Monitoring Program”) on South Bayfront 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, sampling within storm drains located within Shellmound Street, sampling of surface waters within the Temescal Creek channel, 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 sampling and reporting.

The Sherwin-Williams Company Settlement Agreement & Order

As part of the eminent domain actions filed by the Redevelopment Agency to acquire some of the parcels comprising South Bayfront Site A, the Redevelopment 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 settlement agreements with the responsible parties to pay for their appropriate share of the costs of remediation and ongoing groundwater monitoring, which settlement agreements were approved by order of the Court.

The Settlement Agreement with The Sherwin-Williams Company is on file with the City Clerk⁴. As provided in Section VI of the Settlement Agreement with The Sherwin-Williams Company, the Redevelopment Agency agreed that it would pay for the first \$200,000 of

⁴ The Settlement Agreement with The Sherwin-Williams Company was attached as **Appendix B** to the January 15, 2019 staff report to the Successor Agency regarding consideration of ROPS 19-20, and can be viewed at <https://emeryville.legistar.com/View.ashx?M=F&ID=6964105&GUID=630010D6-9FE3-4F1A-99DC-491DA6A855FC>.

costs associated with the groundwater RMP Monitoring Program⁵, and the next \$1,314,000 of such costs would be shared equally with The Sherwin-Williams Company. Any costs in excess of \$1,514,000 are shared 95% by The Sherwin-Williams Company and 5% by the Redevelopment Agency. The Settlement Agreement with The Sherwin-Williams Company constitutes an enforceable obligation of the Successor Agency pursuant to Section 34171(d)(1)(D). The obligation of the Successor Agency set forth in the Settlement Agreement is reflected in ROPS line item 46, whereby the Successor Agency contracts and pays for EKI's services and then secures reimbursement from The Sherwin-Williams Company for their share ("Sherwin-Williams Site A Reimbursement").

As of December 20, 2024, the Successor Agency and The Sherwin-Williams Company have collectively spent \$727,297.99 on shared RMP Monitoring Program costs, leaving a balance of \$586,702.01 in shared (50/50) costs before the obligation shifts to a 95/5 split. Thus, the Successor Agency's allocation of the remaining shared costs is one half of \$586,702.01, or \$293,351.01. As noted, any costs in excess of \$1,514,000 are shared 95% by Sherwin-Williams and 5% by the Successor Agency..

Site A Disposition and Development Agreement

The Redevelopment Agency sold South Bayfront Site A to Bay Street Partners LLC, successor-in-interest to the South Bayfront Redevelopment Project Partnership, on June 12, 2001, pursuant to the Disposition and Development Agreement (Site A DDA) dated September 23, 1999. Bay Street Partners thereafter redeveloped South Bayfront Site A with the Bay Street project comprising over 300,000 square feet of retail/restaurant/theatre space, approximately 350 housing units (rental and ownership), a hotel and structured parking. As provided in Section 212, subsection 1 of the Site A DDA, as between the Redevelopment Agency and Bay Street Partners and any future property owner, the Redevelopment Agency retained the responsibility for ongoing groundwater monitoring and remediation⁶. The Site A DDA constitutes an enforceable obligation of the Successor Agency pursuant to Section 34171(d)(1)(E). The current owner of South Bayfront Site A is Bay Street CenterCal, LLC, and this obligation of the Successor Agency is reflected in ROPS line item 47.

Environmental Engineering Services

⁵ Pursuant to the terms of the purchase agreement between the Redevelopment Agency and Myers Drum, Myers Drum is obligated to implement the groundwater RMP Monitoring Program south of Temescal Creek; accordingly, the Successor Agency's obligation is limited to implementing the groundwater RMP Monitoring Program north of Temescal Creek.

⁶ The DDA for South Bayfront Site A has been amended 15 times, the last occurring on January 6, 2011. The applicable provision of Section 212, subsection 1, of the Site A DDA is provided in the First Implementation Agreement between the Redevelopment Agency and the South Bayfront Redevelopment Project Partnership, dated September 8, 2000. A copy of the First Implementation Agreement to the DDA is attached as **Appendix C** to the January 15, 2019 staff report to the Successor Agency regarding consideration of ROPS 19-20, and can be viewed at <https://emeryville.legistar.com/View.ashx?M=F&ID=6964105&GUID=630010D6-9FE3-4F1A-99DC-491DA6A855FC>.

ROPS line item 44 relates to the Professional Services Agreement (PSA) with the firm of Erler & Kalinowski, Inc. (EKI), to provide services on behalf of the Successor Agency that are set forth in the RMP Monitoring Program. Implementation of the RMP Monitoring Program is required by the terms of the Settlement Agreement with The Sherwin-Williams Company and fulfills the former Redevelopment Agency's obligation pursuant to the terms of the Site A DDA with the owner of South Bayfront Site A. The PSA with EKI constitutes an enforceable obligation of the Successor Agency pursuant to Sections 34171(d) (1) (E) and 34171(d) (1) (F).

The costs of the regular annual groundwater monitoring and reporting is fairly consistent from year to year, however, the overall cost can fluctuate from year to year depending on the need to repair and/or replace monitoring wells, prepare the Five Year Review, or respond to DTSC directives. The next Five Year Review is to be prepared in 2026, which means it is to be prepared and submitted to DTSC during the ROPS 25-26 cycle.

As reflected in ROPS line item 44, it is estimated that the Successor Agency will incur \$160,000.00 for groundwater monitoring and reporting services provided by EKI pursuant to the RMP Monitoring Program during the ROPS 25-26 cycle. The estimated cost is reflective of costs representative of regular annual groundwater monitoring plus those attributed to (i) the Five Year Review required pursuant to the RMP Monitoring Program, (ii) the need to repair and/or replace groundwater monitoring wells that have been damaged if the DTSC does not allow the wells to be decommissioned, (iii) general project management, and (iv) anticipated costs associated with DTSC requests for additional data collection/investigation and analysis.

Environmental Regulatory Oversight

Oversight of the remediation of South Bayfront Site A as required by the Site A RAP and the ongoing groundwater monitoring required by the RMP has been provided by DTSC pursuant to the Oversight Agreement between DTSC and the former Redevelopment Agency. As noted above, the Oversight Agreement with DTSC constitutes an enforceable obligation of the Successor Agency pursuant to Sections 34171(d)(1)(E) and 34171(d)(1)(F). Thus, for the ROPS 25-26 cycle and as reflected in ROPS line item 45, it is estimated that the Successor Agency will incur \$75,000.00 for the reimbursement of DTSC's costs of oversight.

B. *South Bayfront Site B Remediation and Monitoring (ROPS Items 39, 40, 41, 121)*

- **Item 39: Cox Castle & Nicholson - Legal Services**
- **Item 40: Chevron USA/Union Oil Settlement Agreement & Order**
- **Item 41: EKI – Environmental Engineering Services**
- **Item 121: CalEPA DTSC – Environmental Oversight Agreement**

Background

In early 2004, the former Redevelopment Agency commenced actions to acquire and remediate the properties known collectively as 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 South Bayfront Site A to the south) for redevelopment into a mixed-use endcap to the South Bayfront Site A project discussed above. Given the knowledge gained from the process of studying, investigating, evaluating and remediating South Bayfront Site A, the Redevelopment Agency engaged the firm of Eler & Kalinowski, Inc. (“EKI”) as its environmental engineer for Site B, and entered into a Professional Services Agreement (“PSA”) with EKI on October 6, 2004. In addition, in order to secure regulatory oversight services for the remediation process at Site B, the former Redevelopment Agency also entered into an environmental oversight agreement with DTSC in 2004.

After an extensive process of environmental study, investigation and evaluation, in June 2008 the Redevelopment Agency awarded a contract for soil remediation of hazardous materials contamination at Site B. Soil remediation activities at Site B were conducted in accordance with the Final Feasibility Study/Remedial Action Plan (“FS/RAP”) and Final Remedial Design and Implementation Plan (“RDIP”) prepared by EKI and approved by DTSC. Soil remediation activities at Site B were completed in the fall of 2009 and the Soil Remediation Completion Report was approved by DTSC on June 15, 2010.

The Chevron USA/Union Oil Settlement Agreement & Order

As part of the eminent domain actions filed to acquire four of the five parcels comprising 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, a month after the soil remediation had been completed, in the matter of Emeryville Redevelopment Agency v. Howard F. Robinson and Jeanne C. Robinson, PG&E, Wilson Associates, Chevron Corporation, Union Oil, Sherwin-Williams Company, Mary Lou Adam as Trustee, Christopher D. Adam, Hilary A. Jackson; Bank of America, trustee of Koeckritz Trust, Alameda County Superior Court, Consolidated Case Nos. RG-06-267600, RG-06-267594, RG-07-332012, the Alameda County Superior Court approved an Order On Joint Motion For Good Faith Determination Of Settlement and Settlement Allocations (“Settlement Order”)⁷ approving the settlements with several defendants and approving the allocation of \$22,400,000 in settlement proceeds.

The settlement proceeds covered **known** costs incurred up to that point for soil remediation and the Redevelopment Agency’s legal fees, as well as an estimate of approximately \$9.6 million for future groundwater remediation costs. The Settlement

⁷ 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 \$25.9 million from all defendants for costs incurred for soil remediation, legal fees and future anticipated costs of groundwater remediation at Site B.

Order confirmed the Court's prior approval of the Chevron USA/Union Oil Settlement Agreement, and approved 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 for Site B is an obligation of the former Redevelopment Agency pursuant to the terms of the settlement agreements approved by the Settlement Order. The settlement agreements approved by the Settlement Order constitute an enforceable obligation of the Successor Agency pursuant to Section 34171(d)(1)(D) and 34171(d)(1)(E). This obligation is reflected in ROPS line item 40⁸.

Environmental Engineering Services

Upon completion of the soil remediation, the next phase of remediation related to groundwater contamination commenced. With respect to groundwater remediation, the approved FS/RAP anticipated that the Redevelopment Agency would implement one of two remedial alternatives.

Based on the results of the extensive soil remediation and its favorable impact to groundwater, the Redevelopment Agency and DTSC agreed to pursue the bio-remediation alternative rather than the construction of a containment trench and pumping and treating of contaminated groundwater. In connection with the implementation of groundwater remediation, the Redevelopment Agency and DTSC entered into a new Environmental Oversight Agreement on June 27, 2011, for DTSC to provide regulatory oversight services related to the remediation of groundwater. The Environmental Oversight Agreement with DTSC is an enforceable obligation of the Successor Agency pursuant to Sections 34171(d) (1) (E) and 34171(d) (1) (F), and was previously listed on the ROPS as line item 43.

Thereafter, to advance the bio-remediation remedy, EKI 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"). Based on the favorable results from the pilot study, the RDIP was amended to authorize the bio-remediation of groundwater contamination across Site B.

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 more readily negatively impair indoor air within buildings constructed on the site. In the summer of 2013, EKI implemented ERD to address impacts from PCE, TCE and VC to shallow groundwater. Subsequent groundwater monitoring results have

⁸ A copy of the Chevron USA/Union Oil Settlement Agreement and the Settlement Order are attached as **Appendix D** and **Appendix E**, respectively, to the January 15, 2019 staff report to the Successor Agency regarding consideration of ROPS 19-20, and can be viewed at <https://emeryville.legistar.com/View.ashx?M=F&ID=6964105&GUID=630010D6-9FE3-4F1A-99DC-491DA6A855FC>.

shown that ERD has been very effective at reducing the contaminant levels in shallow groundwater of PCE, TCE 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 initial injections to deeper groundwater on Site B were completed in the fall of 2016.

In the spring of 2017, groundwater monitoring was undertaken of the shallow and deep groundwater zones to document the effectiveness of the fall 2016 ERD injections on contaminant levels in groundwater of PCE, TCE and VC. Based on the data from the spring 2017 sampling activities, it was evident that additional buffer needed to be injected in order to facilitate the further degradation of PCE, TCE and VC. Thus, in late spring 2017, supplemental injections of buffer was implemented. In the fall of 2017, sampling of monitoring wells was undertaken to ascertain the effectiveness of the supplemental injections. Based on the favorable results, a completion report related to remediation of groundwater was submitted to DTSC for approval on March 21, 2018, and approved on April 10, 2019.

As reflected in the completion report and recent Annual Groundwater Monitoring Reports, notwithstanding the effectiveness of the ERD injections to both shallow and deeper groundwater, it is evident that contaminants in groundwater from off-site sources will continue over time to migrate onto and impact the groundwater beneath Site B. Thus, in late 2019 additional injections of ERD were implemented with similar effectiveness. However, unless and until off-site sources of contamination are addressed, there may need to be continued injections of ERD into the groundwater under Site B for the foreseeable future. As noted, one such off-site source is the Corporation Yard site discussed in section III.C. below.

Accordingly, with respect to Site B, in calendar year 2019, EKI undertook activities to evaluate post-injection baseline soil vapor conditions to assess whether long-term injections of ERD into groundwater will be required since the data indicates the primary ongoing source of CVOCs in shallow groundwater are up gradient off-site sources (i.e. the Corporation Yard). The assessment shows that impacts from soil vapor conditions to indoor air of structures built on the site can be adequately and appropriately mitigated with engineering controls (e.g. vapor barriers, passive/active vapor systems) and thereby eliminate the need for more costly on-going ERD injections, provided impacts from off-site sources (i.e. the Corporation Yard) are addressed.

In calendar year 2020, EKI prepared a draft of the Operation and Maintenance Plan (“O&M Plan”) for Site B. The O&M Plan will address the installation of engineering controls, location of groundwater monitoring wells as well as a schedule for on-going groundwater monitoring obligations, and a soil management plan governing any future on-site excavation activities associated with site redevelopment on Site B. The draft of the O&M Plan does not anticipate the placement of wells for on-going injection of ERD because impacts from off-site sources (i.e. the Corporation Yard) are anticipated to be sufficiently controlled pursuant to remedial activities at the Corporation Yard which commenced in 2024. However, on June 30, 2023, DTSC requested preparation of an

injection workplan for additional supplemental injection activities to complete the dichlorination process past VC in shallow groundwater based on previously submitted groundwater monitoring reports which noted the resurgence of contaminant levels in groundwater.

EKI prepared a response to DTSC on behalf of the Successor Agency suggesting that the supplemental ERD injections be delayed until remediation activities at the Corporation Yard have been implemented and there has been an opportunity to assess its impact to off-site groundwater. DTSC has yet to respond to the Successor Agency's request. Yet, for budgeting purposes for the ROPS 25-26 period, it is assumed that an additional supplemental ERD injection event will be conducted along the upgradient eastern and southern property boundaries of Site B.

The PSA with EKI is an enforceable obligation of the Successor Agency pursuant to Sections 34171(d)(1)(E) and 34171(d)(1)(F). For the ROPS 25-26 cycle and as reflected in ROPS line item 41, it is estimated that the Successor Agency will incur \$1,145,000.00 for the environmental engineering services provided by EKI. These services will include the second semi-annual groundwater monitoring event and report to DTSC for 2025, the first such semi-annual event and report for 2026, general project management, and the supplemental ERD injections in the shallow groundwater and report to DTSC which comprises approximately \$892,000 of the anticipated expense.

Legal Services

ROPS line item 39, a Professional Services Agreement with the firm of Cox, Castle & Nicholson and an enforceable obligation of the Successor Agency pursuant to Section 34171(d)(1)(F), may be utilized by the Successor Agency to fund the costs of legal services incurred in reviewing the O&M Plan, preparing and negotiating the terms of an O&M Agreement, if required, and LUC with DTSC, obtaining the confirmation of the immunity under the Polanco Act from DTSC discussed below, and related environmental matters impacting Site B. For the ROPS 25-26 cycle, and as reflected in ROPS line item 39, it is estimated that the Successor Agency will incur \$50,000.00 for the services provided by Cox, Castle & Nicholson.

Environmental Regulatory Oversight

As noted earlier, an environmental oversight agreement with DTSC was executed in 2011 governing the groundwater remediation process and was amended several times over the years. The oversight agreement with DTSC constitutes an enforceable obligation of the Successor Agency pursuant to Section 34171(d)(1)(E) and Section 34171(d)(1)(F) and was listed on each ROPS since the inception of the dissolution process. However, the term of the oversight agreement inadvertently expired in 2018 before an extension of the term could be prepared and executed. Accordingly, as part of the ROPS 18-19 approval process, the DOF denied funding for the oversight agreement because the term had expired, and no extension of the term had been approved and executed.

DTSC's services are necessary for the Successor Agency to complete the remediation of groundwater at Site B, which is an enforceable obligation of the Successor Agency pursuant to the terms of the settlement agreements related to Site B approved by the Settlement Order of the Alameda County Superior Court on July 23, 2010. Therefore, pursuant to authority provided by Section 34177.3(a), on January 15, 2019, the Successor Agency approved and authorized the execution of an Environmental Oversight Agreement with DTSC to provide regulatory oversight of groundwater remediation and monitoring at Site B. The Environmental Oversight Agreement with DTSC is an enforceable obligation of the Successor Agency pursuant to Section 34171(d) (1) (F), and provides for the reimbursement of DTSC's costs of oversight and review of the ongoing groundwater monitoring.

For the ROPS 25-26 cycle and as reflected in ROPS line item 121, it is estimated that the Successor Agency will incur \$100,000.00 for DTSC oversight.

Once the Successor Agency completes the groundwater remediation efforts required by the FS/RAP and RDIP and the Settlement Order, it will obtain immunity from future regulatory actions pursuant to the Polanco Redevelopment Act, which immunity can be transferred to future owners of Site B. Further, once DTSC approves the O&M Plan, O&M Agreement (if required), Land Use Covenant (LUC) that will place restrictions on use of groundwater beneath Site B, as well as future uses of Site B, and confirms the application of the immunity pursuant to the Polanco Redevelopment Act, the Site B parcels are to be transferred to the City of Emeryville for future development pursuant to the terms of the approved Long Range Property Management Plan (LRPMP).

C. Corporation Yard Remediation/Cost Recovery (ROPS Items 49, 122, 126, 127)

- **Item 49: Cox Castle & Nicholson – Legal Services**
- **Item 122: DTSC – Enforcement & Oversight of Imminent and/or Substantial Endangerment Order and Remedial Action Order; ICS – Soil Remediation Contractor**
- **Item 126: EKI – Environmental Engineering Services**
- **Item 127: WSL Settlement Agreement & Order**

Background

The former Redevelopment Agency acquired the property located at 5679 Horton Street, Emeryville, in July 1999 from the Lozick Trust in order to facilitate the connection of Horton Street with former Landregan Street ("Horton Street Extension Project"), as called out in the circulation element of the City's General Plan. A portion of the property was dedicated by the Redevelopment Agency to the City for the Horton Street Extension Project, and the remainder, which includes a large warehouse structure and surface parking, was

utilized by the City as a temporary location for the Public Works Department's corporation yard (hereinafter, the "Corporation Yard")⁹.

The City and Redevelopment Agency subsequently entered into a Purchase and Sale Agreement dated June 4, 2009 ("Purchase Agreement") regarding the transfer of the Corporation Yard, which was amended on February 25, 2011. Thereafter, title to the Corporation Yard was transferred to the City on March 4, 2011.

The Dissolution Act was enacted on June 28, 2011, and Health and Safety Code Section 34167.5 obligated the State Controller to review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between a city or county, or city and county that created a redevelopment agency, and the redevelopment agency. If an asset transfer did occur during that time period, and the City was not contractually committed to a third party for the expenditure or encumbrance of those assets, then to the extent not prohibited by state or federal law, the Controller was required to order the available assets to be returned to the Successor Agency. On April 20, 2012, the State Controller did in fact issue such an order to the City of Emeryville affecting the Corporation Yard site.

The Corporation Yard site, which had been transferred by the Agency to the City on March 4, 2011, had not been approved as a "governmental purpose" asset to be transferred to the City in accordance with Section 34181. Accordingly, the Corporation Yard was returned to the Successor Agency, as required by the State Controller's order.¹⁰

As part of the ROPS 19-20 process, line item 122 (Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order) ("ISE Order") and 123 ("EKI Contract") were denied by DOF letter dated May 17, 2019. The Successor Agency contested the denial of line item 123 ("EKI Contract") as part of the ROPS 19-20 meet and confer process. The Successor Agency did not contest the denial of the ISE Order on line item 122 as an enforceable obligation because DTSC had not yet finalized and issued the ISE Order. Thereafter, on May 21, 2019, the Successor Agency filed a Petition For Writ of Mandate ("Petition") with the Superior Court in Sacramento County challenging DOF's decision to deny line item 123 ("EKI Contract") on ROPS 19-20, in Successor Agency To The Redevelopment Agency of the City of Emeryville v California Department of Finance, Keely Bosler, Case No. 34-2019-8000149. On February 27, 2020, the Sacramento County Superior Court granted the Petition and upheld the Successor Agency's position that the EKI Contract for environmental engineering services at the Corporation Yard is an enforceable obligation pursuant to Health and Safety Code

⁹ Note that the Corporation Yard is also referred to as the Former Marchant Whitney (FMW) Site, in reference to the prior owners who are believed to be the main contributors to the contamination at the Corporation Yard (Marchant Calculating Machine Company and Whitney Research Tool Co.).

¹⁰ Also worth noting that the Corporation Yard is not listed in, and thus not governed by, the LRPMP. Further, as provided by Section 34191.3 (b), the time in which to have the Department of Finance consider and approve an amendment to the LRPMP expired as of July 1, 2016. Accordingly, Sections 34177(e) and 34181(a) are the operative provisions with respect to disposition of the Corporation Yard.

34171(d)(1)(E) and (F). Although DOF initially appealed the decision to the California Court of Appeal, during the pendency of the appeal DTSC issued the ISE Order to the Successor Agency to remediate the Corporation Yard site, and thus the Successor Agency and DOF entered into a Settlement Agreement in the aforementioned litigation, whereby DOF dismissed the appeal and approved Line Items 122 (ISE Order), 123 (EKI Contract), and 126 (EKI Contract) on ROPS 21-22 as enforceable obligations related to the ISE Order (Line Item 122) discussed below.

Imminent and Substantial Endangerment Order and Remedial Action Order

On August 13, 2020, DTSC issued its ISE Order to the Successor Agency to remediate hazardous substances contamination in soil and groundwater at the Corporation Yard. The ISE Order is an enforceable obligation pursuant to Health and Safety Code 34171(d) (1) (C) and therefore is included in line item 122 of ROPS 25-26. Furthermore, pursuant to a settlement agreement dated August 3, 2021, between the Successor Agency and DOF in Successor Agency To The Redevelopment Agency of the City of Emeryville v California Department of Finance, Keely Bosler, Case No. 34-2019-8000149, DOF agreed that the ISE Order constituted an enforceable obligation¹¹. Therefore, as provided by Section 34177.3 (b), the Successor Agency is authorized to enter into contracts in order to implement the terms of the ISE Order, which itself is an enforceable obligation pursuant to 34171 (d)(1)(C). Accordingly, the contract with EKI for environmental engineering services (Line Item 126) required to implement the ISE Order is an enforceable obligation pursuant to Health and Safety Code 34177.3 (b).

DTSC Regulatory Oversight

For the ROPS 25-26 cycle and as reflected in ROPS line item 122, it is estimated that the Successor Agency will incur \$300,000.00 in costs for DTSC oversight for implementation of the ISE Order. Note that ROPS line item 122 reflects a request for \$5,000,000, which includes \$300,000 of anticipated expenses for DTSC oversight services plus \$4,700,000 for ICS remediation services discussed below.

Environmental Engineering Services

As reflected in line item 126, effective July 1, 2021, the Successor Agency and EKI entered into a contract in the initial amount of \$2.71 million for the following services: an initial scoping meeting with DTSC and related tasks, general environmental project management services, preparation and submittal of a groundwater and subsurface vapor monitoring plan, updating and resubmitting the Feasibility Study/Remedial Action Plan

¹¹ For further information about Successor Agency To The Redevelopment Agency of the City of Emeryville v California Department of Finance, Keely Bosler, Case No. 34-2019-8000149, and further analysis as to the Successor Agency's obligation to remediate the Corporation Yard, please see the January 19, 2021 staff report to the Successor Agency regarding consideration of the ROPS 21-22, at pp. 13-22, which can be viewed here: <https://emeryville.legistar.com/View.ashx?M=F&ID=9040007&GUID=51F1E01A-A22C-48FD-91AD-68B532057175>, and such analysis is incorporated by reference.

(“FS/RAP”) and the Initial Study/Mitigated Negative Declaration (“IS/MND”) required pursuant to the California Environmental Quality Act (“CEQA”), and updating and re-submitting the Multi-Phase Extraction (“MPE”) Pilot Tests Work Plan.

In anticipation of approval of the FS/RAP, on January 17, 2023, the Successor Agency approved a contract amendment with EKI for engineering services to implement the FS/RAP over the next five (5) successive ROPS periods from 2023/2024 through 2027/2028, for a total sum of \$40,345,000.

EKI’s contract covering ROPS 2023/2024 through ROPS 2027/2028 anticipated the following expenditures as follows:

- ROPS 2023/2024 – \$4,485,000 - finalize FS/RAP; initiate site soil remediation;
- ROPS 2024/2025 - \$11,700,000 for installation and implementation of the thermal remediation;
- ROPS 2025/2026 - \$11,700,000 for implementation of the thermal remediation;
- ROPS 2026/2027 - \$10,935,000 for implementation and decommissioning of the thermal remediation, groundwater polishing, installation and startup of multi-phase extraction (MPE) system, and groundwater monitoring and reporting;
- ROPS 2027/2028 - \$1,525,000 for groundwater polishing, operation of the MPE system, and groundwater monitoring and reporting.

In the ROPS 2023/24 cycle, \$4,485,000 was authorized for EKI’s engineering services to implement the FS/RAP. Because of delays to commencement of building demolition and soil excavation by the remediation contractor, a portion of the \$4,485,000 approved and authorized for EKI’s engineering services to implement the FS/RAP in the ROPS 2023/2024 cycle was not expended because certain services were not performed. Nevertheless, those services need to be performed eventually and were anticipated to be undertaken during the current ROPS 2024/2025 cycle. Yet, the lag in time for completion of the demolition and soil excavation similarly results in a delay in full implementation of the next stage of remediation involving thermal remediation. Accordingly, the \$11,700,000 estimated for the ROPS 2024/2025 cycle as noted above was decreased to a total of \$9,400,000.00.

As noted, in the current ROPS 2024/2025 cycle, \$9,400,000 was approved and authorized for EKI’s engineering services to implement the FS/RAP. However, again, because of the knock-on effect caused by delays in other aspects of the site cleanup, it is anticipated that only approximately \$5,500,000 of the amount authorized will be expended. At present, soil excavation, soil disposal and backfill across the entire site to a depth of five feet (5’), as discussed below, has been completed. However, there remains the need to conduct the focused excavation of the primary source area to a depth of ten feet (10”) within an air controlled tented structure. The permit from the Bay Area Air Quality Management District (BAAQMD) was just recently received allowing this final portion of the soil remediation to commence with an anticipated completion date of May/June 2025. In the interim, preparatory work for the thermal remediation continues and it is anticipated full implementation of thermal remediation will commence during the

ROPS 2025/26 cycle. Accordingly, the \$11,700,000 estimated for the ROPS 2025/2026 cycle as noted above has been decreased to \$10,500,000 and is reflected on line item 126 of the ROPS.

ICS - Remediation Contractor

On May 23, 2023, DTSC provided notice that it had approved the FS/RAP, which allowed for commencement of implementation of the approved remedy during the current ROPS 2023/24 cycle. The preferred remedy involves three (3) main remedial measures conducted over an initial five (5) year period:

- building demolition and soil excavation;
- in-situ thermal remediation; and
- multi-phase extraction (MPE).

On June 6, 2023, the Successor Agency approved the bid package for the first remedial measure involving building demolition and soil excavation, and authorized the solicitation of public bids for the demolition and excavation work from a list of pre-qualified contractors. On October 17, 2023, the Successor Agency approved and authorized a contract with the firm of Innovative Construction Solutions (“ICS”) as the lowest responsible bidder in the amount of \$7,523,450, with authorization for the Executive Director to approve up to an additional \$1,280,000 to cover the cost of anticipated alternative work that was part of the public bid package.

The soil remediation work conducted by ICS is occurring as a result of the ISE Order identified on line item 122, and thus sums to be paid to ICS are an enforceable obligation pursuant to Health and Safety Code 34177.3 (b). Sums paid to ICS as the remediation contractor are reflected as a component of ROPS line item 122.

In 2024, ICS completed work to demolish the existing building on the site, and thereafter excavate soil across the entire site to a depth of 5 feet below ground surface (bgs), off-haul the soil for disposal at a licensed landfill and then clean fill imported. The demolition work, which was delayed several weeks due to the presence of fledgling birds, required close coordination with PG&E disconnecting gas to the building, with EBMUD regarding removal and replacement of water lines that service the buildings to the north of the Corporation Yard, as well as UPRR due to proximity of the demolition and excavation activities adjacent to the main rail line.

As of the preparation of this report, ICS still needs to excavate an area encompassing the main contaminate source to a depth of ten feet (10’) within an air controlled-ventilated tent structure and permits from the BAAQMD were just recently received. Accordingly, it is anticipated that the remainder of ICS’ work will be completed by the end of the current ROPS 2024/25 cycle. For the ROPS 2025/2026 cycle, it is anticipated that \$4,700,000 will need to be authorized on line item 122 to close out the contract with ICS for invoices related to the cost of alternative work that was in fact authorized as part of the contract award as well as anticipated change orders.

As noted below, funding for line item 122 will come from the \$33 million in settlement proceeds secured from the WSL Defendants (noted on line item 127) and the \$2.5 million SB 170 Grant Funding secured by the City of Emeryville (previously noted on line item 128). The Successor Agency has utilized the full amount of the SB 170 Grant Funding to pay for ICS' invoices to date, therefore, all remaining expenses for ICS will be paid for from the WSL Settlement Proceeds.

Legal Services¹² - Cost Recovery Litigation

During calendar year 2015 and 2016, potential responsible parties ("PRPs") were notified of the existence of the contamination at the Corporation Yard and provided the opportunity to undertake the cleanup themselves. Notices were sent by the City and Successor Agency to PRPs pursuant to authority contained in the Gatto Act (AB 440) and the Polanco Redevelopment Act. None of the PRPs responded to the City and Successor Agency's notice with a stated desire to assume the responsibility to clean up the Site. Accordingly, the Successor Agency and City Council authorized the filing of a complaint¹³ against the PRPs to obtain an order requiring said parties to implement the site cleanup and to also recover costs of remediation, which includes all the investigative costs and attorney fees.

ROPS line item 49 provided funding to the Successor Agency's legal counsel (Cox Castle & Nicholson) to pursue this action to recover costs expended. Following the approval of the WSL Settlement Agreement, discussed below, there remained one remaining defendant, Hanson Building Materials ("Hanson"). The trial regarding the Successor Agency's claims against Hanson commenced October 10, 2023 and concluded on November 7, 2023 before Judge Orrick. Post trial briefing was submitted to the trial court judge on December 8, 2023, and a decision was issued on August 27, 2024. In sum, while the Court agreed with the Successor Agency that Hanson's subsidiary predecessor was the primary source of the contamination, it also concluded that, due in part to the subsidiary's bankruptcy, there was not sufficient evidence of inequitable conduct by Hanson to impose liability on Hanson for the subsidiary/predecessor's contamination. The Successor Agency declined to appeal the decision.

For purposes of the ROPS 25-26 cycle and as reflected in ROPS line item 49, the Successor Agency is anticipating the need for the legal services of CCN to review the annual report to the WSL Defendants and their insurance companies about the expenditure of the WSL Settlement Proceeds on the remediation work at the Corporation

¹² Cox Castle and Nicholson also provides legal services related to the implementation of the ISE Order, and those costs are captured in line item 39.

¹³ A copy of the Second Amended Complaint filed in the matter of *Successor Agency To The Former Emeryville Redevelopment Agency, City of Emeryville v Swagelok Company, an Ohio corporation; Whitney Research Tool Co., a dissolved California corporation; Hanson Building Materials Limited, a British Corporation; and Catherine Lennon Lozick, an individual residing in Ohio*; United States District Court, Northern District of California, Case No. 17-cv-00308-WHO, is attached as Appendix S to the January 15, 2019 staff report to the Successor Agency regarding consideration of ROPS 19-20, and can be viewed at <https://emeryville.legistar.com/View.ashx?M=F&ID=6964105&GUID=630010D6-9FE3-4F1A-99DC-491DA6A855FC>.

Yard site. Accordingly, it is estimated that the Successor Agency will incur no more than \$50,000.00 during the ROPS 25-26 cycle to prepare and review this annual report required by the WSL Settlement Agreement.

WSL Settlement Agreement & Order

In connection with the litigation noted above, the Successor Agency and a sub-set of the defendants, Swagelok Company, Whitney Research Tool Co., Catherine Lennon Lozick and their insurance carriers (the “WSL Defendants”) entered into a settlement agreement dated July 6, 2022 (“WSL Settlement Agreement”), which provides for payment of \$33 million by the WSL Defendants to the Successor Agency in exchange for the Successor Agency remediating the Corporation Yard in accordance with the ISE Order.

The WSL Settlement Agreement with the WSL Defendants was approved by the Oversight Board on July 25, 2022, pursuant to Resolution No. OB-2022-11, which action of the Oversight Board was approved by the State of California Department of Finance by letter dated August 9, 2022. Thereafter, the WSL Settlement Agreement was approved by the United States District Court, Northern District of California (“District Court”), on November 15, 2022, by Order Granting The Motion For Determination Of Good Faith Settlement And Contribution Protection in the matter of Successor Agency To The Former Emeryville Redevelopment Agency, City of Emeryville v Swagelok Company, an Ohio corporation; Whitney Research Tool Co., a dissolved California corporation; Hanson Building Materials Limited, a British Corporation; and Catherine Lennon Lozick, an individual residing in Ohio; United States District Court, Northern District of California, Case No. 17-cv-00308-WHO. Hanson did not appeal the order. Accordingly, the WSL Settlement Agreement with the WSL Defendants is final and reflected as line item 127.

WSL Settlement Proceeds

The \$33 million dollar settlement payment (“WSL Settlement Proceeds”) has been received by the Successor Agency and, in keeping with the WSL Settlement Agreement, placed in a separate account to be used exclusively for costs of remediating the Corporation Yard. Unlike other funds in the Successor Agency’s possession, such as the Reserve Balance of unexpended RPTTF, revenues from the Bay Street Site A Note, or the Sherwin-Williams Reimbursement, the WSL Settlement Proceeds cannot be used to fund enforceable obligations of the Successor Agency other than the expenses of DTSC (line item 122), ICS (line item 122), and EKI (line item 126) related to the remediation of the Corporation Yard.

SB 170 Grant Funding

In 2021, SB 170 related to the State Budget was adopted by the State Legislature, and it included an allocation of \$2,500,000 from DTSC to the City of Emeryville for remediation of the Corporation Yard site. Accordingly, on January 17, 2023, the City and Successor Agency approved a grant agreement (“SB 170 Grant Funding Agreement”) which provides that in exchange for the Successor Agency’s agreement to remediate the

Corporation Yard site in accordance with the ISE Order issued by DTSC, the City will provide the Successor Agency with the \$2,500,000 of grant funding. The SB 170 Grant Funding Agreement was previously reflected on line item 128. These funds were approved and authorized to be used to pay for the services of ICS, the remedial contractor, reflected on line item 122. This grant funding has been fully expended in the current ROPS 2024-2025 cycle for payment of the services of ICS; accordingly, line item 128 has been retired as part of the ROPS 2025-2026 cycle.

Overall Project Funding

As of June 30, 2024, i.e. the end of the ROPS 2023-2024 cycle, after accounting for actual expenditures of DTSC and ICS (line item 122) and EKI (line item 126), the available balance of WSL Settlement Proceeds was \$29,376,740. By the end of the current ROPS 2024-2025 cycle (i.e. June 30, 2025), based on authorized expenditures for DTSC, ICS and EKI, the available balance of WSL Settlement Proceeds is \$11,873,290\$. However, it is anticipated that EKI will not expend the full amount of the \$9,400,000 authorized, but rather approximately only \$5.5 million. Accordingly, based on anticipated expenditures during the current ROPS 2024-2025 cycle, the available balance of WSL Settlement Proceeds for the ROPS 2025-2026 cycle is approximately \$15,773,290\$. During the ROPS 2025-2026 cycle, it is estimated that a total of \$15,500,000 will be drawn on the WSL Settlement Proceeds as follows: DTSC - \$300,000; ICS - \$4,700,000; EKI - \$10,500,000.

Accordingly, the expenditures anticipated for ROPS 25-26 for the services of DTSC (line item 122), ICS (line item 122), and EKI (line item 126) related to the remediation of the corporation yard can be fully funded by the WSL Settlement Proceeds.

Report of Estimated Available Cash Balances – as of June 30, 2023

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

The report shows that as of June 30, 2023, there are no bond proceeds being held by the Successor Agency.

The report also shows that as of June 30, 2023, the Reserve Balance and Other Funds are \$0.00 and \$1,442,573, 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 (e.g. Bay Street Site A Note Repayment; Sherwin-Williams Site A Reimbursement; interest income).

Note that all available Reserve Balance and Other Funds must be allocated to enforceable obligations before requesting additional RPTTF funds.

ROPS 25-26 Summary

The ROPS 25-26 has a cover sheet called “ROPS 25-26 Summary” which details the amounts requested by the Successor Agency for July 1, 2025 through June 30, 2026. This summary states a request for DOF to approve total obligations of \$38,399,035, with \$10,554,663 to be funded from Reserve Balance, \$16,942,573 to be funded from Other Funds (which includes the WSL Settlement Proceeds), and \$10,901,799 from new Redevelopment Property Tax Trust Fund (RPTTF) money. Finally, note that RPTTF received by the Successor Agency during the ROPS 25-26 cycle will be reduced by the amount of the ROPS 22-23 prior period adjustment (PPA) reflecting the difference between actual payments and estimated obligations in the ROPS 22-23 period. The PPA for the ROPS 2022-23 period is \$261,092 and thus the amount of RPTTF received by the Successor Agency will be reduced by that amount.

STAFF COMMUNICATION WITH THE PUBLIC

None.

CONFLICT OF INTEREST

None.

CONCLUSION

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 Administrative Budget and Recognized Obligation Payment Schedule of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency for the period of July 1, 2025 through June 30, 2026 (ROPS 25-26).

PREPARED BY: John Kennedy, General Counsel

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE
EMERYVILLE REDEVELOPMENT AGENCY:**



Adam Politzer, Interim Executive Director

ATTACHMENTS

- Attachment A – Map of South Bayfront Site A, Site B and Corporation Yard
- Draft Resolution Approving Administrative Budget 25-26 and ROPS 25-26
 - Exhibit A – Administrative Budget 25-26
 - Exhibit B – Recognized Obligation Payment Schedule July 1, 2025 through June 30, 2026 (ROPS 25-26)