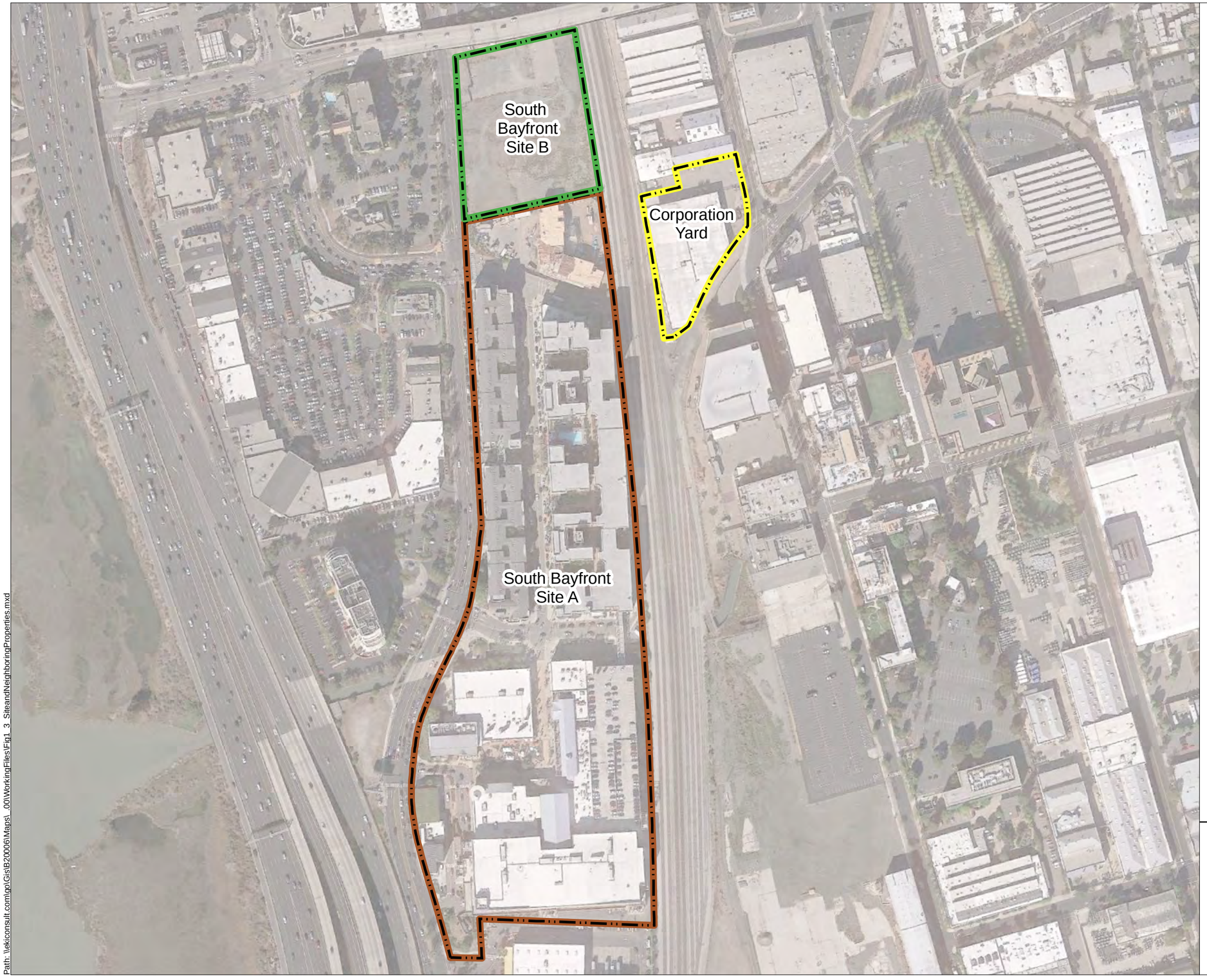
APPENDIX A



N

0 250 500

(Approximate Scale in Feet)

Legend

- Corporation Yard Property Boundary
- South Bayfront Site B Property Boundary
- South Bayfront Site A Property Boundary

Notes

1. All property boundaries are approximate.

Source

Google Earth Pro, Date of Imagery, October 2015.

Erler & Kalinowski, Inc.

Successor Agency Properties

Former Marchant/Whitney Site
Emeryville, CA
December 2018
EKI B20006.00

Figure 1

Path: \\ekiconsult.com\go\GIs\B20006\Maps_00\WorkingFiles\Fig1_3_SiteandNeighboringProperties.mxd

APPENDIX B

COX, CASTLE & NICHOLSON LLP
ROBERT P. DOTY (STATE BAR NO. 148069)
STUART I. BLOCK (STATE BAR NO. 160688)
505 Montgomery Street, Suite 1550
San Francisco, California 94111
Telephone: (415) 296-9966
Facsimile: (415) 397-1095

THE CITY OF EMERYVILLE and EMERYVILLE REDEVELOPMENT AGENCY
MICHAEL G. BIDDLE (STATE BAR NO. 139223)
City Attorney/Agency General Counsel
2200 Powell Street, 12th Floor
Emeryville, CA 94608
Telephone: (510) 596-4381

Attorneys for Plaintiffs the CITY OF EMERYVILLE and the EMERYVILLE REDEVELOPMENT AGENCY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CITY OF EMERYVILLE and the EMERYVILLE REDEVELOPMENT AGENCY,

Plaintiffs,

vs.

ELEMENTIS PIGMENTS, INC., a Delware corporation; THE SHERWIN-WILLIAMS COMPANY, an Ohio corporation; PFIZER, INC., a Delaware corporation; A & J TRUCKING COMPANY, INC., a dissolved California corporation; BAKER HUGHES, INC., a Delaware corporation; ARTHUR M. SEPULVEDA and JOSEPHINE SEPULVEDA, individually, and as TRUSTEES OF THE SEPULVEDA FAMILY LIVING TRUST; and the SEPULVEDA FAMILY LIVING TRUST,

Defendants.

Case No. C 99-03719 WHA

SETTLEMENT AGREEMENT AND [redacted] ORDER

TABLE OF CONTENTS

I. PARTIES

The parties to this Settlement Agreement are the City of Emeryville, the Emeryville Redevelopment Agency, (collectively, "Emeryville"), Sherwin-Williams Company ("Sherwin-Williams"), Baker Hughes, Incorporated (which for purposes of this Settlement Agreement shall include Develco, Inc., and Baker Hughes Oilfield Operations, Inc., all collectively referred to herein as "Baker Hughes"), A&J Trucking Company, Inc., Arthur M. Sepulveda, (the estate of) Josephine Sepulveda, the Sepulvedas as Trustees of the Sepulveda Family Living Trust, and the Sepulveda Family Living Trust (A&J Trucking and the various Sepulveda defendants are collectively referred to herein as "Sepulveda"). For purposes of this Agreement, Sherwin-Williams, Baker Hughes, and Sepulveda may sometimes be collectively referred to as the "Settling Defendants," and Emeryville and the Settling Defendants may sometimes be collectively referred to as the "Parties." Each Party has indicated its acceptance and approval of the terms and conditions hereof by having a duly authorized representative execute this document below.

II. RECITALS

WHEREAS, Emeryville passed various resolutions invoking its powers of eminent domain and subsequently acquired through condemnation and purchase approximately 15 acres of real property generally located on the east side of Shellmound street in Emeryville, California, and commonly referred to as the Sepulveda, McKinley, Elementis/Harcros, and Old Shellmound Street Right of Way parcels (hereafter "the Site," a map of which is attached to this Settlement Agreement as Exhibit A, but "Site" as used herein does not include the portion of the Elementis property designated on Exhibit A as "Covered by Myers RAP," the Warburton Property depicted on Exhibit A, or the portion of the Old Shellmound Street Right of Way south of Temescal Creek on Exhibit A);

WHEREAS, the Site is the subject of an Oversight and Consultation Agreement entered into on July 20, 1998 by Emeryville and the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC");

WHEREAS, Emeryville has, pursuant to the Oversight and Consultation Agreement among other things, investigated the Site for the presence of hazardous substances and contaminants,

evaluated the risk posed to human health and the environment by the hazardous substances and contaminants at the Site, and planned for and implemented a cleanup of the hazardous substances and contaminants at the Site;

WHEREAS, Emeryville alleges that it has incurred in excess of $12 million of costs and damages to date responding to the release of hazardous substances and contaminants at the Site, and alleges that it will incur additional response costs and damages in the future on account of the hazardous substances and contaminants;

WHEREAS, the property owned by Elementis Pigments was the subject of an eminent domain trial in Alameda County Superior Court, which trial resulted in a judgment awarding Elementis $12,493,283 as just compensation for that property in a cleaned (i.e., the hazardous substances and contaminants addressed in a fashion acceptable to appropriate regulatory agencies such that the property could be redeveloped into a mixed use development) and cleared condition (i.e., with improvements demolished and removed from the property);

WHEREAS, the Alameda County Superior Court stayed enforcement of $4,729,086 of that judgment to account for the costs incurred by Emeryville to put the Elementis/Harcros property in a cleaned condition;

WHEREAS, Emeryville filed this action against the Settling Defendants, Elementis Pigments, and Pfizer, Inc. to recover the cleanup costs and damages incurred and to be incurred as a result of the hazardous substances and contaminants at the Site (hereinafter the "Action");

WHEREAS, Emeryville alleges in the Action that the Settling Defendants as well as Elementis Pigments and Pfizer, Inc. are responsible for the hazardous substances and contaminants released at and near the Site and the costs of responding thereto;

WHEREAS, the Settling Defendants, Elementis Pigments and Pfizer, Inc. generally have denied Emeryville's allegations and certain of them have alleged, among other things, that Emeryville should bear the cleanup costs;

WHEREAS, certain of the Parties have filed cross-claims and/or counterclaims against other parties in this action;

WHEREAS, the Parties have negotiated at arms length and in good faith before the Honorable Eugene Lynch (U.S.D.C. N.D. Cal. Retired) and have reached a fair and reasonable compromise that is in the public interest and minimizes further costly and potentially protracted litigation; and

WHEREAS, the Parties anticipate that the Court will review and approve this Settlement Agreement and enter the Order contained in Section XII below or a substantially similar Order;

NOW, THEREFORE, in exchange for the promises contained herein and other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

III. JURISDICTION

The Parties agree that the Court has now, and shall specifically retain, jurisdiction over the Parties and jurisdiction over the subject matter of this Action pursuant to Section 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9613(f), and 28 U.S.C. §§ 1331, 1367(a). For purposes of approval and enforcement of this Settlement Agreement, the Parties waive any and all objections and defenses they may have to the jurisdiction of the Court or to venue in this District. The Parties further agree that the Court may issue such further orders as may be necessary or appropriate to construe, implement, or enforce the terms of this Settlement Agreement. The Parties further agree that in the event there is a dispute over the terms of this Settlement Agreement which the disputing Parties cannot resolve among themselves, such dispute shall be heard and resolved by the Court. The Parties agree that the prevailing party in such dispute before the Court shall be entitled to recover reasonable attorneys' fees, disbursements, and court costs.

IV. PARTIES BOUND

This Settlement Agreement is binding upon and inures to the benefit of Emeryville (and its successors, successors to the Site, assigns, and designees) and the Settling Defendants (and their successors, assigns, and designees).

V. SETTLEMENT PAYMENTS

Subject to and consistent with the terms and provisions contained herein, the Settling Defendants shall pay Emeryville the following sums: Sherwin Williams - $6,500,000, Baker Hughes - $350,000, Sepulveda - $250,000 (each sum being a "Settlement Payment" and the sums collectively

being referred to as the "Settlement Payments"). Each Defendant's obligation to make its Settlement Payment pursuant to the terms and provisions contained herein shall become effective upon its execution of this Settlement Agreement. No Settling Defendant shall be liable for any Settlement Payment of another Settling Defendant.

Within fifteen business days of executing this Settlement Agreement each Settling Defendant other than Sepulveda shall deposit its Settlement Payment into an interest-bearing escrow account at the Bank of San Francisco, Corporate Escrow Services, 550 Montgomery Street, San Francisco, California ("Escrow Agent"). The deposit shall be in the form of a check payable to the Bank of San Francisco and shall be accompanied by a Letter of Escrow Instructions substantially in the form attached hereto as Exhibit B. Sepulveda shall deposit $125,000 with the Escrow Agent within fifteen business days of executing this Settlement Agreement and shall deposit the remaining $125,000 within 180 days of executing this Settlement Agreement. The Settlement Payments, and/or any of them individually, as well as any accrued interest (net of escrow fees) shall be released to Emeryville upon presentation to the Escrow Agent of either of the following: (1) a signed Order of the Court substantially in the form found in Section XII below, or (2) a letter signed by authorized representatives of the Settling Defendant(s) associated with the Settlement Payment(s) to be released directing the Escrow Agent to release the Settlement Payment(s) and any accrued interest (net of escrow fees).

Subject to the terms of Section VIII, in the event that the Settlement Agreement is not approved by the Court as contemplated herein, the funds paid into the escrow accounts, as well as any accrued interest, shall be released to the Settling Defendant that paid the funds into the escrow accounts upon presentation to the Escrow Agent of a letter signed by an authorized representative of the Settling Defendant directing the Escrow Agent to release the Settlement Payment and any accrued interest to the Settling Defendant. Emeryville shall be responsible for payment of the escrow fees.

The Parties agree to execute or cause to be executed any documents the Escrow Agent may reasonably require to be executed and otherwise agree to cooperate to satisfy any reasonable requirements imposed by the Escrow Agent.

VI. ONGOING GROUNDWATER RESPONSE ACTION

The Parties enter into this Agreement understanding, among other things, (1) that groundwater at and adjacent to the west side of the Site may be contaminated with various hazardous substances (such contamination being described in the DTSC-approved Feasibility Study and Final Remedial Action Plan among other documents) and (2) that further Response actions (as that term is defined in Section 101(25) of CERCLA) in connection with alleged groundwater contamination may be required as discussed in the DTSC-approved Feasibility Study and Final Remedial Action Plan or in the Soil Excavation Report (dated March 2000) or the Environmental Risk Management Plan (dated July 2000).

Subject to the provisions of Section VIII, the Parties agree as follows with respect to the costs to be incurred subsequent to the execution of this Settlement Agreement in connection with ongoing groundwater Response actions arising from groundwater at, on, under, or emanating from the Site: Emeryville will pay for the first $200,000 of the groundwater monitoring program required by the Final Remedial Action Plan. To the extent that the cost of the groundwater monitoring program and/or other Response actions associated with groundwater contamination at or emanating from the Site exceed $200,000, the next one million three hundred fourteen thousand dollars ($1,314,000) of such costs shall be born equally by Emeryville and Sherwin-Williams without prejudice to either Emeryville's or Sherwin-Williams' right to seek to recover any and all such costs from any entity or entities not party to this Agreement. To the extent such costs exceed one million five hundred fourteen thousand dollars ($1,514,000, i.e., the initial $200,000 plus the $1,314,000), such costs shall be born 95% by Sherwin-Williams and 5% by Emeryville without prejudice to either Emeryville's or Sherwin-Williams' right to seek to recover any and all such costs from any entity or entities not party to this Agreement. In calculating such costs, Emeryville's and Sherwin-Williams' expenses for their own employees, administration, overhead, and attorneys shall be disregarded.

Emeryville and Sherwin-Williams agree to cooperate with one another regarding the implementation of any groundwater Response actions described in the paragraph above, by providing one another: (1) copies of data within 14 day of its receipt, (2) an opportunity to participate in meetings or discussions with regulatory agencies regarding work proposed to be conducted, (3) an

opportunity to be present and monitor any work to be conducted, and (4) an opportunity to comment on any proposals, draft work plans, remedial recommendations or other draft technical reports prior to their submission to regulatory agencies.

At the point when it becomes reasonably likely that the groundwater Response costs described above will exceed $1,514,000, Sherwin-Williams shall have the right, but not the obligation, to assume responsibility for the management, oversight, implementation and performance of further groundwater Response actions. Sherwin-Williams' assumption of responsibility for the management, oversight, implementation and performance of further groundwater Response actions shall not affect the Parties' agreement for the sharing of costs. Emeryville and Sherwin-Williams agree to use best efforts to reach agreement by consensus on groundwater Response issues. If they have any disagreements regarding groundwater Response issues, they shall use their best efforts to resolve those disagreements prior to discussing their respective positions with the DTSC or RWQCB, including but not limited to meetings between consultants and representatives of Sherwin-Williams and Emeryville. If Sherwin-Williams assumes responsibility for the management, oversight, implementation and performance of further groundwater Response actions, it shall have the right to make the final decision as to what response actions should be recommended to regulatory agencies, but this provision shall not restrict Emeryville from submitting any written comments or recommendations that it feels are appropriate.

VII. DISMISSAL AND RELEASE

As further consideration for the payments set forth in Sections V and VI, the Parties hereby agree to dismiss with prejudice any and all claims under federal, state or other law (including without limitation the Writ Proceeding) against one another, or any of them, asserted in the Action or arising from or related to the Site, including without limitation, claims for the recovery of any Response costs incurred in connection with implementing the approved Remedial Action Plan or conducting the work described in the Soil Excavation Report, damages, indemnification or other relief arising out of the hazardous substances and contaminants at, on, under, or emanating from the Site. Save and except for claims arising from alleged breaches of (or fraud in connection with) this Agreement, the Parties further agree to release one another from any and all claims, demands, actions, and causes of action

arising from or related to the Site, including without limitation, claims arising from the release(s) of hazardous substances and/or contaminants at, on, under, or emanating from the Site, whether presently known or unknown, suspected or unsuspected. In giving this release, each Party expressly waives any protection afforded by Section 1542 of the California Civil Code, which provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The releases provided herein shall not extend to any party or entity other than Emeryville, Sherwin-Williams, Baker Hughes, and Sepulveda.

Emeryville's dismissal of the Action as to each Settling Defendant and its release of each of the Settling Defendants, shall become effective only upon the occurrence of all of the following conditions precedent: (1) payment by an individual Settling Defendant of the sum set forth in Section V for that Settling Defendant by deposit with the Escrow Agent; (2) entry of an order by the Court approving the terms of this Agreement; and (3) receipt by the Escrow Agent of the Settlement Payment from that Settling Defendant.

The Settling Defendants' dismissal of any actions and counterclaims against Emeryville, and cross-claims against one another, and their releases of Emeryville and one another shall become effective only upon the occurrence of the following condition precedent: entry of an order by the Court (1) approving the terms of this Agreement as a good faith settlement under federal and state law, (2) confirming the Settling Defendants' protection from contribution and indemnity claims, and (3) dismissing all claims by the non-settling defendants against the Settling Defendants.

The releases provided herein shall not extend to any claim for breach of this Settlement Agreement. The Parties expressly preserve any and all rights they may have to enforce the provisions of this Settlement Agreement. Emeryville agrees that it has notified or will notify any entity to whom it sells the Site, or any portion thereof, of the terms of this Agreement prior to closing such sale.

VIII. COURT APPROVAL AND PROTECTION AGAINST CLAIMS

The Parties acknowledge and agree that the payments and other undertakings pursuant to this Settlement Agreement represent a good faith compromise of disputed claims and that the compromise represents a fair, reasonable, and equitable resolution of their respective claims arising out of the release of hazardous substances and contaminants at the Site. All matters that are the subject of the releases in Section VII and all matters alleged in the Complaint filed in the Action are defined to be "covered matters" within the meaning of CERCLA. With regard to any claims for costs, damages, or other relief asserted against the Settling Defendants by persons not party to this Agreement on account of the release(s) of hazardous substances at the Site, the Parties agree that Settling Defendants are, and each of them is, entitled to such protection as is provided in Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), California Code of Civil Procedure Sections 877 and 877.6, and any other applicable provision of federal or state law, as well as an order dismissing the cross-claims asserted in the Action and barring contribution or equitable indemnity claims. As promptly as reasonably practicable after this Settlement Agreement has been executed, the Parties shall undertake through their respective counsel a joint motion or other appropriate legal proceedings as may be necessary or appropriate to secure the Court's approval of the Settlement Agreement, the contribution protection contemplated herein, and the dismissal of claims contemplated herein.

Nothing in this Settlement Agreement shall constitute or be construed as releasing or providing contribution protection to any person or entity other than the Settling Defendants. Emeryville expressly reserves its rights to bring or continue any action against any person or entity other than the Settling Defendants to recover costs, damages, and/or attorneys fees incurred by Emeryville. Each of the Settling Defendants, reserves its rights to bring or continue any action against any person or entity other than Emeryville and the other Settling Defendants to recover costs, damages, and/or attorneys fees incurred by them.

If for any reason the Court declines to substantially approve the terms of this Settlement Agreement, the Parties shall negotiate in good faith to amend this document so as to make it acceptable to the Court and shall jointly undertake such motions, applications, and/or other pleadings as may be necessary or appropriate to obtain approval from the Court. The Parties acknowledge and

agree that protection from contribution and/or indemnity claims and the dismissal of claims as described in this Section and elsewhere in this Settlement Agreement are integral and non-divisible to this Settlement Agreement and as such are necessary terms in order for an Order of the Court relating to this Settlement Agreement to qualify as "substantially approved" as that term is used in the context of this Section and elsewhere in this Settlement Agreement. If the Parties have not been able to obtain the Court's approval within 180 days after the date by which all of the Parties have executed this Settlement Agreement, or such longer period as the Parties agree, the Parties may terminate this Agreement and advise the Escrow Agent to release the escrowed funds and any accrued interest to the Settling Defendants.

IX. NOTICE

All notices and all other communications pertaining to this Settlement Agreement shall be in writing and shall be deemed received when delivered personally, by overnight courier, or by facsimile to the Party or Parties, as the case may be, at the following addresses (or such other address for a Party as shall be specified by that Party in a notice pursuant to this Section).

AS TO EMERYVILLE
Michael G. Biddle
Agency General Counsel/City Attorney
2200 Powell Street, 12th Floor
Emeryville, CA 94608
Fax: (510) 596-3724

After November 1, 2000

Michael G. Biddle
Agency General Counsel/City Attorney
1333 Park Avenue
Emeryville, California 94608
Fax: (510) 596-3724

With Copy To:
Robert P. Doty
Cox, Castle & Nicholson LLP
505 Montgomery Street, Suite 1550
San Francisco, California 94111
Fax: (415) 397-1095

AS TO SHERWIN-WILLIAMS
Allen Danzig, Esq.
The Sherwin-Williams Company, Legal Department
101 Prospect Avenue, N.W.
Cleveland, OH 44115-1075

With Copy To:
Edward P. Sangster
Kirkpatrick & Lockhart
100 Pine Street, Suite 3200
San Francisco, California 94111
Fax: (415) 249-1001

AS TO BAKER HUGHES
Joe Curtis
Baker Hughes Incorporated
3900 Essex Lane, Suite 1200
P.O. Box 4740
Houston, TX 72210-4740

With Copy To:
Diana C. Dutton
Akin, Gump, Strauss, Hauer & Feld L.L.P.
1700 Pacific, Suite 4100
Dallas, TX 75201-4675
Fax: (214) 969-2855

AS TO SEPULVEDA
Gavin Whitis
Jaffe, Martini & Blum
155 Sansome Street, Suite 700
San Francisco, CA 94104
Fax: (415) 397-1339

With Copy To:
Elaine Kawasaki
Timpson Garcia
1610 Harrison Street
Oakland, CA 94612

X. OTHER AGREEMENTS

Each of the Parties agrees to take such further acts or execute any and all further documents that may be necessary or appropriate to make this Agreement legally binding upon each of the other Parties, and their officers, directors, agents, employees, attorneys, representatives, subsidiaries, affiliates, predecessors, successors, and assigns.

XI. OTHER PROVISIONS

A. No Admissions or Third Party Rights. This Settlement Agreement shall not be construed as an admission by any party of any fact or the existence *vel non* of liability on the part of any Party; nor shall it be construed so at to create any rights or entitlements by any entity not a Party to the Settlement Agreement.

B. Effective Date. Subject to and consistent with the provisions in Section VIII, this Settlement Agreement shall become binding upon its execution by the Parties. If for any reason the Court does not enter the Order set out below, or one substantially equivalent to it, this Settlement Agreement shall not become effective.

C. Modification. Except as provided in Section IX concerning addresses for notices, this Settlement Agreement may not be modified except by an instrument in writing signed by duly authorized representatives of the relevant Parties.

D. Representative Authority. Each undersigned representative of each Party to this Settlement Agreement certifies that he or she is fully authorized by the Party to execute the terms and conditions of this Agreement and to bind such Party to this Agreement. By signing this Settlement Agreement, each Party consents to the entry of the Order. The Parties represent that they have read this Settlement Agreement, reviewed it with their respective counsel, and understand its contents. Each of the Parties represents and warrants that it has the exclusive right to prosecute and compromise the claims and rights released by this Agreement and that none of them has been sold, assigned, conveyed, or otherwise transferred.

E. Severability. The invalidity or unenforceability of one or more provisions of this Settlement Agreement does not affect the validity or enforceability of any of the other provisions hereof. This Settlement Agreement shall be construed in all respects as if an invalid and unenforceable provision(s) were omitted.

F. Entire Agreement. This Settlement Agreement contains the entire agreement of the Parties with respect to liability for contamination at, on, under, or emanating from the Site and supersedes any and all prior agreements, understandings, promises, and representations made by any Party to any other concerning this subject matter.

G. **Mutual Drafting.** It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by the Parties. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this document.

H. **Section Headings.** The section headings set forth in this document are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of the document.

I. **Independent Legal Representation.** The Parties agree and acknowledge that they have been advised by separate legal counsel in connection with this Settlement Agreement and that they have made all such investigation into matters pertaining to this Agreement as they have deemed necessary or appropriate.

J. **Fees and Costs.** The Parties hereto acknowledge and agree that they are to bear their own costs, expenses and attorneys' fees arising out of or connected with the this litigation and the Writ Proceeding, the negotiation, drafting and execution of this Settlement Agreement, and all matters arising out of or connected therewith. However, in any action taken to enforce the provisions of the Settlement Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, disbursements, and court costs.

K. **Agreement May be Executed in Counterparts.** This Settlement Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument; however, all such counterparts shall comprise but one agreement.

XII. ORDER

UPON CONSIDERATION OF THE FOREGOING Settlement Agreement by and between the City of Emeryville and the Emeryville Redevelopment Agency ("Emeryville"), as plaintiffs, and Sherwin-Williams Company, Baker Hughes Incorporated, A&J Trucking Company, Inc., Arthur M. Sepulveda, The Estate of Josephine Sepulveda, the Sepulvedas as Trustees of the Sepulveda Family Living Trust and the Sepulveda Family Living Trust, as "Settling Defendants", the pleadings on file herein and the arguments of counsel, the Court hereby finds that the Settlement Agreement is fair and

reasonable, both procedurally and substantively. The Court further finds that the Settlement Agreement is consistent with applicable federal and state law; is made in good faith; and is made in the public interest in that it helps provide funding to resolve the environmental threats at the Site and resolves the settling parties' dispute without further litigation. The Court further finds that the Settling Defendants are entitled to protection from contribution and/or indemnity claims pursuant to federal and state law, including but not limited to California Code Civil Procedure Sections 877 and 877.6. The Settlement Agreement is hereby APPROVED.

All claims, cross-claims and/or counterclaims asserted in this matter against the Settling Defendants are hereby dismissed with prejudice as are all claims asserted against Emeryville by any of the Settling Defendants. Further claims, cross-claims or counterclaims against the Settling Defendants or any one of them for matters addressed in the Settlement Agreement are barred. The Court shall retain jurisdiction over the settling parties and jurisdiction over the subject matter of this Action for purposes of enforcing the Settlement Agreement.

Except as otherwise provided herein, each settling party shall bear its own litigation costs and expenses, including attorneys' fees, in this case.

Dated: Feb 15, 2011

William H. Alsup
United States District Court Judge

FOR THE PLAINTIFFS:

Dated: November 21, 2000

THE CITY OF EMERYVILLE

By: Michael B. Biddle
Its: City Attorney

Dated: November 21, 2000

THE EMERYVILLE REDEVELOPMENT AGENCY

By: Michael B. Biddle
Its: Agency General Counsel

FOR THE SETTLING DEFENDANTS:

Dated: November ___, 2000

SHERWIN-WILLIAMS COMPANY

By: _____
Its: _____

Dated: November 30, 2000

BAKER HUGHES, INCORPORATED

By: _____
Its: Director - Environmental Affairs

Dated: November ___, 2000

A&J TRUCKING COMPANY, INC.

By: _____
Its: _____

Dated: November ___, 2000

ARTHUR M. SEPULVEDA, THE ESTATE OF JOSEPHINE SEPULVEDA, THE SEPULVEDA FAMILY LIVING TRUST

By: _____
Its: _____

FOR THE PLAINTIFFS:

Dated: November 21, 2000

THE CITY OF EMERYVILLE

By: Michael G. Biddle
Its: City Attorney

Dated: November 21, 2000

THE EMERYVILLE REDEVELOPMENT AGENCY

By: Michael G. Biddle
Its: Agency General Counsel

FOR THE SETTLING DEFENDANTS:

Dated: ~~November~~ December 8, 2000

SHERWIN-WILLIAMS COMPANY

By: [signature]
Its: Vice President, General Counsel and Secretary

Dated: November ___, 2000

BAKER HUGHES, INCORPORATED

By: _____
Its: _____

Dated: November ___, 2000

A&J TRUCKING COMPANY, INC.

By: _____
Its: _____

Dated: November ___, 2000

ARTHUR M. SEPULVEDA, THE ESTATE OF JOSEPHINE SEPULVEDA, THE SEPULVEDA FAMILY LIVING TRUST

By: _____
Its: _____

FOR THE PLAINTIFFS:

Dated: November 21, 2000

THE CITY OF EMERYVILLE

By: Michael G. Biddy
Its: City Attorney

Dated: November 21, 2000

THE EMERYVILLE REDEVELOPMENT AGENCY

By: Michael G. Biddy
Its: Agency General Counsel

FOR THE SETTLING DEFENDANTS:

Dated: November ___, 2000

SHERWIN-WILLIAMS COMPANY

By: _____
Its: _____

Dated: November ___, 2000

BAKER HUGHES, INCORPORATED

By: _____
Its: _____

Dated: November ___, 2000
Dec. 14, 2000

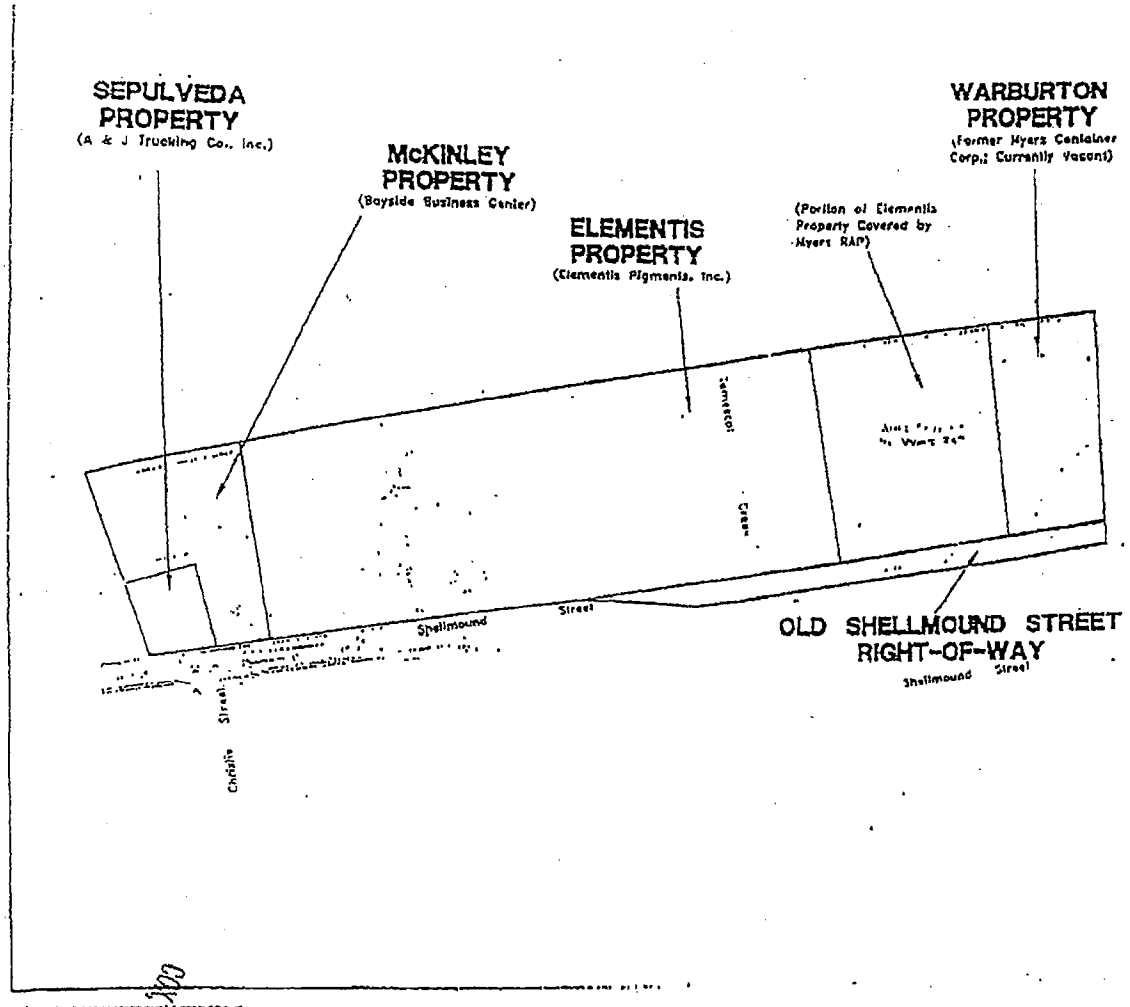
A&J TRUCKING COMPANY, INC.

By: Blaine Kawasaki
Its: trustee for Arthur M. Sepulveda

Dated: November 14, 2000

ARTHUR M. SEPULVEDA, THE ESTATE OF JOSEPHINE SEPULVEDA, THE SEPULVEDA FAMILY LIVING TRUST

By: Blaine Kawasaki
Its: trustee for Arthur M. Sepulveda



N

0 180 360

(Approximate Scale in Feet)

LEGEND

Railroad tracks

Property Boundaries

Notes

1 All locations are approximate

2 Base map from Mark Inger & Co. (September 1998)

Erler & Kalinowski, Inc.

Property Location Map

Remedial Action Plan
Shellmound Properties
Emeryville, CA
February 1999
EKI 970003.18
Figure 2-2

APPENDIX C

FIRST IMPLEMENTATION AGREEMENT

THIS FIRST IMPLEMENTATION AGREEMENT (the "Agreement") is entered into by and between the EMERYVILLE REDEVELOPMENT AGENCY ("Agency") and the EMERYVILLE SOUTH BAYFRONT REDEVELOPMENT PROJECT PARTNERSHIP (the "Developer"), by and through MRP Management Inc., an Ohio corporation, as the Managing Partner of the Developer under this Agreement.

For and in consideration of the mutual covenants and conditions herein set forth, the Agency and Developer hereby agree as follows:

I. PURPOSE OF THIS AGREEMENT

The Agency and Developer have heretofore entered into that certain Disposition and Development Agreement dated as of September 23, 1999 (the "DDA"). The Agency and Developer desire to amend the DDA to provide for certain changes to the Schedule of Performance and to make other appropriate changes.

II. SCHEDULE OF PERFORMANCE

The Schedule of Performance attached to the DDA as Attachment No. 3 is hereby deleted in its entirety, and the Schedule of Performance attached hereto as Attachment No. 3 (Exhibit "A" to First Implementation Agreement) and by this reference made a part hereof, is hereby substituted in lieu thereof for all purposes under the DDA.

III. THE DEVELOPER

Section 107 of the DDA is hereby amended by adding the following paragraph after the second full paragraph thereof as follows:

"Developer may assign this Agreement to Bay Street Partners, LLC, a Delaware limited liability company, comprised of Madison Realty Partnership, LP, a Delaware limited partnership, and California Urban Investment Partners, LLC, a Delaware limited liability company, after approval of all assignment documents by the Agency's General Counsel and Executive Director. Any assignment documents shall provide that the Developer remain fully responsible to the Agency with respect to the entire Site unless otherwise approved by the Agency."

IV. CONDITIONS OF TITLE

Section 205 of the DDA is hereby revised in its entirety to read as follows:

"C. [§205] Condition of Title

The Agency shall convey to the Developer fee simple title to the Site in the physical condition required by Section 212, free and clear of all recorded liens, encumbrances, leases and taxes

except those approved by the Developer as provided below, including without limitation the Covenant To Restrict Use Of Property dated July 26, 2000, by and between the Agency and the California Environmental Protection Agency, Department of Toxic Substances Control, and recorded July 26, 2000 in the Official Records of the Alameda County Recorder's Office at Instrument No. 20-00220929 (the "Environmental Restriction"), and the Shellmound Subsurface Easement contemplated in Section 212, the Parking Purchase Option (Attachment No. 7) and the Hotel Parcel Purchase Option described in Section 514; the Bay Shellmound Assessment, the Bay Shellmound Contingent Assessment and easements of record, including the City Easements, as described in Section V of the Scope of Development (Attachment No. 4); any reciprocal easements mutually agreed to by Agency and Developer to be recorded on the Site that may be necessary for the development and operation of the various uses that are developed on the Site as described in Section I.B. of the Scope of Development (Attachment No. 4). Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency delivered to Developer a Preliminary Title Report for the Site. Developer has reviewed the exceptions to title contained in the Preliminary Title Report within the time set forth in the Schedule of Performance (Attachment No. 3), and has approved the exceptions to title as set forth in the pro-forma Title Insurance Policy attached hereto as Attachment No. 10. (Exhibit "B" to First Implementation Agreement)."

V. SALE AND PURCHASE PRICE

Section 201 of the DDA is hereby revised in its entirety to read as follows:

"A. [201] Sale and Purchase.

In accordance with and subject to the terms, covenants and conditions of this Agreement, the Agency agrees to sell, and the Developer agrees to purchase for development, the Site for the sum of TWENTY FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS ($25,500,000.00) (the "Purchase Price").

Payment of the Purchase Price shall be made in the form of a Down Payment in the amount of FIVE MILLION ONE HUNDRED THOUSAND DOLLARS ($5,100,000.00) (the "Down Payment") and a promissory note in the amount of TWENTY MILLION FOUR HUNDRED THOUSAND DOLLARS ($20,400,000.00) (the "Note") in favor of the Agency. In accordance with Section 207 of this Agreement, the Principal amount due the Agency under the Note may be increased by FIVE HUNDRED SIXTY NINE THOUSAND FIVE HUNDRED EIGHTY SIX DOLLARS ($569,586.00); likewise, in accordance with Section 212, subsection 7, paragraph e. of this Agreement, the Principal amount due the Agency under the Note may be increased by up to TWO HUNDRED THOUSAND DOLLARS ($200,000.00)(the "Amended Note"). The Note or the Amended Note shall be secured by an option to purchase the retail parking parcel and improvements thereon, which shall be substantially in the Form of Option Agreement to Purchase Retail Parking Parcel attached hereto as Attachment No. 7 (the "Parking Purchase Option"), a memorandum of

which shall be recorded against the Site (the "Memorandum of Parking Purchase Option")."

VI. DELIVERY OF THE DOWN PAYMENT, DEVELOPER PUBLIC IMPROVEMENT COSTS, NOTE, OPTIONS AND MEMORANDUMS OF OPTION AND RECORDATION OF GRANT DEED AND MEMORANDUMS.

Section 207 of the DDA is hereby revised in its entirety to read as follows:

"G. [§207] Delivery of the Down Payment, Developer Public Improvement Costs, Note, Options and Memorandums of Option and Recordation of Grant Deed and Memorandums

The Developer shall deposit the remaining portion of the Down Payment and other sums required hereunder and the Promissory Note in substantially the form set forth in Attachment No. 6, the Parking Purchase Option in substantially the form set forth in Attachment No. 7 and the Memorandum of Parking Purchase Option described in Attachment No. 7 and the Hotel Purchase Option in substantially the form set forth in Attachment No. 9 and the Memorandum of Hotel Parcel Purchase Option described in Attachment No. 9 of this Agreement, properly executed and acknowledged by the Developer with the Escrow Agent prior to the date for conveyance thereof, provided that the Escrow Agent shall have notified the Developer in writing that the grant deed, properly executed and acknowledged by the Agency, has been delivered to the Escrow Agent and that title is in condition to be conveyed in conformity with the provisions of Section 205. As required pursuant to the Development Agreement between the City and Developer dated October 22, 1999 (the "City Development Agreement"), prior to the close of escrow Developer shall also deposit with the Escrow Agent for payment to the City the sum of $1,605,800.00, plus an additional $569,586.00 payable to the City which, at the discretion of Developer, can either be deposited with the Escrow Agent by Developer for payment to the City or $569,586.00 of the Down Payment due to the Agency shall be paid to the City and the Principal amount due the Agency under the Note shall be increased by $569,586.00 ($340,000.00 required for the replacement of the Temescal Creek Trunk Sewer (at Section 3.2.4. of the City Development Agreement), the sum of $108,287.00 for the design of the Shellmound Street widening (at Section 3.3 of the City Development Agreement), the sum of $1,179,407.00 for the costs of the construction of widening of Shellmound Street, the sum of $36,000.00 for the design of the widening of the Temescal Creek Bridge, an estimated amount of $511,692.00 (comprised of $471,692.00 representing the lowest responsible bid plus a 10% contingency; $40,000.00 for inspection services) for the costs of the construction of widening of the Temescal Creek Bridge (at Sections 3.3 and 3.5 of the City Development Agreement)) (collectively, these sums payable to the City shall hereinafter be referred to as the "Developer Public Improvements Costs"). Upon the close of escrow, the Escrow Agent shall file the grant deed, Memorandum of Parking Purchase Option, Memorandum of Hotel Parcel Purchase Option, and City easements as

described in Section V of the Scope of Development (Attachment No. 4) for recordation in that order among the land records in the Office of the County Recorder of Alameda County, shall deliver the Down Payment and other required sums to the Agency and City and shall deliver to the Developer and the Agency a title insurance policy insuring title in conformity with Section 208."

VII. TITLE INSURANCE

Section 208 of the DDA is hereby amended to provide that the A.L.T.A. policy of title insurance to be provided to the Agency by the Title Company shall be in the amount of the Note ($20,400,000.00) or the Amended Note.

VIII. INSPECTIONS; CONDITIONS OF THE SITE

Section 212, subsection 1 of the DDA is hereby revised in its entirety to read as follows:

"L [§ 212] Inspections; Conditions of the Site

1. Inspections. The Agency has retained environmental consultants to investigate a portion of the Site known as 4650, 5000, 5500 and 5600 Shellmound Street and the old Shellmound Street right-of-way (the "Sepulveda/ McKinley/Harcross Site") for the presence of Hazardous Materials as that term is defined below. The results of those investigations are presented in the following reports prepared by the Agency's consultant, Erler & Kalinowski, Inc.: Background Review and Work Plan for Subsurface Environmental Investigation, March 1997; Remedial Investigation/Feasibility Study Work Plan, August 1998; Remedial Investigation Report, October 1998; Human Health Risk Assessment, November 1998; Feasibility Study, December 1998; Draft Remedial Action Plan, December 1998; and Final Remedial Action Plan, May 1999. The California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC"), has reviewed and approved all of the foregoing reports. The investigation reported in the foregoing reports has confirmed the presence of a number of Hazardous Materials, as that term is defined below, at the Sepulveda/McKinley/Harcross Site (the "Known Existing Contamination").

The Agency has also retained environmental consultants to investigate a portion of the Site known as a portion of Shellmound Parcels I, II and III (the "Shellmound Parcels Site") for the presence of Hazardous Materials, as that term is defined below. The results of these investigations are presented in the following reports by SOMA Environmental Engineering, Inc.: Human Health Risk Assessment Shellmound Parcels I, II, III, July 30, 1997; Final Removal Action Workplan, Shellmound Parcels I, II, III, February 2, 1998; Well Decommissioning Report, Shellmound Parcels I, II, III, April 13, 1998. DTSC has reviewed and approved all of the foregoing reports. The investigation reported in the forgoing reports has confirmed the presence of a number of Hazardous Materials at the Shellmound Parcels Site (which substances, for purposes of this

Agreement also are part of the "Known Existing Contamination").

Portions of the Site known as the Myers Drum site, 4500 Shellmound Street and approximately the southerly three hundred fifty feet (350') of 4650 Shellmound Street (the "Myers Site") also have been investigated for the presence of Hazardous Materials by environmental consultants retained by several entities other than the Agency, and certain of the reports prepared by those consultants also note the presence of Hazardous Materials (which substances, for purposes of this Agreement, also are part of the "Known Existing Contamination"). The results of those investigations are presented in the following reports prepared by TRC Environmental Corporation: Revised Human Health and Environmental Risk Assessment, April 1994; Final Remedial Action Plan, June 21, 1996; and Removal Action Report, November 1998. DTSC has reviewed and approved all of the foregoing reports.

The Agency and the Developer are aware of the Known Existing Contamination, and they enter into this agreement with the express understanding that additional, presently unknown Hazardous Materials may be identified at the Site as the work contemplated in this Agreement proceeds. The Developer acknowledges receipt of the reports referenced in this and the preceding paragraphs and further acknowledges that it has had sufficient opportunity to make whatever review of such reports the Developer deems appropriate.

Additionally, the Agency provided Developer with copies of the following reports:

a. With respect to the Sepulveda/McKinley/Harcross Site:

(1) Data Report for Subsurface Environmental Investigations, September 1997;

(2) Data Report Above Grade Environmental Investigations, December 1997;

(3) Data Report for Shellmound Street Groundwater Investigations, December 1997;

(4) Draft Remedial Design and Implementation Plan, June 1999;

(5) Final Remedial Design and Implementation Plan, August 1999; and

(6) Soil Excavation Report, March 28, 2000.

b. With respect to the Myers Site:

Remedial Design and Implementation Plan, April 13, 1998.

The Developer acknowledges receipt of these reports.

The Agency agrees to provide Developer with copies of environmental reports concerning the Site that are prepared by the Agency or its consultants subsequent to the execution of the DDA. The Agency represents and warrants that, to the best of its knowledge, it has no other reports or material information with respect to the presence of Hazardous Substances on the Site.

On May 12, 1999, the Agency obtained approval of the Final Remedial Action Plan for the Sepuveda/McKinley/Harcross Site from DTSC and/or other regulatory agencies (the "Appropriate Regulatory Agencies"). Developer and the Agency understand and acknowledge that the Final Remedial Action Plan for the Sepulveda/McKinley/Harcross Site, the Final Removal Action Workplan for the Shellmound Parcels Site and the Final Remedial Action Plan for the Myers Site provide for a deed restriction prohibiting certain uses of the Site and limiting other uses of the Site, including, but not limited to, restrictions prohibiting detached single-family residential dwellings, or the use of any groundwater from the Site. A copy of the deed restriction recorded against the Shellmound Parcels Site has been previously delivered to Developer and the Environmental Restriction approved by DTSC as to the entire site (inclusive of the Shellmound Parcels Site, the Myers Site and the Sepulveda/McKinley/Harcross Site) has been delivered to the Developer within the time set forth in the Schedule of Performance (Attachment No. 3 to this Agreement). Developer hereby acknowledges that it had an opportunity to review the Final Remedial Action Plans for the Myers Site and the Sepulveda/McKinley/Harcross Site and the Final Removal Action Workplan for the Shellmound Parcels Site, and an opportunity to review and comment on the Environmental Restriction for the Site and that the Developer has no objection thereto or to the condition of the Site.

The Agency represents and warrants that the Final Removal Action Workplan for the Shellmound Parcels Site and the Final Remedial Action Plan for the Sepulveda/McKinley/Harcross Site have been implemented and completed as required by the Appropriate Regulatory Agencies. To the best of the Agency's knowledge the Final Remedial Action Plan for the Myers Site has been implemented and completed. Any soils remediation work beyond that prescribed in the Final Remedial Action Plans for the Myers Site or the Sepulveda/McKinley/Harcross Site or as prescribed in the Final Removal Action Workplan for the Shellmound Parcels Site shall, as between the Agency and the Developer, be the responsibility of the Developer. As to the Sepulveda/McKinley/Harcross Site, on May 8, 2000, the Agency obtained confirmation from DTSC that the immunities provided by Section 33459.3 of the California Health and Safety Code apply thereto. As to the Shellmound Parcels Site, on April 21, 1998, the Agency

obtained confirmation from DTSC that the immunities provided by Section 33459.3 of the California Health and Safety Code apply thereto. Developer acknowledges receipt of these letters from DTSC to the Agency confirming the immunities provided by Section 33459.3 of the California Health and Safety Code.

The Agency has prepared an Environmental Risk Management Plan (hereinafter referred to as the "Long-Term Risk Management Plan") for the entire Site, and obtained approval of the Long-Term Risk Management Plan from the DTSC on July 26, 2000. Developer hereby acknowledges it had an opportunity to review and comment on the Long-Term Risk Management Plan and does hereby advise the Agency that it has no objection to the Long-Term Risk Management Plan for the entire Site. As between Agency and Developer and subject to paragraph 7 hereof, Developer shall be responsible and liable for all costs and expenses of complying with the terms and conditions of the Long-Term Risk Management Plan, provided however, that, as between the Agency and Developer as respects groundwater and/or surface water monitoring and any remediation for the Site the Agency shall be responsible for performing and paying the costs of all monitoring, remediation and other response actions for ground water and/or surface water required under the Long-Term Risk Management Plan, and the Remedial Action Plan for the Sepulveda/McKinley/Harcros Site, and the Remedial Action Plan for the Myers Drum Site. Notwithstanding the foregoing, the Agency shall have no responsibility whatsoever for performing or paying the costs of the design, construction , fabrication, installation, repair, reconstruction or maintenance of engineering controls, barriers or systems necessary to prevent the migration of hydrogen sulfide (H_2S) and/or other organic vapors into structures placed on the Site.

The Agency shall ensure that the existing fence securing the Site remains until the date of conveyance of the Site and shall take reasonable steps to ensure that no disposal occurs at the Site prior to the date of conveyance of the Site. Agency shall remove, prior to the close of escrow, all materials that have been deposited on the Site between the date of the Agency's acquisition of the Site and the close of escrow."

IX. INDEMNITY

Section 212, subsection 3 of the DDA is hereby revised in its entirety to read as follows:

"3. Indemnity. Except as provided in paragraph 7 hereof, the Developer agrees, from and after the date of recoding the deed conveying title to the Site from the Agency to the Developer or the commencement of any work on the Site by the Developer under this Agreement, to defend, indemnify, protect and hold harmless the Agency and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("Indemnitees") from , regarding and against any and all liabilities, obligations, orders, decrees, judgements, liens, demands, actions,

Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein), or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), whenever arising or resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath of from the Site (sometimes herein collectively referred to as "Contamination"), with the exception that, Developer shall have no obligation to indemnify the Indemnitees for any Contamination in ground water or surface water resulting from any Hazardous Materials release that first occurred in or about the Site prior to the date of recording of the deed conveying title to the Site from the Agency to the Developer ("existing surface and ground water Contamination"). The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand issued regarding the Contamination, at the Developer's sole cost, except for any existing surface and ground water Contamination, which shall be, as between the Agency and the Developer, the sole responsibility of the Agency."

X. MATERIALITY

Section 212, subsection 6 of the DDA is hereby amended to change the reference in the second sentence of "this Section 211" to "this Section 212".

XI. CONTAMINATION COSTS AND REIMBURSEMENT

Section 212, subsection 7 of the DDA is hereby revised in its entirety to read as follows:

"7. Contamination Costs and Reimbursement.

a. If after conveyance of the Site by the Agency to the Developer as a result of Developer's construction activities on the Site, including without limitation, any digging of utility trenches or digging holes for elevator shafts or pilings or complying with the terms and conditions of the Long-Term Risk Management Plan as required by this Agreement, the Developer

discovers Hazardous Materials on the Site, the Agency will assist the Developer in paying for the Environmental Response Costs associated with the Hazardous Materials as provided herein. Further, the Agency agrees to execute as the generator, any manifest for transportation of the Hazardous Materials to an off-site disposal facility, and as between the Developer and the Agency, the Agency shall be deemed to be the person who arranged for the treatment or disposal of such Hazardous Materials at the off-site facility, provided the Developer complies with the following three conditions:

(i) the Hazardous Materials are disposed of at disposal facilities, owned and operated by Chemical Waste Management ("CWM") as appropriate for the level of contamination including, but not limited to the Kettleman Hills Facility, Altamont Landfill, or Port Arthur or as otherwise approved by Insurer, Agency and Developer; and

(ii) Developer, at no cost or expense to Developer, shall use commercially reasonable efforts to enter into an Agreement with CWM, to be approved by Agency which shall not be unreasonably withheld, which shall generally provide the protection to the Agency as set forth in Attachment No. 11, attached herein (Exhibit "C" to the First Implementation Agreement); and

(iii) Developer, at no cost or expense to Developer, shall use commercially reasonable efforts to enter into an agreement with a contractor to carry out the excavation and transportation of Hazardous Materials for disposal which contract provides the Agency an indemnity and insurance protection in the form attached hereto as Attachment No. 12 (Exhibit "D": to the First

Implementation Agreement).

b. Agency shall set aside an amount equal to ONE HUNDRED THOUSAND DOLLARS ($100,000) of the Down Payment in an escrow with the Escrow Agent that may be used by Developer for Environmental Response Costs associated with the Hazardous Materials including, but not limited to, hauling the Hazardous Materials from the Site (the "Contamination Reimbursement Fund"). These funds shall be deposited in an interest bearing account and all interest shall accrue to the benefit of the Agency and the interest shall not be used to pay Environmental Response Costs associated with the Hazardous Materials.

c. The Agency has purchased Pollution Legal Liability Insurance, Policy No. 4TG000017, from Kemper Environmental providing ten (10) years of coverage commencing June 16, 1999, with a TEN MILLION DOLLAR ($10,000,000) coverage limit and a ONE HUNDRED THOUSAND DOLLAR ($100,000) deductible (the "Policy"). Prior to the conveyance of the Site to the Developer, the Agency and Developer shall cause the following to occur:(i) upon close of escrow, the Agency shall cause Kemper Environmental to cancel the Policy and simultaneously rewrite a policy under the same terms as the Policy except as set forth below, but with the Developer as the Named Insured and the Agency and the City of Emeryville as additional insureds ("New Policy"). Any costs or expenses charged by Kemper with respect to this section 7.c.(i) shall be borne by Developer; (ii) Without the Agency's written consent, Developer shall not cancel the New Policy, reduce the New Policy limits, increase the New Policy deducible, or otherwise materially diminish or dilute the coverage and protection afforded the Agency under the New Policy. Without the Agency's written consent not to be

unreasonably withheld, Developer shall not add to the scope of coverage (including but not limited to adding contractual liability to the coverage) or otherwise materially change the terms of the New Policy. This condition shall be reflected as an endorsement to the New Policy. Any costs or expenses charged by Kemper with respect to this section 7.c.(ii) shall be borne by Developer; (iii) The Developer's lenders and their successors and assigns, the Developer's successors and assigns, the Hotel Developer, and the ground lessee of the building pads located along Shellmound Street at the north and south end of the Site, may be included as additional insureds on the New Policy. If Developer desires to include any other additional insureds on the New Policy, then the following must be in place: (A) the proposed additional insured must obtain its own Pollution Legal Liability Insurance policy providing ten (10) years of coverage with a One Million Dollar ($1,000,000) coverage limit and a deductible of no more than Fifty Thousand Dollars ($50,000) which shall be primary to the New Policy and any other insurance of the City or Agency; and (B) Developer increases the coverage limit on the New Policy by Ten Million Dollars ($10,000,000) for a total coverage limit of not less than Twenty Million Dollars ($20,000,000). These conditions shall be reflected as an endorsement to the New Policy. Any costs or expenses charged by Kemper with respect to this section 7.c.(iii) shall be borne by Developer or the additional insured; (iv) an act or omission by one Insured that constitutes grounds for cancellation under Section IX.C of the Policy, shall not constitute grounds for cancellation of the New Policy with respect to any other Insured. Any costs or expenses charged by Kemper with respect to this section 7.c.(iv) shall be borne by Developer; (v) The total Policy Period aggregate Retention Amount for all Environmental Incidents under Coverages A through D, as applicable, under the New Policy, shall be FIVE HUNDRED THOUSAND DOLLARS ($500,000) (the "Aggregate Maximum Retention

Amount"). Any costs or expenses charged by Kemper with respect to this section 7.c.(v) shall be shared equally between Agency and Developer; (vi) the requirements set forth in the DTSC mandated and approved Long-Term Risk Management Plan (also called the Environmental Risk Management Plan) as applied to any Pollution Condition at the Covered Location constitute Claims made by a government or regulatory agency acting under authority of Environmental Standards, for purposes of Endorsement No.7 of the Policy. Any costs or expenses charged by Kemper with respect to this section 7.c.(vi) shall be borne by Developer; and (vii) notwithstanding the provisions of Endorsement 15, the Policy applies to Environmental Cleanup Costs associated with soil, ground water or surface water or sediment contamination at or emanating from the Covered Location(s) that was identified and addressed via the Excluded Project, that remains onsite after DTSC certification of completion of the Excluded Project. Any costs or expenses charged by Kemper with respect to this Section 7.c.(vii) shall be borne by Developer.

d. If the Developer, its lenders and their respective successors and assigns seek to recover Environmental Response Costs from the New Policy, the deductible with respect to the first claim under the New Policy shall be paid from the Contamination Reimbursement Fund, if any monies remain, otherwise the Developer shall pay the deductible. If the Developer pays all or a portion of the deductible with respect to the first claim under the New Policy, up to One Hundred Thousand Dollars ($100,000), and is not reimbursed for the deductible payment from the Contamination Reimbursement Fund or otherwise, the payment shall be deducted from the principal of the Promissory Note in accord with paragraph f. of this Section 7.

e. If the Developer pays all or a portion of the deductible with respect to the second, third, fourth, or fifth claim

under the New Policy up to the Maximum Aggregate Retention Amount as defined above, and is not reimbursed for the deductible payment(s), the deductible payment(s) with respect to the second, third, fourth, and fifth claim under the New Policy shall be deducted from the next payment or payments due to the Agency under the Promissory Note. Further, once the deductible payment(s) with respect to the fourth and fifth claim under the New Policy have been deducted from the next payment or payments due the Agency under the Promissory Note, the Principal amount due the Agency underthe Promissory Note shall be increased by an amount equal to the deductible payment(s) made with respect to the fourth and fifth claim under the New Policy.

f. If the Developer is required to expend funds for remediation of Hazardous Materials of the Site that existed prior to transfer of the Site by the Agency to the Developer that are not paid from the Contamination Reimbursement Fund, nor reimbursed from responsible parties, or insurance proceeds; then the total amount paid by Developer for such remediation costs up to an amount that shall not exceed TWO MILLION DOLLARS ($2,000,000), shall be deducted from the Principal of the Promissory Note (Attachment No. 6).

g. The Agency represents and warrants that any Hazardous Materials discovered on any part of the Site, whether in soil or in ground or surface water, after the respective RAP or RAW for such part of the Site was approved by DTSC and prior to the close of escrow, that were reported to or known by representatives of the Agency responsible for environmental affairs, has been or will be disclosed to DTSC, and DTSC has determined or will determine prior to close of escrow that no further removal or remedial action is required to address such Hazardous Materials."

XII. PREHISTORIC ARCHAEOLOGICAL AND CULTURAL RESOURCES

Section 212, subsection 8 of the DDA is hereby revised in its entirety to read as follows:

"8. Prehistoric Archaeological and Cultural Resources.

a. The Final EIR for the South Bayfront Project certified by the Emeryville City Council on February 2, 1999, pursuant to Resolution No. 99-15 together with the Agency's Resolution reviewing and applying the Final EIR to the Project adopted September 14, 1999, pursuant to Resolution No. RD 75-99 contains mitigation measures and findings of fact pursuant to CEQA (the "Agency CEQA Resolution"). The description of archaeological and cultural resources, the process used by the Agency in evaluating these resources, and the CEQA mitigation measures and findings of fact are further described in the Agency CEQA Resolution and accompanying documents, including the Conditions of Approval.

b. Prior to conveyance of the Site to the Developer, the Agency shall be responsible for:

(i) Implementation and completion of Mitigation Measure III.K.1.b. as set forth in the Mitigation and Data Recovery Plan.

(ii) Establishing and maintaining a web site.

(iii) Providing temporary off-site storage space for human remains and associated artifacts uncovered by the Agency prior to conveyance of the Site to Developer.

c. After conveyance of the Site to the Developer, the Developer shall be responsible for:

(i) Implementation of Mitigation Measure III.K.1.a/Condition of Approval XI.A.;

(ii) Implementation of Mitigation Measure III.K.1.c/ Condition of Approval XI.B., except for the establishment and maintenance of a web site; and

(iii) If the City determines an archaeologically and culturally significant portion of CA-ALA-310 is intact and contiguous, implementation of Mitigation Measure III.K.1.d/Condition of Approval XI.C. by establishing a subsurface easement.

d. If as a result of Developer's construction activities on the Site, the Developer discovers Native American remains or associated prehistoric archaeological or cultural artifacts, the Agency shall provide temporary off-site storage space for these Native American remains and associated artifacts, together with those uncovered by the Agency, for a period of time until these Native American remains and associated artifacts are reinterred on the Site by Developer pursuant to Mitigation Measures III.K.I.a. and III.K.1.c. and Condition of Approval XI.A. and XI.B.

e. The Agency acknowledges that as part of the required construction protocol for Developer's construction activities on the Site, Developer is required to perform certain pre-excavation activities in accordance with the General Archaeological Monitoring Plan approved by the City of Emeryville (the "Pre-Excavation Work"). If as a result of Developer's construction activities on the Site the Developer discovers Native American remains and associated artifacts which cause delays in the construction which, in turn, causes the Developer to make increased payments to the Developer's contractor, these increased costs and all costs associated with the Pre-Excavation Work but not including delay costs due to pre-excavation work, shall be paid in the following manner:

(i) The Developer shall pay the first ONE HUNDRED THOUSAND DOLLARS ($100,000).

(ii) If the costs exceed ONE HUNDRED THOUSAND DOLLARS ($100,000), the Agency shall assist the Developer in paying for these costs by setting aside ONE HUNDRED THOUSAND DOLLARS ($100,000) of the Down Payment in an escrow with the Escrow Agent that may be used by the Developer for paying these excess costs. These funds shall be deposited in an interest bearing account and all interest shall accrue to the benefit of the Agency and the interest shall not be used to pay costs.

(iii) If the costs exceed TWO HUNDRED THOUSAND DOLLARS ($200,000), the Agency shall assist the Developer in paying for these excess costs by reducing the next payments due the Agency under the Note up to TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000) as reimbursement to the Developer for these costs it has incurred.

(iv) If the Developer is required to spend funds for the costs that are not paid from any of the sources specified in the above subparagraphs (i) through (iii) of this paragraph 8.e., this amount shall be shared equally between Developer and the Agency. The Agency's payments of its share shall come from its receipts of proceeds from the sale of the Hotel Parcel and Residential Parcel, if any. If these proceeds are insufficient to pay the Agency's share, the Agency's share shall be paid by reducing the next payment or payments due the Agency under the Note.

Other than the assistance specifically provided for in this

paragraph e., the Agency shall not be responsible for the cost of implementation of any Mitigation Measures or Conditions of Approval, any delays or work stoppage, any modification of the Project, archaeological monitoring, Native American monitoring, increased expense or other cost resulting from the existence of Native American remains or associated prehistoric archaeological or cultural artifacts. Further, the Agency's assistance specified in this paragraph e. shall terminate upon the earlier of issuance of a Certificate of Completion with respect to that portion of the Site covered by the Certificate of Completion, or three (3) years after the close of escrow as to the entire Site."

XIII. ADDITIONAL CONDITIONS PRECEDENT TO CONVEYANCE

A. Section 214 (6) of the DDA is hereby deleted in its entirety and the following is substituted in lieu thereof:

"(6) The Developer shall have submitted to the Agency a copy of an executed contract for construction of the improvements to be located on Block One of the Project (the "Block One Improvements") and other applicable Developer Improvements to be constructed on the Site, and the Agency shall have approved such documents. If the Agency disapproves Developers' construction contract, Agency shall provide written notice of the reasons for such disapproval within the time set forth in the Schedule of Performance (Attachment No. 3)."

B. Section 214 (8) of the DDA is hereby deleted in its entirety and the following is substituted in lieu thereof:

"(8) The Developer shall have submitted to the Agency a "Public Access Easement" which grants public access to the streets delineated on the Tentative Subdivision Map approved by the City of Emeryville Planning Commission on March 23, 2000, pursuant to Resolution No. MAS 00-1 and provides that the Developer shall maintain such streets."

C. Section 214 (12) of the DDA is hereby deleted in its entirety and the following is substituted in lieu thereof:

"(12) After submission by the Developer to the City of all necessary drawings and documents the City shall have issued grading and foundation permits for the commencement of the Block One Improvements."

D. Section 214 (14) of the DDA is hereby deleted in its entirety and the following is substituted in lieu thereof:

"(14) Developer and Agency have approved the changes and endorsements to the Policy described in paragraph 7.c. of Section 212 of this Agreement."

E. Section 214 (16) of the DDA is hereby deleted in its entirety and the following is substituted in lieu thereof:

"(16) Developer and Agency have agreed upon escrow instructions governing both the release of the Contamination Reimbursement Fund described in paragraph 7.b. of Section 212 of this Agreement and the release of the ONE HUNDRED THOUSAND DOLLARS ($100,000) of Down Payment funds to be used by Developer in accord with paragraph 8.e.(ii) of Section 212 of this Agreement."

F. Sections 214 (2), 214 (3), 214 (5), 214 (10), 214 (13) and 214 (15) of the DDA are hereby deleted in their entirety.

XIV. REMEDIES AND RIGHTS OF TERMINATION PRIOR TO CONVEYANCE OF THE SITE TO THE DEVELOPER

Sections 509, 510 and 511 of the DDA are hereby revised in their entirety to read as follows:

"F [§509] Remedies and Rights of Termination Prior to Conveyance of the Site to the Developer.

12. [§510] Termination by the Developer

In the event that prior to conveyance of title to the Site to the Developer:

a. The Agency, after and despite diligent efforts, is not able to acquire the Site and does not tender conveyance of the Site or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within thirty (30) days after written demand by the Developer; or

b. The Developer and Agency cannot agree to the form of the Parking Purchase Option or Hotel Purchase Option within the times set forth in the Schedule of Performance (Attachment No. 3); or

b. The Developer and Agency cannot agree to the form of the Parking Purchase Option or Hotel Purchase Option within the times set forth in the Schedule of Performance (Attachment No. 3); or

c. The Developer is unable to obtain and submit the final evidence of financing described in Section 214 satisfactory to the Agency and by the dates provided in this Agreement; or

d. The Developer is unable to obtain a Permitted Assignee for the residential uses on the Site; or

e. The Agency is in material breach or default after the expiration of any applicable notice and cure period, within respect to any other obligation of the Agency under this Agreement; or

f. Developer has not approved the changes and endorsements to the Policy described in paragraph 7.c. of Section 212 of the Agreement within the times set forth in the Schedule of Performance (Attachment 3); or

g. Developer and Agency have not agreed upon escrow instructions governing release of the Contamination Reimbursement Fund described in paragraph 7.b. of Section 212 of this Agreement and the release of ONE HUNDRED THOUSAND DOLLARS ($100,000) of Down Payment funds to be used by the Developer in accord with paragraph 8.e.(ii) of Section 212 of this Agreement; or

h. The Agency has not completed all of its obligations under Section 212 of this Agreement within the times set forth in the Scheduled of Performance; or

i. The Agency has not approved the construction contract for construction of the Block One Improvements and other applicable Developer Improvements;

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the Agency. In the event of termination under subparagraph a., b.,d., e., f., g., h., and i., of this section 510, neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement, and the Agency shall return the Deposit and Additional Deposit to the Developer as provided in Section 108.

IN THE EVENT OF TERMINATION UNDER SUBPARAGRAPH c. OF THIS SECTION 510, THE DEPOSIT AND ADDITIONAL DEPOSIT SHALL BE RETAINED BY THE AGENCY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE

DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS MAKING IT NECESSARY FOR THE AGENCY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT SUCH SITE WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE; OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT AND ADDITIONAL DEPOSIT HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE AMOUNT OF SUCH DEPOSIT AND ADDITIONAL DEPOSIT SHALL BE PAID TO THE AGENCY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE AGENCY SHALL ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE DEVELOPER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

By: _____

By: _____

2. [§511] Termination by the Agency

In the event that prior to conveyance of title to the Site to the Developer:

a. The Developer fails to maintain the amount of the Deposit as required by Section 108 of this Agreement; or

b. The Developer transfers or assigns or attempts to transfer or assign this

or the parties in control of the Developer or the degree thereof contrary to the provisions of Section 107 hereof; or

d. The Developer does not submit the final evidence of financing described in Section 214 satisfactory to the Agency and by the dates provided in this Agreement; or

e. The Developer fails to submit to the City construction plans, drawings and related documents as and when required by this Agreement; or

f. The Developer does not pay the remaining portion of the Down Payment of the Purchase Price, deliver to the Escrow Agent the Developer Public Improvements Costs for payment to the City, Promissory Note, Memorandum of Parking Option and Memorandum of Hotel Parcel Purchase Option and take title to the Site under tender of conveyance by the Agency pursuant to and as required by this Agreement; or

g. The Developer does not submit an executed contract for construction of the Block One Improvements and other applicable Developer Improvements to be constructed on the Site satisfactory to the Agency and by the date provided in this Agreement; or

h. The Developer does not submit to the Agency evidence that it has executed an agreement with the City obligating the Developer to maintain the streets within the interior of the Project in satisfactory form and in the manner and by the date provided in this Agreement; or

i. The Developer fails to submit plans and drawings for the City Easements satisfactory to the City and by the date provided in this Agreement; or

j. The Agency has not approved the changes and endorsements to the Policy described in paragraph 7.c. of Section 212 of this Agreement within the times set forth in the Schedule of Performance; or

k. The Developer and Agency are unable to agree upon the form of the Parking Purchase Option or Hotel Purchase Option within the time set forth in the Schedule of Performance (Attachment No. 3); or

l. The Developer is in material breach or default with respect to any other obligation of the Developer under this Agreement; or

m. If any default or failure referred to in subdivision a., d., e., f., g., h., i., k. or l. of this Section 511 shall not be cured within thirty (30) days after the date of written demand by the Agency; or

n. Developer and Agency have not agreed upon escrow instructions governing release of the Contamination Reimbursement Fund described in paragraph 7.b. of Section 212 of this Agreement and the release of the ONE HUNDRED THOUSAND DOLLARS ($100,000) of Down Payment funds to be used by the Developer in accord with paragraph 8.e.(ii) of Section 212 of this Agreement;

then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the Agency, may, at the option of the Agency, be terminated by the Agency by written notice thereof to the Developer. In the event of termination under subparagraphs d., j., k., or n. of this Section 511, neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement, and the Agency shall return the Deposit and Additional Deposit to the Developer as provided in Section 108.

IN THE EVENT OF TERMINATION UNDER SUBPARAGRAPH a., b., c., e., f., g., h., i., or l. OF THIS SECTION 511, THE DEPOSIT AND ADDITIONAL DEPOSIT SHALL BE RETAINED BY THE AGENCY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATION MAKING IT NECESSARY FOR THE AGENCY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT SUCH SITE WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE; OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT AND ADDITIONAL DEPOSIT HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF

DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT AND ADDITIONAL DEPOSIT HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE AMOUNT OF SUCH DEPOSIT AND ADDITIONAL DEPOSIT SHALL BE PAID TO THE AGENCY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATE DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE AGENCY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE DEVELOPER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

By: _____

By: _____

XV. FORM OF PROMISSORY NOTE

The Form of Promissory Note attached to the DDA as Attachment No. 6 is hereby amended to provide that in accordance with Section 207 of the DDA, the Principal amount due the Agency under the Note may be increased by FIVE HUNDRED SIXTY NINE THOUSAND FIVE HUNDRED EIGHTY SIX DOLLARS ($569,586.00). Further, the Form of Promissory Note is hereby amended to provide that, in accordance with Section 212, subsection 7, paragraph e. of the DDA, the Principal amount due the Agency under the Note may be increased by up to TWO HUNDRED THOUSAND DOLLARS ($200,000.00). Additionally, the Form of Promissory Note is hereby amended to provide that Developer's Project Costs are presently identified as ONE HUNDRED TWENTY FOUR MILLION DOLLARS ($124,000,000.00).

XVI. CONTINUING ENFORCEABILITY OF DDA

Except as modified and amended in this Agreement, all other provisions of the DDA remain in effect.

XVII. TIME FOR ACCEPTANCE OF THIS FIRST IMPLEMENTATION AGREEMENT BY THE AGENCY; DATE OF FIRST IMPLEMENTATION AGREEMENT

This First Implementation Agreement when executed by the Developer and delivered

to the Agency, must be authorized, executed and delivered by the Agency on or before 30 days after this First Implementation Agreement is signed by the Developer, otherwise it shall have no effect.

The effective date of this First Implementation Agreement shall be the date when this First Implementation Agreement has been signed by the Agency.

Date: September 8, 2000

EMERYVILLE REDEVELOPMENT AGENCY

By: _____
Executive Director

By: _____
Secretary

APPROVED AS TO FORM:

_____
Michael G. Biddle
Agency General Counsel

Date: August 9, 2000

THE EMERYVILLE SOUTH BAYFRONT REDEVELOPMENT PROJECT PARTNERSHIP

By: MRP MANAGEMENT, INC.

By: _____

Title: CEO

EXHIBIT "A"

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

Action	Date
1. Execution and Delivery of Agreement by Developer.	
The Developer shall execute and deliver this Agreement to the Agency.	Completed.
2. Initial Deposit.	
The Developer shall deliver the Initial Deposit to the Agency. (Section 108)	Completed.
3. Opening of Escrow.	
The Agency shall open an escrow for conveyance of the Site to the Developer. (Section 202)	Completed.
4. Execution of Agreement by Agency.	
The Agency and City Council shall hold a public hearing to authorize execution of this Agreement by the Agency, and if so authorized, the Agency shall execute and deliver this Agreement to the Developer. (Section 900)	Completed.
5. Approval by Developer's Board.	
The Developer's Board of Directors shall approve this Agreement.	Completed.
6. Deed Restriction for Myers Site and Sepulveda/McKinley/Harcross Site and Long Term Risk Management Plan Submittal to Developer.	
The Agency shall provide the Developer with the proposed required deed restrictions for the Myers Site and Sepulveda/McKinley/Harcross Site and the proposed Long-Term Risk Management Plan for the entire Site. (Section 212)	Completed.

Action	Date
7. **Agency Submits Preliminary Title Report, including list of Exceptions to Title to Developer.**	
The Agency shall submit a Preliminary Title Report, including a list of Exceptions to Title to Developer. (Section 205)	Completed.
8. **Developer Notification of Unacceptable Proposed Deed Restrictions for Long-Term Risk Management Plan.**	
If the proposed deed restriction for the Site or the proposed Long-Term Risk Management Plan are not acceptable, the Developer shall notify Agency in writing. If Developer does not notify the Agency in writing that such items are unacceptable, such items are acceptable by Developer. (Section 212)	Completed.
9. **Developer Notification of Unacceptable RAPs/RAW or Condition of Site.**	
If the RAPs for the Myers Site and Sepulveda/McKinley/Harcross Site and the RAW for the Shellmound Parcels Site or the condition of the Site, is not acceptable, the Developer shall notify Agency in writing. (Section 212)	Completed.
10. **Agency Completes Physical Remediation of Sepulveda/McKinley/Harcross Site Necessary for Development.**	
Agency shall complete the physical remediation of Sepulveda/McKinley/ Harcross Site necessary for Developer to complete construction of the Developer's Improvements on the Site. (Section 212)	Completed.
11. **Developer Approval – Exceptions to Title.**	
The Developer shall approve or disapprove the exceptions to title submitted by the Agency. (Section 205)	Completed.
12. **Deed Restrictions Finalized and Provided to Developer.**	
Agency shall obtain DTSC approval of the finalized deed restrictions and shall provide copies to the Developer. (Section 212)	Completed.

Action	Date
13. Submission – Evidence of Retail Leases.	
Developer shall submit to the Agency evidence of tenant commitments of at least 50% of the gross leasable area of the Retail Improvements. (Section 214)	Completed.
14. Submission – Final Construction Drawings and Landscaping and Grading Plans.	
The Developer shall prepare and submit to the City for review and approval the following plans:	
Final Foundation and Preliminary Structural plans for the Block One Improvements and Final Grading and Landscaping plans for the Site and public improvement plans for the Site.	No later than 10/15/2000.
Final Structural and Preliminary Architectural, Mechanical, Plumbing and Electrical for the Block One Improvements	Within 60 days after City approval of the Final Foundation Plans for the Block One Improvements
Final Architectural, Mechanical, Plumbing and Electrical for the Block One Improvements.	Within 60 days after City approval of the Final Structural Plans for the Block One Improvements
Final Foundation and Preliminary Structural for the remainder of the Minimum Project Improvements	No later than ?
Final Structural and Preliminary Architectural, Mechanical, Plumbing and Electrical for the remainder of the Minimum Project Improvements	Within 60 days after City approval of the Final Foundation Plans for the remainder of the Minimum Project Improvements
Final Architectural, Mechanical, Plumbing and Electrical for the remainder of the Minimum Project Improvements (Section 303)	Within 60 days after City approval of the Final Structural Plans for the remainder of the Minimum Project Improvements.
15. Approval – Evidence of Retail Leases.	
Agency shall approve Developer's evidence of tenant commitments of at least 50% of the gross leasable area of the Retail Improvements. (Section 214)	Completed.
16. Additional Deposit.	
Developer deposits Additional Deposit in escrow account. (Section 108)	No later than 08/04/00.
17. Developer Notification Regarding Mello-Roos.	
Developer shall notify Agency in writing whether it wishes Agency to provide the Mello-Roos financing. (Section 214)	Completed.

Action	Date
18. Submission – Preliminary Evidence of Equity Capital and Mortgage Financing.	
The Developer shall submit to the Agency for review and approval the preliminary evidence of financing required under Section 214. (Section 214)	Completed.
19. Developer Notification of Unacceptable Finalized Deed Restrictions or Long-Term Risk Management Plan.	
If the finalized deed restrictions or the Long-Term Risk Management Plan for the Site are not acceptable, the Developer shall notify Agency in writing. (Section 212)	Completed.
20. Approval – Preliminary Evidence of Equity Capital and Mortgage Financing.	
The Agency shall approve or disapprove the Developer's preliminary evidence of financing. (Section 214)	Completed.
21. Submission – Final Evidence of Financing.	
The Developer shall submit to the Agency for review and approval final evidence of financing as required by Section 214. (Section 214)	No later than 10/15/2000.
22. Submission – Construction Contract.	
Developer shall submit to the Agency an executed construction Contract for the Minimum Project Improvements. (Section 214)	No later than 11/30/2000.
23. Approval – Final Evidence of Equity Capital and Mortgage Financing.	
The Agency shall approve or disapprove the Developer's final evidence of equity capital and mortgage financing. (Section 214)	No later than two weeks from submission (outside date of 10/29/2000).
24. Approval -- Final Construction Drawings and Landscaping and Grading Plans.	
The Agency shall cause the City to approve or disapprove the Developer's construction drawings and plans for the Site. (Section 304)	Within 45 days after receipt of each submittal of plans..

Action	Date
25. Submission -- City Easements and Interior Street Maintenance Agreement.	
Developer shall submit to Agency evidence that the City Easements have been submitted to the City, and the Interior Street Maintenance Agreement with the City. (Section 214)	Prior to close of escrow.
26. Parcelization of the Site.	
The Developer shall obtain approval of subdivision of the Site into four or more parcels to be such as to permit the development and construction of the applicable Developer's Improvements and the use, operation and maintenance of such improvements. (Section 211)	Completed.
27. Approval – Construction Contract.	
Agency shall approve Developer's Construction Contract for the Minimum Project Improvements (Section 214)	Prior to close of escrow.
28. Final DTSC Approvals and Agency Confirmation Letter.	
Agency shall deliver written confirmation to Developer that, to the best of its knowledge, governmental agencies have not imposed or required additional work over that required by the DTSC approved Final Remedial Action Plans and Final Removal Action Work Plan. (Section 212)	Prior to close of escrow.
29. Deposit.	
Escrow Agent pays Agency Deposit	Within 5 days of deposit of Additional Deposit into escrow account and no later than 08/09/00.
30. Relocation, Demolition and Site Clearance.	
The Agency shall relocate all occupants, demolish all improvements and clear the Site. (Sections 211 and 212)	Prior to close of escrow.

Action	Date
31. Deposit of Remaining Portion of Down Payment, Developer Public Improve-ment Costs, Promissory Note, Deed of Trust, Memorandum of Option and Other Required Sums.	
The Developer shall deposit the remaining portion of the Down Payment, the Developer Public Improvement Costs, Promissory Note, Deed of Trust, Memorandum of Option and other required sums into escrow. (Section 207)	Prior to close of escrow.
32. Agency Deposit of Grant Deed.	
The Agency shall deposit the grant deed into escrow. (Section 206)	Prior to close of escrow.
33. Close of Escrow.	
The Agency shall convey title to the Site to the Developer, and the Developer shall accept such conveyance. (Section 203)	No later than 12/15/2000.
34. Developer Deposit of Public Art Contribution.	
The Developer shall deliver the required art contribution to the Agency for deposit into the Emeryville Public Art Fund. (Section 705)	At the time of Developer filing the Building Permit Application for the Site.
35. Submission -- Certificates of Insurance.	
The Developer shall furnish to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 307)	Prior to the date set forth herein for the commencement of construction of the Block One Improvements and other applicable Developer Improvements and no later than 02/15/2001.
36. Governmental Permits.	
The Developer shall obtain any and all permits required by the City or any other governmental agency. (Section 308)	Prior to the date set forth herein for the commencement of construction of the Block One Improvements and other applicable Developer Improvements and no later than 02/15/2001.

Action	Date
37. Commencement of Construction of Minimum Project.	
The Developer shall commence construction of the Minimum Project. (Section 306)	Within 60 days after conveyance of the Site by the Agency to the Developer and no later than 02/15/2001.
38. Agency's Work on the Site.	
The Agency shall commence and complete the work specified in this Agreement and the Scope of Development (Attachment No. 4) to be performed by the Agency. (Section 312)	On a schedule which will coordinate with the Developer's construction schedule and estimated to be no later than 03/31/2001 for the widening of the Temescal Creek Bridge, and 12/31/2001 for the relocation of the PG&E power line.
39. Completion of Construction of Minimum Project.	
The Developer shall complete construction of the Minimum Project. (Section 306)	No later than 24 months after commencement of construction on the Site.
40. Submission--Evidence of Membership in TMA.	
The Developer shall submit to the Agency evidence that it is a member of the Transportation Management Association. (Section 704)	Prior to obtaining a certificate of occupancy from the City for all or any portion of the Site.
41. Issuance -- Certificate of Completion.	
The Agency shall furnish the Developer with the Minimum Certificate of Completion. (Section 322)	Promptly after completion of construction of the Minimum Project and upon written request therefor by the Developer.
The Agency shall furnish applicable Certificates of Completion to Developer and Permitted Assignees for applicable portions of the Site. (Section 322)	Promptly after completion of the applicable Hotel Improvements and Residential Improvements upon written request, therefore, from the applicable Developer or Permitted Assignee.

SPECIAL HOTEL IMPROVEMENTS SCHEDULE ITEMS

Action	Date
Submission – Assignment Notice for Hotel Developer/Operator.	
The Developer shall submit to the Agency for review and approval the Assignment Notice for the hotel developer/operator. (Section 514)	No later than 09/23/2003.
2. **Approval – Assignment Notice.**	
The Agency shall approve or disapprove the Assignment Notice for the hotel developer/operator. (Section 514)	Within 30 days after Agency receipt.
3. **Conveyance to Hotel Developer.**	
The Developer shall convey the portion of the Site pertaining to the Hotel Improvements (the "Hotel Parcel") to the Hotel Developer. (Section 514)	Within 180 days after Agency approval of the Assignment Notice.
4. **Resubmission of Hotel Developer/ Operator.**	
Developer shall resubmit to Agency for review and approval the Assignment Notice for the hotel developer/operator and shall obtain Agency approval of same and convey Hotel Parcel to Hotel Developer within the times in Items 1 through 3 above.	If within 180 days of Agency approval of any Assignment Notices, Developer has not conveyed Hotel Parcel to Hotel Developer as provided in Item 3.
5. **Agency Option Notice.**	
The Agency shall provide written notice to Developer of its intent to exercise its option to purchase the Hotel Parcel. (Section 514)	Within 60 days after failure of the Developer to submit the Assignment Notice to the Agency, failure to obtain Agency approval of the proposed Hotel Parcel assignee, or failure of Developer to convey the Hotel Parcel to the approved Hotel Developer within the times stated in items 1 through 3 above, but in any event within 2 years after 09/23/2003.
6. **Conveyance of Hotel Parcel to Agency.**	
The Developer shall convey the Hotel Parcel to the Agency pursuant to the Agency's option to purchase. (Section 514)	Within 30 days after Developer receipt of the Agency's Option Notice is Item 5 above.

EXHIBIT "B"

SCHEDULE A

Your Ref:

Policy No. 05 PRO-FORMA ORDER NO. 911185
Premium:

Amount of Insurance: $0.00
Date of Policy: TBD at TBD

1. Name of Insured:
MADISON AND MARQUETTE OR ASSIGNEE

2. The estate or interest in the land which is covered by this policy is:

A FEE AS TO PARCELS A, C, E, F, B-ONE, D-ONE, D-TWO, D-FOUR AND D-FIVE; AN EASEMENT AS TO PARCELS B-TWO-A, B-TWO-B AND D-THREE

3. Title to the estate or interest in the land is vested in:

MADISON AND MARQUETTE

4. The land referred to in this policy is situated in the State of California, County of Alameda and is described as follows:

SEE ATTACHED DESCRIPTION

This Policy valid only if Schedule B is attached.

DESCRIPTION

POLICY NO. 05 PRO-FORMA

CITY OF EMERYVILLE

PARCEL A

BEGINNING AT THE INTERSECTION OF THE EASTERN LINE OF SHELLMOUND STREET, AS DESCRIBED IN THE DEED BY LUELLA PETERSON TO TOWN OF EMERYVILLE, DATED FEBRUARY 2, 1940, RECORDED NOVEMBER 6, 1940, IN BOOK 4007 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 37, WITH THE SOUTHERN LINE OF THE LAND FIRSTLY DESCRIBED IN THE DEED BY THE MEE ESTATE TO WILLIAM MC GUIRE AND CHARLES MC GUIRE, DATED MARCH 24, 1921, AND RECORDED JUNE 18, 1921, IN BOOK 35 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 178; RUNNING THENCE ALONG SAID LINE OF SHELLMOUND STREET NORTHERLY, 165.67 FEET, MORE OR LESS, TO THE DIRECT EXTENSION WESTERLY OF THE NORTHERN LINE OF THE LAND SECONDLY DESCRIBED IN THE LAST MENTIONED DEED; THENCE EASTERLY ALONG SAID EXTENDED LINE AND THE DIRECT EXTENSION EASTERLY THEREOF, 390 FEET, MORE OR LESS, TO THE WESTERN LINE OF THE RIGHT OF WAY, 100 FEET WIDE, OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S MAIN LINE THROUGH EMERYVILLE; THENCE ALONG THE LAST NAMED LINE SOUTHERLY, 193.60 FEET TO THE SOUTHERN LINE OF THE LAND SECONDLY DESCRIBED IN THE LAST MENTIONED DEED; THENCE WESTERLY ALONG THE LAST NAMED LINE AND THE DIRECT EXTENSION WESTERLY THEREOF, 391.57 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 049-1038-003

PARCEL B

PARCEL ONE:

PARCEL B, AS SHOWN ON PARCEL MAP 1356, FILED MAY 12, 1978, IN BOOK 37 OF PARCEL MAPS, AT PAGE 52, OFFICIAL RECORDS.

PARCEL TWO-A:

AN EASEMENT FOR SPUR TRACK, PURPOSES, AS RESERVED IN THE DEED FROM THE SHERWIN-WILLIAMS COMPANY, A CORPORATION, TO GENERAL ELECTRIC COMPANY, A CORPORATION, DATED OCTOBER 12, 1964, RECORDED OCTOBER 15, 1964, ON REEL 1339, IMAGE 471, INSTRUMENT NO. AW/165997, ALAMEDA COUNTY RECORDS, ACROSS A STRIP OF LAND 17.00 FEET IN WIDTH, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY, FORMERLY NORTHERN RAILWAY CO. 100-FOOT-WIDE RIGHT OF WAY, AS SAID LINE IS DESCRIBED IN THE DEED FROM CHARLES CROCKER TO NORTHERN RAILWAY CO., RECORDED JANUARY 27, 1879, IN BOOK 175 OF DEEDS, PAGE 115, ALAMEDA COUNTY RECORDS, SAID POINT OF BEGINNING BEING DISTANT NORTHERLY FROM A TANGENT BEARING NORTH 7° 21' 07" WEST, ON THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 14,273.60 FEET, SUBTENDING A CENTRAL ANGLE OF 0° 49' 12", AN ARC DISTANCE OF 204.28 FEET FROM THE NORTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND CONTAINING 38,937 SQUARE FEET, MORE OR LESS, CONVEYED BY THE SHERWIN-WILLIAMS CO. OF CALIFORNIA, A CORPORATION, TO C. K. WILLIAMS & CO., A CORPORATION, BY DEED RECORDED MARCH 21, 1960, ON REEL 50, IMAGE 58 (AR/32415), ALAMEDA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTHERLY, ALONG SAID WESTERLY LINE OF SOUTHERN PACIFIC RAILROAD COMPANY'S 100-FOOT RIGHT OF WAY, FROM A TANGENT BEARING NORTH 8° 10' 19" WEST, ON THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 14,273.60 FEET, SUBTENDING A CENTRAL ANGLE OF 0° 14' 19", AN ARC DISTANCE OF 59.44 FEET; THENCE LEAVING SAID

DESCRIPTION

LINE, SOUTH 85° 30' WEST, 17.04 FEET TO A POINT IN THE LINE PARALLEL WITH SAID WESTERLY LINE OF SOUTHERN PACIFIC RAILROAD COMPANY'S 100-FOOT RIGHT OF WAY, AND DISTANT 17.00 FEET THEREOF; THENCE ALONG THE LAST NAMED LINE SOUTHERLY, FROM A TANGENT BEARING SOUTH 8° 24' 55" EAST, ON THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 14,256.60 FEET, SUBTENDING A CENTRAL ANGLE OF 0° 14' 36", AN ARC DISTANCE OF 60.55 FEET; AND THENCE NORTH 81° 49' 41" EAST, 17.00 FEET TO THE POINT OF BEGINNING.

PARCEL TWO-B:

ALL THE INTEREST OF GRANTOR IN THOSE CERTAIN EASEMENTS RESERVED BY GRANTOR IN THAT CERTAIN DEED FROM THE SHERWIN-WILLIAMS COMPANY, A CORPORATION, TO GENERAL ELECTRIC COMPANY, A CORPORATION, DATED OCTOBER 12, 1964, RECORDED OCTOBER 15, 1964, ON REEL 1339, IMAGE 471, INSTRUMENT NO. AW/165997, FOR THE BENEFIT OF THE LAND HEREINABOVE CONVEYED, AND SUBJECT TO THE COVENANTS AND CONDITIONS CONTAINED IN SAID DEED.

ASSESSOR'S PARCEL NO. 049-1038-008

PARCEL C

PARCEL A, AS SHOWN ON PARCEL MAP 1356, FILED MAY 13, 1975, IN BOOK 87 OF PARCEL MAPS, AT PAGE 52, OFFICIAL RECORDS.

ASSESSOR'S PARCEL NO. 049-1038-007

PARCEL D

PARCEL ONE:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SHELLMOUND STREET, AS SAID LINE OF SHELLMOUND STREET IS DESCRIBED IN THE DEED FROM THE SHERWIN-WILLIAMS CO. OF CALIFORNIA, A CORPORATION, TO THE TOWN OF EMERYVILLE, BY DEED DATED FEBRUARY 5, 1940, AND RECORDED NOVEMBER 5, 1940, IN BOOK 4007 OF OFFICIAL RECORDS, PAGE 39, ALAMEDA COUNTY RECORDS, AND DISTANT ON SAID EASTERLY LINE OF SHELLMOUND STREET, SOUTH 4° 30' EAST, 476.816 FEET FROM THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF PLOT 41, ACCORDING TO KELLERSBERGER'S SURVEY; RUNNING THENCE NORTH 85° 30' EAST, 387.20 FEET TO THE WESTERLY BOUNDARY LINE OF THAT CERTAIN PARCEL OF LAND CONTAINING 4.23 ACRES, MORE OR LESS, CONVEYED BY E. WIARD TO NORTHERN RAILWAY COMPANY, BY DEED DATED MARCH 22, 1873, AND RECORDED SEPTEMBER 15, 1873, IN BOOK 93 OF DEEDS, PAGE 460, ALAMEDA COUNTY RECORDS; THENCE ALONG THE WESTERLY BOUNDARY LINE OF SAID 4.23 ACRE TRACT, ON AN ARC CURVING TO THE RIGHT, WITH A RADIUS OF 14,273.6 FEET, THE LONG CHORD OF WHICH ARC BEARS SOUTH 7° 15' 55" EAST, 43.13 FEET TO THE WESTERN LINE OF THAT PARCEL OF LAND DESCRIBED IN THE DEED FROM THE SHERWIN WILLIAMS COMPANY, A CORPORATION, TO SOUTHERN PACIFIC COMPANY, A CORPORATION, DATED JANUARY 31, 1925, RECORDED DECEMBER 29, 1925, IN BOOK 1209 OF OFFICIAL RECORDS, AT PAGE 145, ALAMEDA COUNTY RECORDS; THENCE ALONG THE SAID WESTERN LINE, SOUTH 1° 48' 50" WEST, 65.78 FEET TO THE SOUTHERN LINE OF THE LAND DESCRIBED IN THE DEED FROM THE MEE ESTATE, A CORPORATION, TO THE SHERWIN-WILLIAMS CO. OF CALIFORNIA, A CORPORATION, DATED JULY 27, 1920, RECORDED AUGUST 30, 1920, IN BOOK 2997 OF DEEDS, AT PAGE 1, ALAMEDA COUNTY RECORDS; THENCE ALONG THE LAST NAMED LINE, SOUTH 87° 56' 30" WEST, 382.39 FEET TO THE SAID EASTERLY LINE OF SHELLMOUND STREET; THENCE ALONG THE LAST NAMED LINE, NORTH 4° 30' WEST, 92.16 FEET TO THE POINT OF BEGINNING.

DESCRIPTION

PARCEL TWO:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SHELLMOUND STREET, AS SAID LINE IS DESCRIBED IN THE DEED FROM SHERWIN-WILLIAMS CO. OF CALIFORNIA, A CORPORATION, TO THE TOWN OF EMERYVILLE, FILED NOVEMBER 6, 1940, IN BOOK 4007 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 39, SAID POINT OF BEGINNING BEING DISTANT ALONG SAID EASTERLY LINE OF SHELLMOUND STREET, SOUTH 4° 30' EAST, 476.92 FEET FROM THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF PLOT 41, ACCORDING TO KELLERSBERGER'S SURVEY; THENCE FROM SAID POINT OF BEGINNING, LEAVING SAID EASTERLY LINE OF SHELLMOUND STREET, ALONG THE NORTHERLY LINE OF THAT CERTAIN PARCEL OF LAND CONTAINING 38,937 SQUARE FEET, MORE OR LESS, CONVEYED BY THE SHERWIN-WILLIAMS CO. OF ALAMEDA, A CORPORATION, TO C. K. WILLIAMS & CO., A CORPORATION, BY DEED RECORDED MARCH 21, 1960, ON REEL 50, IMAGE 55 (AR/32415), ALAMEDA COUNTY RECORDS, NORTH 85° 30' EAST, 387.20 FEET TO THE WESTERLY BOUNDARY LINE OF THAT CERTAIN PARCEL OF LAND CONTAINING 4.23 ACRES, MORE OR LESS, CONVEYED BY E. WIARD TO NORTHERN RAILWAY COMPANY, BY DEED RECORDED SEPTEMBER 15, 1873, IN BOOK 93 OF DEEDS, PAGE 460, ALAMEDA COUNTY RECORDS; THENCE NORTHERLY ALONG SAID WESTERLY BOUNDARY LINE, FROM A TANGENT BEARING NORTH 7° 21' 07" WEST, ON THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 14,273.60 FEET, SUBTENDING A CENTRAL ANGLE OF 1° 03' 31", AN ARC DISTANCE OF 263.72 FEET; THENCE LEAVING SAID LINE, SOUTH 85° 30' WEST, 371.64 FEET TO A POINT IN THE EASTERLY LINE OF AFORESAID SHELLMOUND STREET; AND THENCE ALONG THE LAST NAMED LINE, SOUTH 4° 30' EAST, 263.25 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

AN EASEMENT FOR SPUR TRACK PURPOSES, APPURTENANT TO PARCEL 2, HEREINABOVE DESCRIBED, ACROSS A STRIP OF LAND 17.00 FEET IN WIDTH, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND CONTAINING 38,937 SQUARE FEET, MORE OR LESS, CONVEYED BY THE SHERWIN-WILLIAMS CO. OF CALIFORNIA, A CORPORATION, TO C. K. WILLIAMS & CO., A CORPORATION, BY DEED RECORDED MARCH 21, 1960, ON REEL 50, IMAGE 55 (AR/32415), ALAMEDA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, ALONG THE EASTERLY LINE OF SAID PARCEL SOUTHERLY, FROM A TANGENT BEARING SOUTH 7° 21' 07" EAST, ON THE ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 14,273.60 FEET, SUBTENDING A CENTRAL ANGLE OF 0° 10' 23.2", AN ARC DISTANCE OF 43.13 FEET; THENCE SOUTH 1° 48' 50" WEST, 17.07 FEET; THENCE LEAVING SAID LINE, NORTH 88° 11' 10" WEST, 17.00 FEET TO A LINE PARALLEL WITH THE EASTERLY LINE OF SAID PARCEL, AND DISTANT AT RIGHT ANGLES 17.00 FEET THEREOF; THENCE ALONG THE LAST NAMED LINE, NORTH 1° 48' 50" EAST, 15.72 FEET; THENCE FROM A TANGENT BEARING NORTH 7° 11' 03" WEST, ON THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 14,256.60 FEET, SUBTENDING A CENTRAL ANGLE OF 0° 10' 16", AN ARC DISTANCE OF 42.58 FEET TO THE NORTHERLY LINE OF AFORESAID PARCEL; AND THENCE ALONG THE LAST NAMED LINE, NORTH 85° 30' EAST, 17.03 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE PARCEL OF LAND CONTAINING 38,937 SQUARE FEET, MORE OR LESS, CONVEYED BY THE SHERWIN-WILLIAMS CO. OF CALIFORNIA, A CORPORATION, TO C. K. WILLIAMS & CO., A CORPORATION, BY DEED RECORDED MARCH 21, 1960, ON REEL 50, IMAGE 55 (AR/32415), ALAMEDA COUNTY RECORDS, WITH THE EASTERLY LINE OF SHELLMOUND STREET, AS SAID LINE IS DESCRIBED IN THE DEED FROM THE SHERWIN-WILLIAMS CO. OF CALIFORNIA, A CORPORATION, TO THE

DESCRIPTION

TOWN OF EMERYVILLE, FILED NOVEMBER 6, 1940, IN BOOK 4007 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 39; THENCE ALONG THE LAST NAMED LINE;, NORTH 4° 30' WEST, 263.25 FEET; THENCE SOUTH 85° 30' WEST, 30 FEET, MORE OR LESS, TO THE WESTERN LINE OF PLOT 7, AS SAID PLOT IS SHOWN ON "MAP OF THE RANCHOS OF VINCENTE & DOMINGO PERALTA", FILED JANUARY 21, 1857, IN BOOK 17 OF MAPS, PAGE 12, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; THENCE ALONG THE LAST NAMED LINE, SOUTH 4° 32' EAST, 263 FEET, MORE OR LESS, TO THE DIRECT PRODUCTION WESTERLY YOF SAID FIRST MENTIONED LINE; AND THENCE ALONG SAID LINE SO PRODUCED, NORTH 85° 30' EAST, 30 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL FIVE:

BEGINNING AT THE INTERSECTION OF THE EASTERN LINE OF SHELLMOUND STREET, AS SAID STREET NOW EXISTS 60 FEET WIDE, SINCE MARCH 27, 1940, WITH THE SOUTHERN LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED BY THE MEE ESTATE TO THE SHERWIN WILLIAMS CO., A CORPORATION, DATED JULY 27, 1920, AND RECORDED IN BOOK 2997 OF DEEDS, PAGE 1, ALAMEDA COUNTY RECORDS; RUNNING THENCE ALONG SAID LINE OF SHELLMOUND STREET, SOUTH 4° 16' 15" EAST, 1055.62 FEET TO THE SOUTHERN LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED BY SOUTHERN PACIFIC COMPANY TO C. K. WILLIAMS & CO. OF CALIFORNIA, LTD., DATED OCTOBER 3, 1941, RECORDED OCTOBER 11, 1941, IN BOOK 4144 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 86, UNDER RECORDER'S SERIES NO. 00-56161; THENCE ALONG THE LAST NAMED LINE, NORTH 87° 02' 45" EAST, 400 FEET, MORE OR LESS, TO THE WESTERN LINE OF THE RIGHT OF WAY, 100 FEET WIDE, OF THE SOUTHERN PACIFIC RAILROAD COMPANY; THENCE ALONG THE LAST NAMED LINE NORTHERLY, ON A CURVE TO THE LEFT WITH A RADIUS OF 14,273.77 FEET, A DISTANCE OF 1048.34 FEET TO THE SOUTHERN LINE OF SAID LAND DESCRIBED IN SAID FIRST ABOVE MENTIONED DEED; THENCE ALONG THE LAST NAMED LINE, SOUTH 88° 01' 15" WEST, 392.57 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NOS. 049-1038-001-01 (AFFECTS PARCEL ONE)
049-1038-001-04 (AFFECTS PARCELS TWO AND FOUR)
049-1038-002 (AFFECTS PARCEL FIVE)

PARCEL E

PARCEL 3 OF PARCEL MAP 7379, FILED JULY 8, 1999, IN BOOK 244 OF PARCEL MAPS, AT PAGES 91 AND 92, SERIES NO. 99-250565, ALAMEDA COUNTY RECORDS.

ASSESSOR'S PARCEL NOS. 049-1516-006-02
049-1516-007-02

PARCEL F

BEGINNING AT THE SOUTHEASTERLY CORNER OF PARCEL 3 OF PARCEL MAP 7379, RECORDED IN BOOK 244, PAGES 91 - 92 OF ALAMEDA COUNTY RECORDS;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 3 AND THE WESTERLY RIGHT-OF-WAY LINE OF "OLD SHELLMOUND STREET", NORTH 03° 07' 14" WEST, 744.03 FEET TO THE NORTHERLY LINE OF SAID PARCEL AND THE SOUTHERLY LINE OF TEMESCAL CREEK;

THENCE ALONG SAID NORTHERLY LINE, NORTH 78° 04' 26" EAST, 13.16 FEET AND CONTINUING ON SAID WESTERLY LINE OF "OLD SHELLMOUND STREET";

THENCE ALONG SAID WESTERLY LINE, NORTH 03° 07' 14" WEST, 40.23 FEET TO THE NORTHERLY LINE OF TEMESCAL CREEK;

DESCRIPTION

THENCE LEAVING THE WESTERLY RIGHT-OF-WAY LINE OF "OLD SHELLMOUND STREET" ALONG THE NORTHERLY LINE OF TEMESCAL CREEK, SOUTH 72° 54' 07" WEST, 43.95 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF "NEW" SHELLMOUND STREET;

THENCE ALONG SAID EASTERLY LINE, THE FOLLOWING TWO (2) COURSES:

1. NORTH 26° 52' 10" EAST, 43.99 FEET;

2. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 687.13 FEET, THROUGH A CENTRAL ANGLE OF 19° 34' 01", AN ARC LENGTH OF 234.66 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SHELLMOUND STREET;

THENCE ALONG SAID EASTERLY LINE, SOUTH 03° 07' 14" EAST, 938.40 FEET TO A POINT ON THE NORTHERLY LINE OF A PARCEL OF LAND CONVEYED TO BARBARY COAST STEEL CORPORATION, BY DEED RECORDED IN SERIES NO. 87-289741, ALAMEDA COUNTY RECORDS;

THENCE ALONG THE NORTHERLY AND WESTERLY LINES OF SAID BARBARY COAST STEEL CORPORATION PARCEL, THE FOLLOWING THREE (3) COURSES:

1. NORTH 87° 45' 58" WEST, 60.26 FEET;

2. SOUTH 03° 07' 15" EAST, 101.10 FEET; AND

3. NORTH 88° 48' 34" WEST, 13.04 FEET TO THE POINT OF BEGINNING.

SCHEDULE B

Your Ref:
POLICY NO. 05 PRO-FORMA

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

A 1. County and city taxes for the Fiscal Year 2000 - 2001, a lien not yet due or payable.

B 2. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5, Revenue and Taxation Code, Sections 75 et seq.

D 3. Assessment for BAY ST./SHELLMOUND ST. EXTENSION A.D. under Act 1915
Assessment No. 167, Series NOT SHOWN
Issued JUNE 27, 1994, for original principal of $60,094.00, payable in 25 annual installments. Said bond payable to the CITY OF EMERYVILLE.

BOND BALANCE $51,761.50

(AFFECTS PARCEL A)

E 4. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument

Recorded	:	APRIL 24, 1919, BOOK 2741 OF DEEDS, PAGE 391, SERIES NO. S-14499, ALAMEDA COUNTY RECORDS
Granted to	:	PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION
Purpose	:	GAS PIPE LINES
Affects	:	PORTION OF PARCEL A

I 5. Assessment for BAY ST./SHELLMOUND ST. EXTENSION A.D. under Act 1915
Assessment No. 169
Issued JANUARY 7, 1994, for original principal of $49,361.00, payable in 25 annual installments. Said bond payable to the CITY OF EMERYVILLE.

BOND BALANCE $42,442.75

(AFFECTS PARCEL B)

L 6. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument

Recorded	:	NOVEMBER 5, 1940, BOOK 4007, PAGE 39, SERIES NO. MM-60264, OFFICIAL RECORDS
Granted to	:	TOWN OF EMERYVILLE, A MUNICIPAL CORPORATION
Purpose	:	STREET AND HIGHWAY
Affects	:	PORTIONS OF PARCELS B, C AND D

Z 7. Assessment for IMPROVEMENT OF BAY ST./SHELLMOUND ST. EXTENSION A.D. under

SCHEDULE B
(Continued)

Policy No. 000911186 911

Act 1915
Assessment No. 164, Series NOT SHOWN
Issued JANUARY 7, 1994, for original principal of $32,914.00 payable in 25 annual installments. Said bond payable to the CITY OF EMERYVILLE.

BOND BALANCE $28,300.90

(AFFECTS PARCEL D-ONE)

AA 8. Assessment for IMPROVEMENT OF BAY ST./SHELLMOUND ST. EXTENSION A.D. under Act 1915
Assessment No. 165, Series NOT SHOWN
Issued JANUARY 7, 1994, for original principal of $69,776.00 payable in 25 annual installments. Said bond payable to the CITY OF EMERYVILLE.

BOND BALANCE $59,996.48

(AFFECTS PARCELS D-TWO AND D-FOUR)

AB 9. Assessment for IMPROVEMENT OF BAY ST./SHELLMOUND ST. EXTENSION A.D. under Act 1915
Assessment No. 166, Series NOT SHOWN
Issued JANUARY 7, 1994, for original principal of $342,818.00 payable in 25 annual installments. Said bond payable to the CITY OF EMERYVILLE.

BOND BALANCE $294,770.06

(AFFECTS PARCEL D-FIVE)

AL 10. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument

Recorded	:	JUNE 20, 1925, BOOK 1073, PAGE 52, SERIES NO. U-51194, OFFICIAL RECORDS
Granted to	:	TOWN OF EMERYVILLE, A MUNICIPAL CORPORATION
Purpose	:	PUBLIC SEWER
Affects	:	PORTION OF PARCEL D-FIVE

AM 11. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument

Recorded	:	OCTOBER 13, 1965, REEL 1617, IMAGE 882, SERIES NO. AX-141146, OFFICIAL RECORDS
Granted to	:	ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
Purpose	:	FLOOD CONTROL
Affects	:	PORTION OF PARCEL D-FIVE

AN 12. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument

Recorded	:	OCTOBER 13, 1965, REEL 1617, IMAGE 890, SERIES NO.

SCHEDULE B
(Continued)

Policy No. 000911186 911

AX-141147, OFFICIAL RECORDS
Granted to : TOWN OF EMERYVILLE, A MUNICIPAL CORPORATION
Purpose : SANITARY SEWER
Affects : PORTION OF PARCEL D-FIVE

AO 13. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument
Recorded : SEPTEMBER 23, 1983, SERIES NO. 83-177472, OFFICIAL RECORDS
Granted to : PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION
Purpose : POLES, TRANSFORMERS, ANCHORS AND GUY WIRES
Affects : PORTION OF PARCELS D-TWO AND D-FOUR

AP 14. Easement, upon the terms, covenants and conditions thereof, for the putposes stated herein and incidental purposes created in that certain instrument
Recorded : OCTOBER 24, 1988, SERIES NO. 88-268868, OFFICIAL RECORDS
Granted to : PACIFIC BELL
Purpose : COMMUNICATION FACILITIES
Affects : THE NORTHERLY FIVE (5) FEET OF THE WESTERLY ONE HUNDRED FIFTY (150) FEET OF THAT CERTAIN PARCEL OF LAND DESCRIBED AND CONVEYED BY CORPORATION GRANT DEED FROM GENERAL ELECTRIC COMPANY, A NEW YORK CORPORATION, TO PFIZER, INC., A DELAWARE CORPORATION, DATED FEBRUARY 27, 1981, AND FILED IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY ON MARCH 3, 1981, AS INSTRUMENT NO. 81-032086.

(AFFECTS PARCEL D)

AT 15. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument
Recorded : JUNE 17, 1969, REEL 2423, IMAGE 659, OFFICIAL RECORDS
Granted to : TOWN OF EMERYVILLE
Purpose : SANITARY SEWERS
Affects : NORTHERLY 10 FEET OF PARCEL E

BA 16. Covenant to Restrict Use of Property, upon the terms and conditions contained therein,
Executed By : CITY OF EMERYVILLE REDEVELOPMENT AGENCY ("COVENANTOR")
Recorded : ~~MARCH 27, 1990~~, SERIES NO. ~~90103753~~, OFFICIAL RECORDS
20-00220929
July 26, 2000
(Affects All Parcels)

SCHEDB-02/24/98 bs

SCHEDULE B
(Continued)

Policy No. 000911166 911

~~(AFFECTS PARCEL H)~~

DE 17. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument

Recorded	:	OCTOBER 21, 1937, BOOK 1731, PAGE 68, OFFICIAL RECORDS
Granted to	:	PACIFIC GAS AND ELECTRIC COMPANY
Purpose	:	ELECTRIC TRANSMISSION AND DISTRIBUTION LINES
Affects	:	PORTION OF PARCEL F

THE EFFECT UPON SAID EASEMENT OF:

A Quitclaim Deed

Executed By	:	PACIFIC GAS AND ELECTRIC COMPANY
To	:	THE TOWN OF EMERYVILLE
Recorded	:	NOVEMBER 6, 1940, BOOK 4013, PAGE 28, OFFICIAL RECORDS

BI 18. Notice of Reassessment and of Continuation of Prior Assessment (Notice of Assessment)

By	:	CITY OF EMERYVILLE, BAY STREET - SHELLMOUND STREET EXTENSION ASSESSMENT DISTRICT LIMITED OBLIGATION REFUNDING BONDS
Recorded	:	JULY 21, 1999, SERIES NO. 99268461, OFFICIAL RECORDS

BY 19. ANY MATTERS THAT AN ALTA SURVEY WOULD DISCLOSE.

BZ 20. THE CONSEQUENCES OF ANY FAILURE OF THE CITY OF EMERYVILLE REDEVELOPMENT AGENCY, GRANTOR IN THE DEED RECORDED _____, OFFICIAL RECORDS TO THE VESTEE HEREIN, TO HAVE ACQUIRED THE INTEREST OF HARCROS PIGMENTS INC., A DELAWARE CORPORATION, AS TO PARCEL D; THE SHERWIN-WILLIAMS CO. OF CALIFORNIA, A CORPORATION; JUDSON STEEL CORPORATION, A CORPORATION; LUELLA PETERSON, A WIDOW; C. K. WILLIAMS & CO. OF CALIFORNIA LTD., FORMERLY C. K. WILLIAMS & CO. OF CALIFORNIA, A CORPORATION; SOUTHERN PACIFIC COMPANY, A KENTUCKY CORPORATION, AS TO PARCEL F.

CA DF
06/12/00
ALTA OWNER 1970 PRO-FORMA
ENDORSEMENT: 110.7

CD "NOTE: This is a Pro Forma Policy furnished to or on behalf of the party to be insured. It does not reflect the present status of title and is not a commitment to insure the estate or interest as shown herein, nor does it evidence the willingness of the company to provide any affirmative coverage shown herein. Any such commitment must be an express written undertaking on appropriate forms of the company."

ENDORSEMENT

Attached to Policy No. 000911186

Issued by

CHICAGO TITLE INSURANCE COMPANY

The Company insures the insured against loss which the insured shall sustain by reason of the matter shown as Item 21, Part 1 of Schedule B.

The total liability of the Company under said policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated: -

CHICAGO TITLE INSURANCE COMPANY

PRO-FORMA

By: _____

Authorized Signatory

CLTA Form 110.7 (Rev. 9-10-93)

EXHIBIT "C"

ATTACHMENT NO. 11

1. **Scope of Work.** CWM agrees to provide all tools, equipment, apparatus, facilities, labor, transportation and materials necessary to analyze, collect, treat, manage, remediate, recycle and/or dispose of the waste from the Site (as described in Attachment No. 2 of the DDA) at the appropriate CWM Facility (Kettleman Hills Facility; Altamont Landfill; or other facility owned and/or operated by CWM) ("Facility") depending on the characterization of the waste, in accordance with applicable federal, state and local laws and regulations ("Services").

2. **CWM Warranties.** CWM represents and warrants to the Developer and Agency that:

   a. CWM is generally engaged in the business of performing Services with respect to waste materials and has developed the requisite expertise to perform the particular Services agreed to by the Developer, Agency and CWM hereunder.

   b. All CWM vehicles and each Facility utilized to perform Services hereunder shall have all permits, licenses, certificates or approvals required under applicable laws and regulations for such Services;

   c. CWM shall perform Services for the Developer and Agency in a safe and workmanlike manner, and in compliance with all statutes, ordinances, laws, orders, rules and regulations applicable to the Services;

   d. CWM shall at all times maintain proper Facilities and provide safe access for inspection by the Developer and Agency to all parts of the work; and

   e. CWM is an independent contractor and shall have and maintain complete control over its employees and operations.

3. **Developer Warranties.** Developer represents and warrants to Agency and CWM to the best of its knowledge that:

   a. The description of and specifications pertaining to its waste materials in the Profile Sheet is and at all times will be true and correct in all material respects, and waste materials tendered to CWM will at all times, including, without limitation, at the time of recertification of the waste materials, conform to the description and specifications contained in the Profile Sheet;

   b. Developer has made available all information it has regarding the waste materials and the surface and subsurface conditions of the Site, and if the Developer receives information that the waste materials described in the Profile Sheet present, or may present, a hazard or risk to persons or the environment not reasonably disclosed in the Profile Sheet, Developer will promptly report such information to CWM;

c. In the event that the Developer is not the Generator of the waste materials (as defined in 40 CFR 260.101), Developer has all necessary authority to enter into their Agreement with CWM with respect to such waste materials;

d. Developer is under no legal restraint which prohibits the transfer of possession of such waste materials to CWM; and

e. Developer shall comply with all applicable statutes, ordinances, laws, orders, rules and regulations, and shall provide CWM access to premises owned or controlled by Developer necessary for performing the Services.

4. **Transfer of Title.** CWM shall take title to Agency's waste materials upon completion of loading into CWM's transportation vehicles, or, if transported by the Developer's contractor, upon acceptance at the Facility. Acceptance shall be deemed when the truck driven by the Developer's contractor enters the gate of the Facility and is weighed.

5. **Indemnification of Agency.**

a. CWM agrees to indemnify, defend and save harmless the Emeryville Redevelopment Agency, the City of Emeryville, Erler & Kalinowski, Inc., Harcros Pigments, Inc., Elementis Pigments, Inc., C.K. Williams & Co., IMACC Corporation, Richard V. McKinley Family Trust, Myers Container Corp., Pfizer, Inc., Sepulveda Family Living Trust, The Sherwin-Williams Company, Dorothy H. Warburton, East Bay Municipal Utility District, Alameda County Flood Control and Water Conservation District, Pacific Gas & Electric Company and Pacific Bell and their officers, directors, officials, employees, agents and contractors from and against all liabilities, losses, penalties, fines, claims, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may hereafter suffer, incur, be responsible for or pay out as a result of bodily injuries (including death), property damage, contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, laws, orders, rules or regulations, (a) caused by CWM's breach of their Agreement with Developer, or by any negligent act, negligent omission, or willful misconduct of CWM or its employees or agents in the performance of the Agreement, or (b) arising out of CWM's treatment or disposal under this Agreement of Agency's conforming waste materials at a Facility, but not including the sole negligence or willful misconduct of the Developer in sending nonconforming waste to the Facility or in classifying the waste.

b. Developer agrees to indemnify, defend and save harmless the Emeryville Redevelopment Agency, the City of Emeryville, Erler & Kalinowski, Inc., Harcros Pigments, Inc., Elementis Pigments, Inc., C.K. Williams & Co., IMACC Corporation, Richard V. McKinley Family Trust, Myers Container Corp., Pfizer, Inc., Sepulveda Family Living Trust, The Sherwin-Williams Company, Dorothy H. Warburton, East Bay Municipal Utility District, Alameda County Flood Control

and Water Conservation District, Pacific Gas & Electric Company and Pacific Bell and their officers, directors, officials, employees, agents and contractors from and against all liabilities, losses, penalties, fines, claims, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may hereafter suffer, incur, be responsible for or pay out as a result of bodily injuries (including death), property damage, contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, laws, orders, rules or regulations, arising out of the sole negligence or willful misconduct of the Developer in sending nonconforming waste to the Facility or in classifying the waste.

c. CWM shall indemnify, defend, protect and hold harmless the Emeryville Redevelopment Agency, the City of Emeryville, Erler & Kalinowski, Inc., Harcros Pigments, Inc., Elementis Pigments, Inc., C.K. Williams & Co., IMACC Corporation, Richard V. McKinley Family Trust, Myers Container Corp., Pfizer, Inc., Sepulveda Family Living Trust, The Sherwin-Williams Company, Dorothy H. Warburton, East Bay Municipal Utility District, Alameda County Flood Control and Water Conservation District, Pacific Gas & Electric Company and Pacific Bell and their officers, directors, officials, employees, agents, assigns and contractors and any successor or successors to Agency's interest ("Indemnitees") from and against all claims, action, damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interests, fines, charges, penalties and expenses (including but not limited to attorneys and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of an kind whatsoever, paid incurred or suffered by, asserted against Indemnitees arising from or attributed to any cleanup or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether it is undertaken due to governmental action or order) concerning any of the Agency's conforming hazardous waste (as defined below) disposed of at any CWM Facility.

d. This indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify the Indemnitees from all forms of liability under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq. or other similar federal, state or local laws or regulations for any and all matters addressed in this provision. The foregoing shall not apply to matters resulting from the sole negligence or willful misconduct of the Agency.

e. "Hazardous Waste" as used in this Agreement shall mean any hazardous or toxic materials, substances, wastes, pollutants, effluents, contaminants, any other chemicals known to cause cancer or reproductive toxicity or omissions or wastes

or any other chemical, material or substance, the handling, storage, release, transportation or disposal of which is or becomes prohibited, limited or regulated by any federal, state, county, regional local authority, including, without limitation, (i) petroleum and petroleum by-products, (ii) all substances now or hereafter designated as "hazardous substances," "hazardous materials" or "toxic substances" pursuant to the Comprehensive Response Compensative and Liability Act of 1980, 42 U.S.C. 9601 et seq., (iii) all substances now or hereafter designated as "hazardous waste" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code, or (iv) all substance now or hereafter designated as "hazardous substances" under any other federal, state or local laws or in any regulation adopted pursuant to said laws.

6. **Insurance.** CWM shall, at its own costs and expense, procure and maintain during the term of this Agreement, occurrence-based coverage of the following types and with not less than the following limits of liability. CWM shall provide insurance certificates to the Agency for approval prior to the start of work. The Agency reserves the right to require complete, certified copies of all insurance policies. All required insurance shall be placed with insurers with a current A.M. Best's rating of no less than A:VII unless otherwise approved by the Agency.

a. Commercial General Liability (including but not limited to bodily and personal injury, sickness, disease or death; injury to or destruction of property including loss of use; premises and operation; products and completed operations; and personal and advertising injury)

General Aggregate	$8,000,000
Each Occurrence	5,000,000

b. Comprehensive Automobile Liability (including hired, owned and non-owned vehicles for bodily injury and personal injury, sickness, disease or death; injury to or destruction of property including loss of use)

General Aggregate	8,000,000
Each Occurrence	5,000,000

c. Worker's Compensation and Employer's Liability 2,000,000

d. Pollution Legal Liability in the amount statutorily required or $5,000,000 per occurrence/$8,000,000 annual aggregate, whichever is higher (The policy shall cover bodily injury, sickness, disease, mental anguish, shock or death; property damage including physical injury to or destruction of property including loss of use, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed; and defense costs and expenses. Coverage shall apply to sudden and nonsudden pollution conditions, including the discharge, dispersal, release or escape of

smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gasses, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.) If CWM obtains Pollution Legal Liability Insurance on a claims-made basis, then it shall maintain coverage for at least ten (10) years after the final payment is made under this Agreement.

The policies are to contain, or be endorsed to contain, the following provisions:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Agency.

b. The insurance provided by CWM shall be considered primary and not contributory to other insurance available to the Agency, City or their officials, employees or agents or to the additional insureds.

c. As to the General Liability, Automobile Liability and Pollution Legal Liability Coverages, the Emeryville Redevelopment Agency, City of Emeryville, Erler & Kalinowski, Inc., East Bay Municipal Utility District, Alameda County Flood Control and Water Conservation District, Pacific Gas & Electric Company and Pacific Bell and their respective officers, directors, officials, employees, agents and contractors shall be named as additional insureds. The Agency's remediation contractor, Performance Excavators, shall be named as additional insured as to activites at CWM's facilities and not the job site. If requested by the Agency, any or all of the following parties shall also be added as additional insureds: Harcros Pigments, Inc., Elementis Pigments, Inc., C.K. Williams & Co., IMACC Corporation, Richard V. McKinley Family Trust, Myers Container Corp., Pfizer, Inc., Sepulveda Family Living Trust, The Sherwin-Williams Company, Dorothy H. Warburton. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the additional insureds and respective officers, directors, officials, employees, agents and contractors.

d. The insurer agrees to waive all rights of subrogation against the Agency, the City, its officials, employees and agents and against the additional insureds.

e. **Records; Ownership of Work.**

a. CWM shall maintain records for a minimum of ten (10) years after final payment is made under their Agreement with Developer. At that time, if CWM should elect to dispose of the documents, CWM shall notify the Agency and upon written request and at Agency's expense, shall transfer the documents to the Agency in lieu of disposal.

b. All documents and information obtained or prepared by CWM in connection with the performance of the Services, including but not limited to CWM's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents ("Documents") are the property of the Agency and the Agency shall be entitled to full access and copies of such documents. The Agency may use any reports of findings, feasibility studies, industrial hygiene and safety engineering work, or other work performed or prepared by CWM under their Agreement with Developer.

EXHIBIT "D"

Attachment No. 12.

DEVELOPER shall require its CONTRACTOR hired to excavate and transport Hazardous Materials on the Site for disposal at facilities owned or operated by Chemical Waste Management (the "WORK"), to obtain and maintain the following insurance and provide indemnification of the Agency pursuant to a valid and legally binding written contract ("CONTRACT").

A. **Insurance**

CONTRACTOR shall procure and continuously maintain for the duration of the CONTRACT and any applicable warranty period insurance against claims for injuries to persons and damages to property that may arise from or in connection with the performance of the WORK by CONTRACTOR and its agents, representatives, employees, suppliers, materialmen, and subcontractors. Such insurance shall include the specific coverages set out herein and shall be written for not less than the limits of liability and coverages shown below, or as required by applicable laws and regulations, whichever limits are greater. All insurance shall remain in effect during the life of the CONTRACT and at all times thereafter when the CONTRACTOR may be correcting, removing, adjusting, or replacing WORK.

Designation of Substantial Completion, issuance of a Notice of Completion, or other acceptance of the WORK by DEVELOPER, shall not limit CONTRACTOR's liabilities or provision of satisfactory insurance. All insurance shall be valid within all States, Territories, and other locations in which WORK is performed.

Before beginning any WORK, CONTRACTOR shall furnish DEVELOPER and the EMERYVILLE REDEVELOPMENT AGENCY ("AGENCY") with Certificates of Insurance showing the type, amount, class of operations covered, effective dates, and dates of expiration of policies. The Certificates are to be signed by a person authorized by the carrier to bind coverage on its behalf. All Certificates are to be received and approved by DEVELOPER and AGENCY before work commences.

CONTRACTOR shall also provided complete, certificate copies of all required insurance policies, and furnish copies of the original endorsements effecting each coverage. CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish separate Certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

All policies, endorsements, and Certificates shall contain a provision or endorsement that the coverage afforded will not be canceled until at least 30 days prior written notice has been given to DEVELOPER and AGENCY by first-class or express mail. In the event of change in coverage or refusal to renew coverage, CONTRACTOR shall immediately, by telefax and by first-class or express mail, inform DEVELOPER and AGENCY of such change or refusal. CONTRACTOR

and any Subcontractor shall immediately stop their work in the event any of their insurance coverages are terminated.

All insurance required herein shall be placed with insurers with a current A.M. Best's rating of no less than A, VII unless otherwise approved by DEVELOPER and AGENCY. Any deductibles or self-insured retentions over $50,000 must be declared to any approved by DEVELOPER and AGENCY. Any self-insured retention or deductible amount on the policy shall not reduce the collectable amount of the limits of liability.

Coverages shall contain no special limitations on the scope of protection afforded to DEVELOPER, AGENCY or any ADDITIONAL INSURED. The policies shall also be endorsed to contain a provision that, in the event of payment for any loss, the insurance policy underwriter shall have no rights of recovery or subrogation against CONTRACTOR, DEVELOPER, AGENCY or ADDITIONAL INSURED arising out of or in connection with WORK performed under the CONTRACT.

Each policy shall contain an endorsement that, as applied to insurance claims arising out of the CONTRACT, CONTRACTOR's insurance shall be primary and the insurance of DEVELOPER, AGENCY and any ADDITIONAL INSURED shall be non-contributory. All policies of insurance shall be issued only by insurers duly admitted to write such insurance for the location of the WORK. Neither DEVELOPER, AGENCY, or any ADDITIONAL INSURED shall be obligated or in any way responsible for the loss or theft of, or obtaining or maintaining in force insurance on, construction equipment, tools or personal effects, owner by or rented to or in the care, custody or control of CONTRACTOR or any Subcontractor.

Coverages shall be at least as broad as:

1. Commercial General Liability: This insurance shall be written in the 1986 form or later and shall protect the CONTRACTOR against all claims arising from injuries to persons other than its employees as well as damage to property of DEVELOPER or any others arising out of any act or omission of CONTRACTOR or its agents, employees or Subcontractors or any of their agents and employees. The policy shall also include protection against claims insured by usual personal injury liability.

   Provide insurance as specified by Insurance Services Office (occurrence Form Number CG 0001). Claims made policies will not be acceptable except as expressly agreed by DEVELOPER and AGENCY. The policy shall contain no exclusions relative to blasting, explosion, collapse of buildings or structures, or damage to underground structure.

   This insurance shall also provide broad form contractual liability coverage that provides coverage for the indemnification obligations of CONTRACTOR set forth below.

2. Comprehensive Automobile Liability: This insurance shall be written in comprehensive form and shall protect CONTRACTOR or its agents, employees, or Subcontractors or any

of their agents and employees against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Provided insurance as specified by Insurance Services Office Form Number CA 0001 (Ed. 12/93), code 1 (any auto), with an MCS 90 endorsement and a CA9948 endorsement attached if hazardous materials or waste are to be transported.

3. Workers' Compensation and Employer's Liability: This insurance shall protect CONTRACTOR against all claims under applicable State or Territorial workers' compensation laws in all locations where WORK is to be performed. Provided insurance as required by laws and regulations applicable to and covering employees of CONTRACTOR engaged in the performance of the WORK. Provide Employer's Liability Insurance protecting CONTRACTOR against common law liability in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship. In case any class of employees is not protected under any workers' compensation statute, CONTRACTOR shall provide, and shall cause each Subcontractor to provide, adequate employer's liability insurance for the protection of such of its or their employees as are not otherwise protected.

This policy shall include an "all states" endorsement and a stop gap liability endorsement. CONTRACTOR shall require each Subcontractor similarly to provide workers' compensation insurance for all of its employees to be engaged in the WORK unless such employees are covered by protection afforded by CONTRACTOR's workers' compensation insurance.

4. Contractor's Pollution Liability: For losses caused by pollution conditions that arise from the operations, acts, or omissions of CONTRACTOR or any Subcontractor, suppliers, materialmen, vendors, and agents, of all tiers, described under the scope of WORK, provided insurance with coverage for:

a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;

b. property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;

c. defense including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims for such compensatory damages.

5. Certificate Requirement From Disposal or Treatment Facility Pollution Legal Liability: For losses that arise from the disposal or treatment of any waste or soil performed by CONTRACTOR. If CONTRACTOR's scope of WORK requires the disposal of any

hazardous or non-hazardous materials away from the job site, CONTRACTOR shall direct the disposal site operator to furnish a Certificate of Insurance for Pollution Legal Liability with coverage for:

a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;

b. property damage including physical injury to, or destruction of, tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or damaged;

c. defense including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims for such compensatory damages.

Coverage shall apply to sudden and non-sudden pollution conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere or any water course or body of water, which results in bodily injury or property damage.

B. Insurance Coverage Amounts.

Coverages: The limits of liability for required insurance shall provide coverage for no less than the following amounts, or greater amounts where required by applicable laws and regulations:

Workers' Compensation and Employer's Liability:

1. State: Statutory Workers' Compensation
2. Employer's Liability:
   $2,000,000 Each Accident
   $2,000,000 Disease - Policy Limit
   $2,000,000 Disease - Each Employee

Commercial General Liability:

1.	General Aggregate	$8,000,000	
	Each Occurrence	$5,000,000	
	Personal and Advertising	$5,000,000	per occurrence
2.	Products/Completed Operations	$8,000,000	Aggregate

Each Occurrence	$5,000,000

The Commercial General Liability policy shall be written on an occurrence basis and shall include coverage for premises/operations, products, completed operations, independent contractor, blanket contractual, personal injury, and broad form property damage.

Contractor's Pollution Liability Insurance:

Annual Aggregate	$5,000,000
Each Occurrence	$5,000,000

Comprehensive Automobile Liability, including Hired, Owned, and Non-owned Vehicles:

1.	Bodily Injury and Property Damage	$8,000,000	Combined Single Limit
		$5,000,000	Each Accident

For transport of hazardous materials and wastes:

1.	Bodily Injury and Property Damage	$8,000,000 $5,000,000	Combined Single Limit Each Accident

General Note: The insurance limits described above may be met with a combination of Contractor's primary and Contractors excess coverages.

C. Indemnification

To the fullest extent permitted by law, the CONTRACTOR shall indemnify, promptly defend and hold harmless the DEVELOPER and AGENCY, as well as the City of Emeryville, East Bay Municipal Utility District, Alameda County Flood Control and Water Conservation District, Pacific Gas & Electric, and Pacific Bell and all of their respective officers, directors, agents, employees, subsidiaries, parents, and successors ("ADDITIONAL INSUREDS") against and from all claims, damages, losses, and expenses, including but not limited to fees and charges of attorneys and court mediation and arbitration costs, arising out of, in connection with, or resulting from the acts, omissions, negligence, or willful or reckless misconduct of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable arising out of or in connection with WORK performed under the CONTRACT, but not from the sole negligence or willful misconduct of DEVELOPER, AGENCY or any ADDITIONAL INSURED. Without limiting the generality of the foregoing, the above indemnification provision extends to Environmental Impact Claims as defined below.

"Environmental Impact Claim" is defined as any claim, suit, judgment, cost, loss, or expense

(including attorney's fees and charges, and court mediation and/or arbitration costs) that arises out of or in connection with, is related to, or is based on the actual or threatened dispersal, discharge, escape, release, or saturation, whether sudden or not, of dust, chemicals, liquids, gases, vapors, or any other material, irritant, contaminant, or pollutant in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface (a) soils, (b) water or water course, (c) objects, or (d) any tangible or intangible matter.

The CONTRACTOR shall reimburse the DEVELOPER, AGENCY and an ADDITIONAL INSURED for all costs and expenses (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court mediation and arbitration costs) incurred by DEVELOPER, AGENCY, or any ADDITIONAL INSURED defending themselves against any such claim or liability or in enforcing the CONTRACTOR's obligations provided herein.

The indemnification obligation as specified herein shall not be limited in any way by any limitation of the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any Subcontractor or other person or organization under workers' compensation act, disability benefit acts, or other employee benefit acts.

APPENDIX D

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into this 5th day of October, 2009, by and between the City of Emeryville ("City") and the Emeryville Redevelopment Agency (the "Redevelopment Agency") on the one hand and Union Oil Company of California ("Union Oil"), Chevron U.S.A. Inc. ("Chevron U.S.A.") and Chevron Corporation ("Chevron") on the other hand.

In consideration for the Settlement Payment and other consideration reflected herein, the parties agree as follows:

I. RECITALS.

WHEREAS, Plaintiff Emeryville Redevelopment Agency (the "Redevelopment Agency") has filed a series of consolidated lawsuits pending in Alameda Superior Court in which it alleges, among other things: (1) that it has incurred costs and damages in connection with the investigation and cleanup of various Hazardous Substances and other environmental contamination at and/or migrating toward an approximately three-acre property made up of five different parcels in Emeryville, California, which parcels are commonly referred to as Site B and which are generally depicted in the map attached as Exhibit A; (2) that the Hazardous Substances and other environmental contamination are sufficiently intermixed and synergistic that a coordinated, integrated investigation and remediation of all the Hazardous Substances and environmental contamination impacting Site B was and is necessary and appropriate; (3) that it will incur additional costs and damages in the future on account of the Hazardous Substances and other environmental contamination at Site B and/or migrating toward Site B from upgradient locations; and (4) that it is entitled to recover its costs, damages, attorneys' fees and interest jointly and severally from the parties it has sued

pursuant to the combined operation of the Polanco Redevelopment Act, Cal. Health & Safety Code Section 33459 *et seq.*, and other statutory and common law theories;

WHEREAS, the Redevelopment Agency's lawsuits name Chevron, Union Oil, Christopher D. Adam and Hillary A. Jackson, Individually and as Successors to Mary Lou Adams as trustee of (A) Trust A u/t/o the Adam Family Trust dated October 14, 2003 and (B) the Adam Family Trust, Survivor's Share, Bank of America, N.A. as Trustee of Trust Created under the terms of the will of Ernest Paul Koeckritz, aka Paul Koeckritz, Deceased, Barbra Koeckritz, Howard F. Robison, Jr., an individual, and Howard F. Robinson, Jr., by devise, Stacy Trevino and The Sherwin-Williams Company as defendants;

WHEREAS, various defendants have asserted cross-claims against one another, and/or cross-claims against the City and Union Pacific Railroad;

WHEREAS, the claims and allegations in the Redevelopment Agency's lawsuits, in the related cross-claims, and in the answers to those pleadings have generally been denied;

WHEREAS, the City, by order dated June 10, 2009, obtained summary adjudication of all of the claims asserted against it in the Action;

WHEREAS, all of the parties that have appeared in the Action participated in a mediation on June 15-16, 2009, conducted by the Honorable William L. Bettinelli (retired) and some but not all of them conducted additional negotiations thereafter;

WHEREAS, prior to this Settlement Agreement there has been: (1) voluminous written discovery; (2) production of hundreds of thousands of pages of documents; (3) numerous meet and confer sessions; (4) motion practice related to the pleadings, summary judgment, and trial structure issues; (5) numerous depositions spanning several weeks of actual testimony; and (6) initial disclosures of expert witnesses;

WHEREAS, in anticipation of the mediation the Redevelopment Agency

presented a claim estimated at $25 to $36 million (and primarily comprised of approximately $14 million of remediation costs incurred as of the summer of 2009, approximately $2.7 million of attorneys' fees, approximately $750,000 of interest, between $8 to $17 million for expected future remediation costs for contamination in groundwater and soil vapor, and approximately $500,000 of future regulatory oversight costs);

WHEREAS, historical information available as of the mediation linked the Settling Defendants more strongly to petroleum and migrating chlorinated volatile organic compounds ("CVOCs") than to metals or other Hazardous Substances and contamination;

WHEREAS, the Settling Defendants disputed, among other things, the validity and propriety of the past costs and the estimated future costs, including for the remediation of groundwater and soil gas, and also disputed their relative contribution to the contamination issues, including the CVOCs associated with the future remediation of groundwater and soil gas and hence the future costs of such remediation;

WHEREAS, the settlement terms as reflected in this Settlement Agreement have been reached by the Redevelopment Agency and the City on the one hand and Union Oil, Chevron U.S.A. and Chevron on the other hand after extensive, good faith negotiations over an approximately three month period beginning at the mediation;

WHEREAS, without admitting any issues of fact or law, the Settling Parties agree that the settlement memorialized in this Settlement Agreement reflects the Settling Parties' shared desire to avoid the expense and risk inherent in continued litigation of the Action, and is a good faith effort to advance the public interest by providing substantial funds toward past and future costs associated with the environmental investigation and remediation of Site B and the Powell Street Release Area;

WHEREAS, the Settling Parties anticipate that the Court will review and approve this Settlement Agreement and enter the Good Faith Orders attached as Exhibit B;

NOW, THEREFORE, in consideration of the foregoing recitals and in exchange for the promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Settling Parties agree as follows:

II. DEFINITIONS.

A. Settling Parties. The Redevelopment Agency, the City, Union Oil, Chevron U.S.A. and Chevron are collectively referred to as the "Settling Parties" and individually as "Settling Party."

B. Settling Defendants. Union Oil, Chevron U.S.A. and Chevron are collectively referred to as "Settling Defendants."

C. The Action. The "Action" means the litigation entitled *Emeryville Redevelopment Agency v. Robinson, et al*, Case No. RG-06-267594, *Emeryville Redevelopment Agency v. Security Pacific, et al*, Case No. RG-06-267600, *Emeryville Redevelopment Agency v. Chevron Corporation, et al*, Case No. RG-07-332012, and all related cross-claims.

D. The Court. The "Court" is the Superior Court of California in and for the County of Alameda.

E. Site B. "Site B" is comprised of the following real property: 1535 Powell Street (APN: 049-1321-001-02), 1525 Powell Street (APN: 049-1321-003-02), Former Rail Spur Property (APN: 049-1321-005-00), 5770 Shellmound Street (APN: 049-1321-001-04), and 5760 Shellmound Street (APN: 049-1321-004-04).

F. Powell Street Release Area. The "Powell Street Release Area" is defined as the area bounded on the north and south by the outer-limits of the existing footprint of Powell Street, bounded on the west by the eastern edge of Shellmound Street, and

bounded on the east by the western edge of Horton Street in Emeryville, California.

G. The Chevron Asphalt Lab Property. The term "Chevron Asphalt Lab Property" means the property located at 1520 Powell Street in Emeryville, California that was formerly owned by Chevron, which property is now commonly referred to as the Terraces Condominiums or The Terraces at Emery Station and designated as 5855 Horton Street.

H. Good Faith Orders. The two orders attached as Exhibit B which approve the good faith nature of the settlement and the Redevelopment Agency's allocation of the Settlement Payment are collectively referred to as the "Good Faith Orders." They may be separately referred to as the "Good Faith Determination" and the "Settlement Payment Allocation Determination."

I. Hazardous Substances. As used in this Settlement Agreement, the term "Hazardous Substances" shall include all substances defined as hazardous substances in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14), and all substances defined as hazardous substances in Section 33459(c) of the California Health & Safety Code. Consistent with the definition in Section 33459(c) and notwithstanding CERCLA's "petroleum exclusion," the Settling Parties expressly intend to include crude oil and every fraction thereof, petroleum and any fraction thereof, and petroleum products of every kind in the term Hazardous Substances as that term is used in this Settlement Agreement.

III. SETTLEMENT PAYMENT.

A. Settlement Payment. Subject to and consistent with the terms and provisions of this Settlement Agreement, the Settling Defendants shall collectively pay the Redevelopment Agency fifteen million, five hundred thousand dollars ($15,500,000.00) (the "Settlement Payment").

B. Timing of Settlement Payment. The Settling Defendants shall deliver the Settlement Payment to counsel for the Redevelopment Agency at the address listed in

Section VIII below for notices, within ten (10) business days after entry by the Court of the Good Faith Determination Order. The payment shall be in the form of a check or wire transfer made payable to "Cox, Castle & Nicholson LLP as Trustee for the Emeryville Redevelopment Agency."

C. Settlement Payment Temporarily Held in Trust. Upon receipt of the Settlement Payment, counsel for the Redevelopment Agency (Cox, Castle & Nicholson LLP ("Cox, Castle")) shall hold the Settlement Payment in an interest-bearing client trust account. Cox, Castle shall continue to hold the Settlement Payment and shall not distribute the same to any person or entity (including without limitation Cox, Castle or any of its partners or creditors, or the Redevelopment Agency or the City) until the "Distribution Period" begins.

The "Distribution Period" shall begin once the Good Faith Orders entered by the Court approving this Settlement Agreement have become final and non-appealable, i.e., no writ(s) pursuant to C.C.P. Section 877.6(e) has been timely filed or, if filed, such writ(s) has or have been resolved in a fashion consistent with the terms of this Settlement Agreement and the Good Faith Orders and the time for any appeal of such a decision resolving the writ(s) has expired. Consistent with the voidability provisions stated in Section III.D, below, the Distribution Period also can begin notwithstanding the occurrence of a "triggering event" (as that terms is defined in Section III.D below) if the triggering event(s) has or have been waived by the party or parties on whose behalf the triggering event operates. If the Distribution Period begins, Cox, Castle may distribute the Settlement Payment in accordance with the Redevelopment Agency's instructions.

D. Voidability of Settlement Agreement and Return of Settlement Payment.

If any of the below-listed "triggering events" occurs, this Settlement Agreement may be voided as provided herein. The triggering events are: (1) the Court declines to approve the terms of the Settlement Agreement and enter either the Good Faith Determination or the Settlement Payment Allocation Determination; provided,

however, that failure to approve the Settlement Payment Allocation Determination shall give rise to a termination right only on behalf of the Redevelopment Agency and not on behalf of any other Party; (2) either or both of the Good Faith Orders is reversed or modified on appeal, provided, however, that any reversal or modification that is limited to the Settlement Payment Allocation Determination shall give rise to a termination right only on behalf of the Redevelopment Agency and not on behalf of any other Party; or (3) despite entry of the Good Faith Determination, Union Oil or Chevron remain (or are brought back in as) a party to the Action, or Chevron U.S.A. or a releasee herein becomes a party to the Action, or before September 1, 2010 Settling Defendants or a releasee herein become(s) a party to litigation concerning Hazardous Substances or contamination within, on, under, at, emanating from and/or migrating to or from Site B or Powell Street Release Area; provided, however, that this triggering event shall give rise to a termination right only on behalf of the Settling Defendants, not the Redevelopment Agency or the City. Upon the occurrence of a triggering event, any Settling Party so entitled may void the Settlement Agreement by sending written notice to the other Settling Parties within five (5) business days of receiving written notice of the triggering event. If a Settling Party or Settling Parties entitled to void the Settlement Agreement elects not to void the Settlement Agreement within five (5) business days of receiving written notice of a triggering event, the triggering event in question shall be deemed waived and shall no longer be a basis to void the Settlement Agreement.

In the event that the Settlement Agreement is voided by one of the Settling Parties and Settling Defendants have already made the Settlement Payment, then the following shall occur: (1) Cox, Castle (and/or the Redevelopment Agency if the Distribution Period has begun) shall return the Settlement Payment by check or wire transfer to the Settling Defendants within five (5) business days of written request from the Settling Defendants; (2) the claims in the Action by and among the Settling Parties shall be restored fully and completely to their state as of August 31, 2009; (3) the period

of time between August 31, 2009 and five (5) business days after the Settling Defendants make their written request for return of the Settlement Payment shall not be counted or considered for purposes of applying any statute of limitation, any equitable defense such as laches, or any similar time-based defense or limitation on any claim in the Action; and (4) the Settling Parties agree to cooperate with each other in a good faith attempt to obtain (to the extent practicable) a Court order or determination adjusting the trial and discovery schedule in the Action such that the Settling Parties have the same amount of time for discovery, trial preparation, and trial, as they would have had as of August 31, 2009 if those parties had not entered into the Settlement Agreement.

IV. COURT APPROVAL AND PROTECTION AGAINST CLAIMS.

The Settling Parties acknowledge and agree that the Settlement Payment, the Settlement Payment Allocation Determination, and the other undertakings pursuant to this Settlement Agreement represent a good faith compromise of disputed claims and that the compromise (1) represents a fair, reasonable, and equitable resolution of their respective claims arising out of the release of Hazardous Substances at and/or migrating to or from Site B, and (2) benefits the public interest by providing funds to support the cleanup of Site B and a portion of the Powell Street Release Area while avoiding further litigation among the Settling Parties. With regard to any claims for costs, damages, or other relief asserted, or which could have been asserted, against the Settling Defendants by any person or entity that is not a signatory to this Settlement Agreement on account of the release(s) of Hazardous Substances within, on, under, at, emanating from and/or migrating to or from Site B and the Powell Street Release Area, the Settling Parties agree that upon approval of this Settlement Agreement by the Court, Settling Defendants are, and each of them is, entitled to the full benefit of any and all applicable provisions of state and federal law (whether statutory, common law, decisional, or otherwise, including but not limited to California Code of Civil Procedure Sections 877 and 877.6 and CERCLA Section 113(f)) extinguishing or limiting Settling Defendants' alleged liability

to persons or entities that are not signatories to this Settlement Agreement.

The Settling Parties further agree that the release(s) of Hazardous Substances within, on, under, at, emanating from and/or migrating to or from Site B and the Powell Street Release Area and the claims made in the Action are matters addressed in this Settlement Agreement. The Settling Parties acknowledge and agree that the dismissal of claims as described in Section V and elsewhere in this Settlement Agreement, and the protection from contribution and indemnity claims (no matter how they are plead or styled) under all applicable state and federal laws and authorities and the termination of Settling Defendants' involvement in the Action as a party (under any legal theory) are integral and non-divisible aspects of this Settlement Agreement and as such are necessary and material terms in the Good Faith Determination. Entry by the Court of the Good Faith Orders approving this Settlement Agreement is thus a condition precedent to the obligations of the Settling Parties under this Settlement Agreement.

The Settling Parties further agree that the allocation of the Settlement Payment and the resulting determination of any credit(s) against the Redevelopment Agency's claims in favor of any non-settling defendant(s) or other parties also are an integral and non-divisible aspect of this Settlement Agreement and as such are necessary and material terms in the Settlement Payment Allocation Order. Entry by the Court of the Settlement Payment Allocation Order is thus a condition precedent to the obligations of the Settling Parties under this Settlement Agreement.

Accordingly, as promptly as reasonably practicable after this Settlement Agreement has been executed, the Settling Parties shall undertake, through their respective counsel, motions or other appropriate legal proceeding(s) as may be necessary or appropriate to secure the Court's approval of the Settlement Agreement, the claim protection contemplated herein, the dismissal of all claims contemplated herein, and the allocation of the Settlement Payment as provided herein.

V. DISMISSAL AND RELEASE.

A. Dismissal. The Redevelopment Agency and the Settling Defendants hereby agree to the Court's dismissal (in the Good Faith Determination Order) with prejudice of any and all claims against Settling Defendants in the Action, and any and all claims by the Settling Defendants against either the Redevelopment Agency or the City.

B. Releases.

(1) By the Redevelopment Agency and the City: Save and except for claims arising from alleged breaches of this Settlement Agreement, and except for claims expressly created or preserved in this Settlement Agreement, the Redevelopment Agency and the City (and each of their predecessors, successors, assigns, departments, divisions, designees, and any affiliated entities) hereby release Settling Defendants (and each of their past and present predecessors, successors, assigns, parents, subsidiaries, departments, divisions, designees, directors, managers, board members, officers, shareholders, partners, insurers, agents, employees, attorneys, and any affiliated corporations or entities) from any and all known or unknown, past or future, claims, suits, proceedings, orders, obligations, demands, actions, liens, liabilities, losses, damages, penalties, remedial actions, environmental investigation and remediation costs and expenses, construction delay claims, attorneys' fee claims, other causes and expenses and causes of action of any nature whatsoever arising from or relating to: (1) Hazardous Substances or contamination within, on, under, at, or emanating from and/or migrating to or from Site B; (2) Union Oil's and Settling Defendants' (or releasees herein) historic operations at Site B, including any facilities, Hazardous Substances or contamination related thereto; (3) Hazardous Substances or contamination that has or continues to migrate to Site B or the Powell Street Release Area emanating from the Chevron Asphalt Lab Property; (4) Hazardous Substances or contamination within, at, on or under the Powell Street Release Area; (5) Hazardous Substances or contamination emanating from and/or migrating from the Powell Street Release Area (including, but not limited to,

contamination associated with any pipelines located within the Powell Street Release Area) to Site B or the Chevron Asphalt Lab Property; (6) hydrocarbon contamination emanating from and/or migrating from the Powell Street Release Area (including, but not limited to, contamination associated with any pipelines located within the Powell Street Release Area) that has moved through Site B to other properties; and (7) any claims related to the contamination at Site B or the contamination within the Powell Street Release Area that were and could have been brought as part of the Action.

(2) By Settling Defendants: Save and except for claims arising from alleged breaches of this Settlement Agreement, and except for claims expressly created or preserved in this Settlement Agreement, the Settling Defendants (and each of their past and present predecessors, successors, assigns, parents, subsidiaries, departments, divisions, designees, directors, managers, board members, officers, shareholders, partners, insurers, agents, employees, attorneys, and any affiliated corporations or entities) hereby release the Redevelopment Agency and the City (and each of their predecessors, successors, assigns, departments, divisions, designees, and any affiliated entities) from any and all known or unknown, past or future, claims, suits, proceedings, orders, obligations, demands, actions, liens, liabilities, losses, damages, penalties, remedial actions, environmental investigation and remediation costs and expenses, construction delay claims, attorneys' fees claims, other causes and expenses and causes of action of any nature whatsoever arising from or relating to any claims related to the contamination at Site B that were and could have been brought as part of the Action, including, but not limited to claims that the City was a responsible party for contaminated fill at Site B.

C. Exclusions from Release. The release in Section V(B)(1) of this Settlement Agreement does not include: (1) claims for CVOCs emanating from and/or migrating from the Chevron Asphalt Lab Property to properties other than Site B and/or the Powell Street Release Area; or (2) claims for contamination emanating from and/or

migrating from the Powell Street Release Area to properties other than Site B or the Chevron Asphalt Lab Property, except properties impacted due to migration of hydrocarbon contamination from the Powell Street Release Area that moved through Site B.

Nothing in this Agreement shall be deemed a release of any claims asserted by any of the Settling Parties against persons or entities that are not parties to or releasees under this Settlement Agreement.

D. Enforcement Forbearance. The Redevelopment Agency and City agree not to request that Department of Toxic Substances Control ("DTSC") or any other environmental regulatory agency institute any proceedings or issue any orders that would result in Chevron, Chevron U.S.A. or Union Oil (or any other releasee herein) being required to institute environmental investigation or remediation activity or costs at Site B or the Powell Street Release Area or for other contamination that is released pursuant to Section V(B)(1) of this Settlement Agreement.

E. Waiver of Unknown Claims. In giving these releases, each Settling Party expressly waives any protection afforded by Section 1542 of the California Civil Code, which provides as follows:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

VI. CONTINUING JURISDICTION.

The Settling Parties agree that the Court specifically retains jurisdiction (including pursuant to California Code of Civil Procedure § 664.6) over the subject matter of this Action and the Settling Parties for the purpose of (1) resolving any disputes arising under this Settlement Agreement, (2) issuing such further orders or directions as

may be necessary or appropriate to construe, implement, or enforce the terms of this Settlement Agreement, and/or the Good Faith Orders, and (3) for granting any further relief as the interests of justice may require. The Settling Parties further agree that in the event there is a dispute over the terms of this Settlement Agreement or performance of the obligations arising from this Settlement Agreement which the disputing Settling Parties cannot resolve among themselves, such dispute shall be heard and resolved by the Court. The Settling Parties agree that the prevailing party (or parties) in such dispute before the Court shall be entitled to recover its (or their) reasonable attorneys' fees, disbursements, and court and expert costs.

VII. ADDITIONAL TERMS.

A. Powell Street CVOC Remediation. Subject to receiving DTSC's approval, the Redevelopment Agency shall pursue and conduct remediation (and monitoring) of CVOC in groundwater beneath Powell Street between Horton Street and the Union Pacific Railroad tracks (without cost to the Settling Defendants or any released party herein) via an enhanced, in-situ bioremediation method comparable to what is anticipated for Site B and pursuant to an amendment to the Redevelopment Agency's Remedial Action Plan, dated March 14, 2008, which amendment the Redevelopment Agency shall propose to DTSC such that in-situ bioremediation within the Powell Street Release Area replaces the "Groundwater Extraction Trench" currently identified in the Remedial Action Plan. Through this agreement to conduct work in and under Powell Street, the Redevelopment Agency is not taking responsibility to remediate residual mass, if any, under the building now on the former Chevron Asphalt Lab Property, in the soil beneath Powell Street (except as incidental to its groundwater remediation work), or at any location other than Site B; only CVOCs in groundwater beneath Powell Street between the west side of Horton Street and the Union Pacific Railroad tracks are addressed here.

Chevron U.S.A. agrees to continue monitoring its existing monitoring wells in Powell Street for as long as required by the County of Alameda Health Department and without cost to the Redevelopment Agency or the City or any released party, and to supplement that monitoring program by adding analyses for chemical parameters customarily associated with the biodegradation of CVOCs (*e.g.*, dissolved oxygen, ethanes, ethenes, etc. with final list to be agreed to by the parties' respective technical personnel). Chevron U.S.A. will make its monitoring wells available to Redevelopment Agency's consultants for periodic sampling at the Redevelopment Agency's sole cost. Any additional monitoring wells the Redevelopment Agency installs in Powell Street, will be made available to Chevron U.S.A.'s consultants upon request for periodic sampling at Chevron's sole expense. The Settling Parties agree to share data obtained from any sampling of the monitoring wells with each other. Nothing in this section or Settlement Agreement requires Chevron U.S.A. to maintain or continue sampling its monitoring wells for any period of time other than as required by County of Alameda Health Department. At its election and own expense, the Redevelopment Agency may take over responsibility for maintaining, sampling, monitoring and abandoning Chevron U.S.A.'s monitoring wells upon conclusion of Chevron U.S.A.'s monitoring program.

B. Performance of Required Investigation and Cleanup. Subject to the limitations in Section VII(A) above, as between the Settling Parties only and without prejudice to either the Redevelopment Agency's rights or the City's rights pursuant to this Settlement Agreement or pursuant to any claim(s) that the Redevelopment Agency or the City has or may have against any person or entity that is not a signatory to or releasee of this Settlement Agreement, the Redevelopment Agency shall - without cost to the Settling Defendants (or any of the released parties herein) other than the Settlement Payment - perform or cause to be performed all environmental work reasonably required to study, investigate, evaluate, and remediate the Hazardous Substances or contamination

within, on, under, at, or emanating from and/or migrating to or from Site B and the Powell Street CVOC Remediation to the satisfaction of DTSC. The City and the Redevelopment Agency may decide as between themselves (in any way that does not affect the rights of the Settling Defendants) how to allocate these costs and responsibilities. The obligation to perform such work without cost to the Settling Defendants (other than the Settlement Payment) shall continue to exist if an order or directive by the DTSC or another regulatory agency is directed to Settling Defendants, and not to the City or the Redevelopment Agency; provided, however, that nothing in this Settlement Agreement shall constitute an indemnity, express or implied, against such an order or directive. Nothing in this Settlement Agreement shall obligate either the Redevelopment Agency or the City to perform investigation or cleanup work on Hazardous Substances disposed of within, on, under, or at Site B by one or more of the Settling Defendants subsequent to August 31, 2009. (The terms "disposed of" in the foregoing sentence shall not apply to the continued presence or migration of Hazardous Substances in the soil and/or groundwater at any time; only to new physical releases of Hazardous Substances subsequent to August 31, 2009.)

C. Eminent Domain. Notwithstanding anything to the contrary stated herein, the Redevelopment Agency expressly reserves any and all right it has to value (for purposes of the eminent domain aspects of the Action) the parcels within Site B in their "as contaminated" state as of the statutory defined valuation date.

D. Notice of Settlement Agreement. The Redevelopment Agency agrees that it has notified, or will notify, any person or entity with which it enters into an agreement for the redevelopment, purchase, transfer or acquisition of Site B or the Powell Street Release Area, or any portion thereof, of the terms of this Settlement Agreement.

E. Notice and Recordation of Settlement. Forthwith upon the beginning of the Distribution Period (as defined above in Section III), Redevelopment Agency and/or the City shall record, in a form reasonably acceptable to Settling Defendants, a

Memorandum of Settlement in the County Recorder's Office for Alameda County outlining the terms of this Settlement Agreement and its release with respect to Site B and the Powell Street Release Area. Forthwith upon receipt of a copy of the Settlement Memorandum endorsed or stamped by the Recorder's Office, the Redevelopment Agency and/or the City shall send copies of the same to the Settling Defendants at the address set forth in Section VIII below.

F. Appeal. Neither Settling Defendants nor their counsel or consultants will pursue, participate in, or support any appeal of the summary judgment motion previously granted in the Action regarding the City's status as a potentially responsible party for contamination at Site B. Neither the City nor the Redevelopment Agency shall seek entry of a judgment or costs against Settling Defendants regarding the same.

G. Parties Bound. This Settlement Agreement applies to, is binding upon, and inures to the benefit of each of the Settling Parties, and each of their predecessors, successors, assigns, parents, subsidiaries, departments, divisions, designees, directors, managers, board members, officers, shareholders, partners, agents, employees, attorneys, and any subsidiary or affiliated corporations or entities. Each Settling Party has indicated its acceptance and approval of the terms and conditions hereof by having a duly authorized representative execute this document below.

VIII. NOTICE.

All notices and all other communications, and payments, pertaining to this Settlement Agreement shall be in writing and shall be deemed received when delivered personally, by overnight courier, or by facsimile to the Settling Party or Settling Parties, as the case may be, at the following addresses (or such other address for a Settling Party as shall be specified by that Settling Party in a notice pursuant to this Section).

AS TO THE REDEVELOPMENT AGENCY AND THE CITY:

City Attorney/Redevelopment Agency General Counsel
Attention: Michael G. Biddle, Esq.
1333 Park Avenue
Emeryville, CA 94608
Fax: (510) 596-3724

With Copy To:

Robert P. Doty
Cox, Castle & Nicholson LLP
555 Montgomery Street, Suite 1500
San Francisco, CA 94111
Fax: (415) 392-4250

AS TO UNION OIL, CHEVRON U.S.A. AND CHEVRON:

Cheryl A. Cameron (Property Specialist, Claims & Agreements West Marketing Business Unit)
Chevron Environmental Management Company
4051 Broad Street, Ste. 230
San Luis Obispo, CA 93401
Fax: (805) 546 6900

With Copy To:

Andrew T. Mortl
Glynn & Finley, LLP
100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596
Fax: (925) 945-1975

IX. OTHER PROVISIONS.

A. Cooperation. Each of the Settling Parties agrees to take such further acts and/or execute any and all further documents that may be necessary or appropriate to make this Settlement Agreement legally binding and to effectuate its purposes.

B. No Admissions or Third Party Rights. This Settlement Agreement shall not be construed as an admission by any of the Settling Parties of any fact or the existence *vel non* of liability on the part of any of the Settling Parties; nor shall it be construed so as to create any rights or entitlements by any entity not a Party to (or a releasee of) the Settlement Agreement. Nor is this Settlement Agreement or any of its terms an admission of any of the allegations made in the Action, or an admission of

violation of any law, rule, regulation, or policy by any of the Settling Parties. This Settlement Agreement shall not be used as evidence or in any manner whatsoever in any litigation or other proceeding including but not limited to the Action, except in a proceeding to obtain or apply for the Good Faith Orders or to enforce or interpret the terms of this Settlement Agreement.

C. Modification. Except as provided in Section VIII concerning addresses for notices, this Settlement Agreement may not be modified except by an instrument in writing signed by all Settling Parties affected by the modification or their authorized representatives.

D. Representative Authority. Each undersigned representative of each Settling Party to this Settlement Agreement certifies that he or she is fully authorized to execute the terms and conditions of this Settlement Agreement and to bind such Settling Party to this Settlement Agreement. The Settling Parties represent that they have read this Settlement Agreement, reviewed it with their respective counsel, and understand its contents. Each Settling Party represents and warrants that it has the exclusive right to prosecute and compromise the claims and rights released by this Settlement Agreement and that none of them has been sold, assigned, conveyed, or otherwise transferred.

E. Entire Settlement Agreement. This Settlement Agreement contains the entire agreement of the Settling Parties with respect to the subject matters contained herein and supersedes any and all prior agreements, understandings, promises, and representations made by any Settling Party to any other concerning this subject matter.

F. Mutual Drafting. It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by counsel for the Settling Parties. Accordingly, the Settling Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this document.

G. Independent Legal Representation. The Settling Parties agree and acknowledge that they have been advised by separate legal counsel in connection with this Settlement Agreement and that they have made all such investigation into matters pertaining to this Settlement Agreement as they have deemed necessary or appropriate.

H. Fees and Costs. The Settling Parties acknowledge and agree that as between themselves, and without prejudice to any claims they may have against non-signatories (other than releasees herein), or to the Redevelopment Agency's proposed allocation of the Settlement Payment as a partial offset to its attorneys' fee claim against the non-settling defendants, they have born and are to bear their own costs, expenses and attorneys' fees arising out of or connected with the Action, the negotiation, drafting and execution of this Settlement Agreement, and all matters arising out of or connected therewith except as provided in Section VI.

I. Settlement Agreement May be Executed in Counterparts. This Settlement Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument; however, all such counterparts shall comprise but one Settlement Agreement.

AGREED:

FOR THE REDEVELOPMENT AGENCY:

Dated: October 5, 2009

THE EMERYVILLE REDEVELOPMENT AGENCY

By: Michael L. Biddle
Its: General Counsel

FOR THE CITY:

Dated: October 5, 2009

THE CITY OF EMERYVILLE

By: Michael G. Biddle
Its: City Attorney

Dated: October ___, 2009

Approved as to Form

By: _____
Robert P. Doty, Esq.
(Counsel for the Redevelopment Agency
and the City)

FOR THE CITY:

Dated: October 5, 2009

THE CITY OF EMERYVILLE

By: Michael B. Biddle
Its: City Attorney

Jan 7, 2010

Dated: October ___, 2009

Approved as to Form

By: Robert P. Doty
Robert P. Doty, Esq.
(Counsel for the Redevelopment Agency and the City)

FOR UNION OIL:

Dated: ~~October~~ January 13, ~~2009~~ 2010

UNION OIL COMPANY OF CALIFORNIA

By: _____

Its: Assistant ~~Secretary~~

FOR CHEVRON U.S.A.:

Dated: ~~October~~ January 13, ~~2009~~ 2010

CHEVRON U.S.A. INC.

By: _____

Its: Assistant Secretary

FOR CHEVRON:

Dated: ~~October~~ January 13, ~~2009~~ 2010

CHEVRON CORPORATION

By: _____

Its: ~~Assistant~~ Secretary

Dated: ~~October~~ ___, ~~2009~~

Approved as to Form

By: _____

Andrew T. Mortl, Esq.
(Counsel for Settling Defendants)

FOR UNION OIL:

Dated: October ___, 2009

UNION OIL COMPANY OF CALIFORNIA

By:_____
Its:_____

FOR CHEVRON U.S.A.:

Dated: October ___, 2009

CHEVRON U.S.A. INC.

By:_____
Its:_____

FOR CHEVRON:

Dated: October ___, 2009

CHEVRON CORPORATION

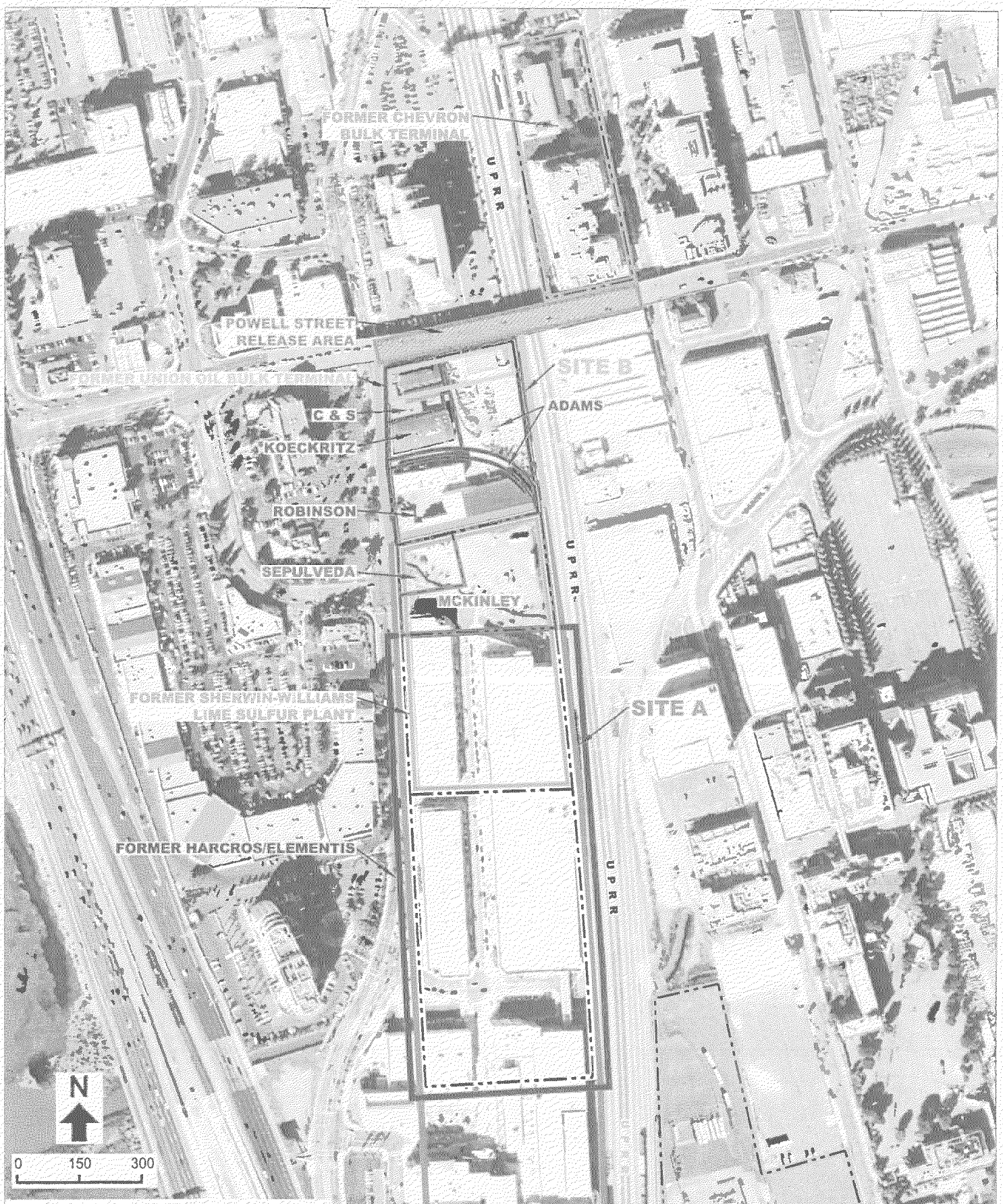
By:_____
Its:_____

Dated: October 9, 2009

Approved as to Form

By: Andrew T. Mortl
Andrew T. Mortl, Esq.
(Counsel for Settling Defendants)

Exhibit A



Notes:

1. All locations are approximate.
2. Basemap source: USGS High Resolution Orthoimage, San Francisco-Oakland, CA 27 February 2004.

Ex A

Exhibit B

GLYNN & FINLEY, LLP
ANDREW T. MORTL, Bar No. 177876
PATRICIA L. BONHEYO, Bar No. 194155
One Walnut Creek Center
100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596
Telephone: (925) 210-2800
Facsimile: (925) 945-1975

Attorneys for Defendants, Cross-Complainants and Cross-Defendants Chevron Corporation and Union Oil Company of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

EMERYVILLE REDEVELOPMENT AGENCY, A BODY POLITIC,

Plaintiff,

vs.

HOWARD F. ROBINSON, JR., AND JEANNE C. ROBINSON, et al.

Defendant.

AND RELATED CROSS-ACTIONS

Case No. RG-06-267594

(Consolidated with Case No. RG-06-267600 and Case No. RG-07-332012)

COMPLEX LITIGATION

[PROPOSED] ORDER GRANTING CHEVRON CORPORATION'S AND UNION OIL COMPANY OF CALIFORNIA'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

Reservation No.: R-984022

Date: October 30, 2009
Time: 9:30 a.m.
Dept.: 21

Assigned for All Purposes to the Honorable Jon S. Tigar

The Motion of Defendants, Cross-Defendants and Cross-Complainants Chevron Corporation ("Chevron") and Union Oil Company of California ("Union Oil") determining the good faith nature of the settlement between Plaintiff Emeryville Redevelopment Agency ("Plaintiff") and the City of Emeryville, on one hand, and Chevron, Union Oil and Chevron U.S.A. Inc. ("Chevron U.S.A."), on the other, having been presented to this Court; and

IT APPEARING TO THE SATISFACTION OF THE COURT that said Motion is made pursuant to California *Code of Civil Procedure* § 877.6(a)(1); that the Motion for

Determination of Good Faith together with the Proposed Order were served on all parties and the Court; that no confidentiality clause of any kind is contained in the settlement agreement; and that the settlement described in the Motion for Determination of Good Faith and the Settlement Agreement, attached as Exhibit 12 to the accompanying Declaration of Andrew T. Mortl, includes the following terms:

a. Plaintiff's execution of a dismissal with prejudice of the following actions against Chevron and Union Oil: *Emeryville Redevelopment Agency v. Robinson, et al*, Case No. RG-06-267594; *Emeryville Redevelopment Agency v. Security Pacific, et al*, Case No. RG-06-267600 and *Emeryville Redevelopment Agency v. Chevron Corporation, et al*, Case No. RG-07-332012 (the "Actions"), as well as a release of various claims, known or unknown, against Chevron and Union Oil related to the Actions and the subject contamination.

b. Delivery of $15,500,000 by Chevron, Chevron U.S.A. and Union Oil to Plaintiff's counsel.

c. Determination by the Court that the settlement is in good faith, thereby dismissing Chevron and Union Oil with prejudice from the Actions in their entirety and barring all pending and future claims against Chevron, Chevron U.S.A. and Union Oil for implied or equitable indemnity and/or contribution (no matter how such claims are styled).

IT IS HEREBY ORDERED that the settlement of $15,500,000.00 between Plaintiff and the City, on one hand, and Chevron, Union Oil and Chevron U.S.A., on the other, was made and entered into in good faith between the parties to the agreement within the meaning and effect of Code of Civil Procedure § 877.6 and *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488. IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion to Approve the Settlement Agreement is granted in its entirety.

2. The settlement between Plaintiff and the City, on one hand, and Chevron, Chevron U.S.A. and Chevron, on the other, is in the public interest in that it helps provide funding to resolve alleged environmental contamination at and around Site B and resolves the Settling Parties' dispute without further litigation;

3. Pursuant to California Code Civil Procedure §§ 877 and 877.6, Chevron, Chevron U.S.A. and Union Oil are entitled to protection from, and are protected from, claims for implied or equitable indemnity and/or contribution (no matter how such claims are styled) arising out of or relating to matters addressed in the Settlement Agreement.

4. As set forth in the Settlement Agreement, all claims, cross-claims, counterclaims, and/or third party claims asserted against the Settling Defendants by any and all parties in the Actions are hereby dismissed with prejudice. All claims asserted against the City by Chevron and Union Oil are also hereby dismissed with prejudice.

5. All claims for implied or equitable indemnity and/or contribution (no matter how such claims are styled) which have been, or could have been, asserted by any person or entity against Chevron, Chevron U.S.A. and Union Oil in the Actions, including claims arising out of or relating to matters addressed in the Settlement Agreement and the subject contamination, are hereby barred.

6. All claims, cross-claims, counterclaims, and third party claims asserted by Chevron and Union Oil against the parties in this Actions that are not parties to the Settlement Agreement are hereby dismissed without prejudice. All such parties and the Settling Defendants shall bear their own attorneys' fees and costs as against each other.

7 The Court shall retain jurisdiction over the Settling Parties and jurisdiction over the subject matter of this Action for purposes of enforcing the Settlement Agreement.

8. Except as otherwise provided herein, each Settling Party shall bear its own litigation cots and expenses, including attorneys' fees.

IT IS SO ORDERED.

Dated: _____

_____
Judge of the Superior Court of California

Submitted by:

GLYNN & FINLEY, LLP
ANDREW T. MORTL
PATRICIAL L. BONHEYO

By: _____
Attorneys for Defendants, Cross-Complainants and Cross-Defendants Chevron Corporation and Union Oil Company of California

McDONOUGH HOLLAND & ALLEN PC
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EMERYVILLE REDEVELOPMENT AGENCY
MICHAEL G. BIDDLE, General Counsel (SBN 139223)
MICHAEL A. GUINA, Assistant General Counsel (SBN 203380)
1333 Park Avenue
Emeryville, CA 94608
Telephone: (510) 596-4300 / Facsimile: (510) 658-8095
Email: mbiddle@ci.emeryville.ca.us

Attorneys for Plaintiff and Cross-Defendant Emeryville Redevelopment Agency

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

EMERYVILLE REDEVELOPMENT AGENCY, A Public Body Corporate and Politic,

Plaintiff,

vs.

HOWARD F. ROBINSON, JR., et al.

Defendants.

AND RELATED CROSS-ACTIONS.

CASE NO. RG-06-267594
Consolidated for All Purposes with RG-06-267600 and RG-07-332012

COMPLEX LITIGATION

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT CREDIT

Reservation No.: 984358

Date: October 30, 2009
Time: 9:30 a.m.
Dept. 21

Hon. Jon S. Tigar

Plaintiff's Motion For Determination of Good Faith Settlement Credit concerning its proposed settlement with defendants Chevron Corporation, Union Oil Company of California, and cross-defendant Chevron U.S.A., Inc. ("collectively, "Chevron") has been presented to this Court. The Court has reviewed and carefully considered all the points and authorities submitted in support of and in opposition to the motion, the arguments by counsel made at the hearing on this motion, as well as all of the supporting declarations and exhibits.

IT APPEARING TO THE SATISFACTION OF THE COURT that said Motion has been made pursuant to and in compliance with Code of Civil Procedure Sections 877 and 877.6, that said motion presents a valid and good faith allocation of the settlement payment to be made by Chevron, and that the proposed allocation of Chevron's payment is based on substantial evidence;

IT IS HEREBY ORDERED that Plaintiff's Motion is approved in its entirety. Upon distribution to the Plaintiff pursuant to the terms of the settlement agreement, the $15.5 million settlement payment shall be allocated as follows vis-à-vis the non-settling defendants: $10,770,000 to Plaintiff's claim for damages on account of groundwater remediation and $4,730,000 allocated to Plaintiff's claim for damages on account of the soil remediation costs incurred through and including August 31, 2009, statutory interest, and attorneys' fees. Therefore, any joint and several judgment against the non-settling defendants shall be reduced by a set-off (i.e. net of) the sum of four million, seven hundred thirty thousand dollars ($4,730,000).

IT IS SO ORDERED.

Dated: _____

_____
The Honorable Jon S. Tigar
Judge of the Superior Court, Alameda County

49195\150821v1

APPENDIX E

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

EMERYVILLE REDEVELOPMENT AGENCY, Plaintiff, vs. HOWARD F. ROBINSON, JR., et al., Defendants.	No. RG06-267594 ORDER ON JOINT MOTION FOR GOOD FAITH DETERMINATIONS OF SETTLEMENTS AND SETTLEMENT ALLOCATION

On June 11, 2010, counsel for plaintiff Emeryville Redevelopment Agency ("Emeryville") and defendant The Sherwin-Williams Company ("Sherwin-Williams") appeared on the latter's objection to the Joint Motion for Good Faith Determinations of Settlements and Settlement Allocation pursuant to Code of Civil Procedure section 877.6. The motion encompasses three separate settlements involving Emeryville and settling defendants (1) Howard Robinson, Jr., ("Robinson"), (2) Christopher D. Adams and the various Adams individuals and trusts ("Adams Parties") and (3) Bank of America as

Trustee of the Ernest Paul Koeckritz Trust and other related parties ("Koeckritz Parties"). Cross-defendants Union Pacific Railroad ("UPRR") and the City of Emeryville ("City") are additional parties to some of these settlements. Counsel for the settling defendants and cross-defendants also appeared at the hearing and joined in the motion. As the Court previously approved the amount (but not the allocation) of the settlement between Emeryville and defendant Chevron, Inc., Sherwin-Williams is now the only non-settling defendant. After considering the submissions of the parties as of the date of hearing and the oral arguments presented at that time, the Court rules as follows.

A. Background

1. In an order issued on February 9, 2010 ("Order"), the Court approved the amount of the $15.5 million Chevron settlement but not the allocation of the funds whereby $10.77 million was allocated to groundwater remediation claims and $4.75 million to soil remediation claims. In rejecting the allocation, the Court noted that Emeryville "'must explain to the court and all other parties the evidentiary basis for any allocations and valuations made, and must demonstrate that the allocation was reached in a sufficiently adversarial manner to justify a presumption that the valuation reached was reasonable.' (*Regan Roofing Co., Inc. v. Superior Court* (1994) 21 Cal.App.4th 1685, 1700-01.)" (Order at 2.) The Court found that these requirements were not met for four reasons. First, the allocation was not proposed by a special master or any other neutral third-party. Second, it was not created based on the adversarial presentation of competing claims. Third, it seemed apparent that the allocation was designed to serve only Emeryville's interests in the litigation rather than some combination of both

Emeryville's and Chevron's interests. Finally, Emeryville introduced no evidence from which the Court could find that the allocation was reached in an adversarial manner.

2. The new settlements that are the occasion for this motion total $6.9 million, and it is now proposed that, of the total $22.4 million available from the Chevron and current settlements, $8,454,000 be assigned to the soil remediation claim, $4,400,000 to satisfy the settling defendants' statutory attorneys' fee obligations and $9,546,000 to future groundwater clean-up costs. Sherwin-Williams does not challenge the amounts of these settlements but does challenge the proposed allocation on two fundamentally distinct grounds.[1] First, it argues that all the defendants in this action were allegedly jointly and severally liable for the same tort – namely, the contamination of both the soils and groundwater at Site B – and thus the plain language of section 877(a) requires the non-settling defendants receive full credit for all sums paid in consideration for the release. Second, assuming *arguendo* any allocation were permissible, it further argues that Emeryville's proposal suffers from the same lack of an adversarial process that the Court previously identified as fatal to a good faith determination on the previously proposed allocation. (Order at 2-3.)

B. <u>The Threshold Issue</u>

3. Section 877(a) provides that:

> Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect:

[1] Because Sherwin-Williams does not challenge the amounts of any of the settlements, the Court does not need to address some of the details, such as the valuation of assigned claims and the like, and this discussion will ignore those aspects of the settlements. This means, of course, that there is no dispute but that the amount of each settlement satisfies the standards enunciated in *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3rd 488.

> (a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater.

On its face, the above statute clearly states that settlements by tortfeasors claimed to be liable for the same tort shall reduce the claims against the other alleged tortfeasors in the amount "stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater."

4. This relatively straightforward language poses a variety of difficulties, though, as soon as one tries to apply it outside the ordinary personal injury case with multiple defendants. As explained by one court:

> In the typical one-plaintiff, multiple-defendants, personal injury action each tortfeasor is potentially liable for the same injury to the plaintiff. Therefore the full settlement by one defendant will offset a judgment against other tortfeasors; no allocation of the settlement is required. But many lawsuits and many settlements do not fit this pattern. In some, the amount of the offset is uncertain because one settlement covers multiple plaintiffs or causes of action with different damages (see, e.g., *Southern Cal. Gas Co. v. Superior Court* (1986) 187 Cal.App.3rd 1030; *River Garden Farms, Inc. v. Superior Court* (1972) 26 Cal.App.3rd 986) or because a sliding scale settlement is used and payments by the settling defendant are contingent upon the degree of plaintiff's success against the remaining defendants (see, e.g., *Abbott Ford, Inc. v. Superior Court* (1987) 43 Cal.3rd 858). In others, the amount of the offset is clouded by injection of noncash consideration into the settlement (see *Arbuthnot v. Relocation Realty Service Corp.* (1991) 227 Cal.App.3rd 682; *Armstrong World Industries, Inc. v. Superior Court* (1989) 215 Cal.App.3rd 951; *Southern Cal. Gas Co. v. Superior Court, supra,* 187 Cal.App.3rd 1030) or, as here, by settling claims for separate injuries not all of which would be attributable to conduct of the remaining defendants.

(*Alcal Roofing & Insulation v. Superior Court* (1992) 8 Cal.App.4th 1121, 1124.)

5. When these more complicated situations are presented, a court reviewing the proposed good faith settlement must keep in mind the underlying policies reflected in section 877(a): "The maximization of recovery to an injured party for the amount of his injury to the extent fault of others has contributed to it ..., [the] encouragement of

settlement ..., [and] the equitable apportionment of liability among tortfeasors." (*Sears, Roebuck & Co. v. International Harvestor Co.* (1978) 82 Cal.App.3rd 492, 496; see also *Abbott Ford, supra*, 43 Cal.3rd at 872-873; *Tech-Bilt, Inc., supra,* 38 Cal.3rd at 494-496; *Erreca's v. Superior Court* (1993) 19 Cal.App.4th 1475, 1500.) At the same time, a court cannot simply review the underlying policy goals and attempt to achieve them without regard to the express statutory language. In this case it is exactly that express statutory language Sherwin-Williams relies upon to argue that it is entitled to credit for the full "amount of the consideration paid."

6. The Sherwin-Williams argument requires that the Court first determine whether the parties here are "joint tortfeasors" within the meaning of section 877(a). Sherwin-Williams argues they are, as the defendants were all initially sued for the clean up of Site B on the same statutory and common law claims. While Sherwin-Williams has been dismissed from the statutory claim on procedural grounds, all the defendants remain co-defendants on the common law claims and thus, it is argued, section 877(a) requires full credit for all cash paid in consideration for the release of those claims. In making this argument, though, Sherwin-Williams also recognizes that on the claims as pled only costs actually incurred to date (i.e., the soil remediation costs) are recoverable at trial and Emeryville cannot recover a monetary judgment for groundwater clean-up costs that it may incur at a later date. It is, of course, exactly those undetermined, future costs that the settling defendants want to include in any settlement. They wish to settle not only the liability that might be determined at trial but the additional contingency of exposure to future claims by Emeryville if it subsequently incurs such costs and either makes a demand or files a new action. It is beyond cavil that some amount has been included in

the settlements before the Court for this contingent liability. The issue is whether the language of section 877(a) allows this factor to be considered in determining the amount of set-off or precludes any recognition of the fact.[2]

7. Here all defendants are joint tortfeasors if one simply looks at the label attached to any one cause of action, e.g. nuisance, trespass, etc.; however, this overlooks the fact that in the present action all seem to agree that the only damages recoverable in this suit are the costs of remediation to date. Future remediation costs can only be recovered in a future suit, and it is this future liability that the settling parties wish to settle – not merely damages for the costs to date. Importantly, section 877(a) addresses the credit to be accorded settlements entered "before verdict or judgment [with] one or more of a number of tortfeasors claimed to be liable for the same tort." The phrase "same tort" in the context of this section must mean the tort to be reduced to "verdict or judgment" and is thus limited to whatever can be reduced to "verdict or judgment." Clearly, as future remediation costs cannot be reduced in this action to "verdict or

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[2] Of course, Emeryville and the settling defendants could avoid this whole problem by simply restructuring the settlements. Theoretically, they could settled the soil remediation cost issue for $X and settle the groundwater cost by placing an additional amount ($Y) into an escrow account that could only be drawn upon by Emeryville if, as and when groundwater costs are in fact incurred. After a specified period of time, any unused portion of the escrowed funds would revert pro rata to the contributing parties. Such a structure would avoid the present controversy entirely, as the amount paid directly to Emeryville now ($X) would be the only amount Sherwin-Williams would be entitled to claim credit for as an offset. This approach would admittedly be less than entirely satisfactory to the settling parties because the settling defendants would continue to have a stake in the groundwater remediation and would need to monitor Emeryville's efforts to determine whether its claims against the escrowed funds were legitimate. Similarly, such an arrangement would be less satisfactory to Emeryville because it would still face the burden of such oversight. Perhaps these unpleasantries could be resolved (after the good faith settlement approval) by the parties negotiating a buy-out of the escrowed amounts. The settling defendants in such a buy-out would receive a partial refund of the escrowed funds with Emeryville pocketing the balance in exchange for assuming the risk that the remediation costs would exceed the funds paid out of escrow in the buy-out. Such an approach would have avoided the current controversy. However, it is worth considering whether, if the above process would avoid the issue raised here by Sherwin-Williams, does it make sense to require the settling parties to go through this two-step approach with the attendant burden of an escrow account rather than allow them to liquidate the contingent liability in the initial settlement.

judgment," liability for those future costs is for a distinct or "severable" tort. The parties to this action are thus "joint tortfeasors" for one set of claims at issue in this case and a second set of claims reserved for another day.

8. This interpretation is bolstered further by the express language of section 877(a); which provides, in pertinent part, that a settlement "shall reduce the claims against the others ... in the amount of the consideration paid for *it* ..." The "it" in this provision refers to the release of the claim on which the parties face joint and several liability in the pending case. Here that claim is for soil remediation and yet the settlement purports to release that claim *and* the separate claim for groundwater contamination. Section 877(a) requires that the non-settling defendant get full credit for the portion of the settlement allocable to the claim to be reduced to "verdict or judgment;" the section does not require that the non-settling defendant get credit for the amount paid to settle both that claim and a separate claim that will not be reduced to a verdict or judgment in the pending case.[3]

9. This construction, moreover, is not only consistent with the plain language of the statute but also effectuates the underlying policies discussed above. In cases such as this, the settling defendants naturally want a global release, but, if Sherwin-Williams' construction were adopted, no party in the plaintiff's position would give such a release if the consideration paid for a global release would be credited in full against only a subset of claims. Thus the Sherwin-Williams construction would frustrate *all* of the underlying

[3] The above analysis is consistent with the view that where a plaintiff's injury is "indivisible" and defendants' liability is joint and several, a settlement cannot "partition" plaintiff's injury in order to maximize further recovery against the non-settling party. (*Bobrow/Thomas Assoc v. Superior Court* (1996) 50 Cal.App.4th 1654, 1660; see generally Weil & Brown California Practice Guide, Civil Procedure Before Trial, ¶12:781 (2009).) Here the injury is not "indivisible," but rather clearly divided between past and future, soil and groundwater, and only one component of the injury is recoverable in the present suit.

policies: it would not maximize the recovery to the injured party, it would discourage settlement, and it would result in an inequitable sharing of liability. Perhaps for this reason, while cases have not expressly analyzed this issue, several have implicitly rejected it by engaging in the kind of allocation exercise the Sherwin-Williams construction would suggest is unauthorized. (See *Erreca's, supra,* 19 Cal.App.4th at 1500-01; *Regan Roofing, supra,* 21 Cal.App.4th at 1698.)

10. For the foregoing reasons, the Court concludes that, under the plain meaning of the statute, Sherwin-Williams is entitled under section 887(a) to full credit for that portion of the settlement fairly to be allocated to the claims to be merged into the verdict or judgment to be entered in this case; in any subsequent proceeding, it is entitled to full credit for the remaining portion of the settlement. The key issue is thus what portion of the current settlements is to be allocated to the claims at issue in this case and what portion is to be allocated to the future remediation costs not at issue in the case.

C. <u>The Good Faith of the Allocation</u>

11. As previously noted, the issue of whether the allocation of settlement funds between incurred soil remediation costs and future groundwater clean-up costs has been addressed before in this case in the context of the Chevron settlement. The allocation of those funds was found to be unacceptable for four distinct reasons. To address one of those objections, Emeryville points first to the involvement of a mediator in negotiating the new allocation. While there is some dispute as to what may be disclosed as to the mediator's role in those negotiations (Evid. Code §§ 1115 et seq.), the fact of that involvement is clearly admissible and addresses the first deficiency noted in

the prior order.[4] To address the other concerns, Emeryville cites the declarations of counsel for the settling parties that the process was an adversarial one with the allocation issues contested at length. It further cites declarations of its experts to demonstrate that there was a rational basis for the allocations and that the allocations are not disproportionate (much less "grossly disproportionate"[5]) to the parties' relative exposures on the two categories of claims.

12. At oral argument the Court inquired further as to the adversarial nature of the negotiations. Specifically, the Court was interested in whether there was some structural element such as a coverage issue that might explain why it would be in the interests of a settling defendant to allocate as much as possible to the soils claim, while Emeryville's interest would be to allocate more to the groundwater claims. Such a showing would be a strong – perhaps conclusive – indicator of an adversarial process and a reasonable valuation. If the negotiations went on for the many months as they apparently did, one would think that there might be such a structural issue that would explain why the settling defendants would seek an allocation different from that sought by plaintiff. The only one that the Court can identify is the demand of Emeryville that defendants pay a fair share of the estimated future groundwater costs as a condition of obtaining a release for that liability. The settling defendants would, of course, want to

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[4] It is unclear the extent to which Sherwin-Williams was a participant in the mediation the movants would like to disclose for purposes of the good faith determination. If Sherwin-Williams was not a party to the mediation, then it has no standing to object if all participants wish to waive the provisions of the Evidence Code for purposes of the good faith determination. If Sherwin-Williams was a participant, then it has standing to object and it would be inappropriate for the Court to consider anything but (1) the fact that there was a mediation before a retired judge and (2) Sherwin-Williams' participation undoubtedly contributed to the adversarial nature of that process.

[5] In considering whether a settlement is in "good faith," the settling parties do not have to show that they have contributed their proportionate share. Rather as explained in *Tech-Bilt*, they only need to show it is "in the ballpark" and not "grossly disproportionate." (38 Cal.3rd at 498-99.)

minimize that exposure and limit the amount Emeryville might demand they pay. That certainly would explain the adversarial nature of the negotiation but it does not explain why after a final global number was agreed to the settling defendants would care how much of the number was allocated to soils and how much to groundwater.

13. The problem is compounded by the fact that apparently the soil remediation is largely completed, while the groundwater remediation has not yet begun. Sherwin-Williams points to this latter factor in arguing that the groundwater costs are largely speculative and may never be incurred. Such a scenario could lead to a windfall for Emeryville, which could pocket any unspent sums. It was just such a possibility that was cited by this Court in rejecting the prior allocation. At that time the proposed allocation to the groundwater remediation was said to be at the upper end of the estimated cost range, and this higher end was estimated by allowing for a 30% contingency for the unknown elements in the future groundwater clean-up effort. The Court pointed to the possibly inflated nature of the groundwater claim as one of the factors weighing against a good faith determination on the allocation.

14. With this history in mind, the Court turns to the merits of the current motion. As noted in the prior order, Emeryville has the burden of (1) explaining "the evidentiary basis for any allocations and valuations made" and (2) demonstrating "that the allocation was reached in a sufficiently adversarial manner to justify the presumption that the valuation reached was reasonable." (*Regan Roofing, supra,* 21 Cal.App.4th at 1700-01; see also *Errica's, supra,* 19 Cal.App.4th at 1495-96.) The issue is whether Emeryville has carried that twofold burden.

15. In addressing this issue, the Court notes that, although it would have been helpful if the moving parties had explained a structural reason why the settling defendants would have been motivated to bargain for an allocation different from that sought by Emeryville, such a showing is not required to meet the second prong of the *Regan Roofing* test. Indeed, in *Abbott Ford*, the case that first articulated the presumption arising from valuations reached in an adversarial setting, the court noted that the "somewhat conflicting interests" deriving from the plaintiff's interest in keeping the value low and the settling defendant's interest in keeping it high enough to secure a good faith determination may provide a sufficiently adversarial setting to give rise to the presumption of reasonable valuation. (*Abbott Ford, supra*, 43 Cal.3rd at 879; see also *Alcal Roofing, supra,* 8 Cal.App.4th at 1125 (discussing the "natural tension" between these two interests).[6]) This tension was present here; moreover it was bolstered by the example of this Court's February ruling that rejected the allocation presented in the Chevron settlement. As all the settlements are contingent on a good faith determination by this Court, were the Court to reject these settlements for the same reason as it did in February, one or more parties might back-out of the agreement. Thus, for example, if the settling defendants wanted the settlements to stick so as to preclude Emeryville from backing out and continuing the litigation, they had an incentive to ensure that an appropriately substantial portion of the overall settlement was designated for the soil remediation costs. Emeryville, of course, shared the interest of securing court approval but undoubtedly wanted to keep the amount allocated to the soil costs to the minimum necessary to secure a good faith determination. The Court finds this dynamic provides

[6] To the extent *Peter Culley & Assoc. v. Superior Court* (1992) 10 Cal.App.4th 1484, 1498, might be broadly read to dismiss this tension as an "imaginary" dispute, such a reading would be inconsistent with *Abbott Ford* and *Alcal Roofing*.

sufficient indicia of an adversarial process to give rise to a presumption that a reasonable allocation was made.

16. In reaching this conclusion, the Court relies not only in the dynamic described above but on two additional factors as well. First, and most importantly, the Court assigns some weight to the involvement of a mediator in the most recent process. That is a major difference between the current record and that before the Court in February. And while the Court is wary of the movants' invitation to consider such factors as the recital in some agreements that the final number reflects the acceptance of a "mediator's proposal," the Court takes some comfort from the fact that a respected retired judge acted as a neutral in the process.[7] The Court has also considered the declarations of counsel for the settling defendants as well as Emeryville. In reviewing those declarations, the Court has disregarded as inadmissible any recitations therein as to what happened in mediation. Even with those portions excluded, though, the declarations provide additional indicia of an adversarial process. All these factors together lead the Court to conclude that the allocations presented by the settling parties were arrived at in a sufficiently adversarial process to warrant a presumption that the valuations are reasonable.

17. Turning to the allocations themselves and the evidentiary support for those allocations,[8] the moving parties propose that the $22.4 million in settlement funds from

[7] As noted in a prior footnote, accepting Sherwin-Williams' position that it has standing to object to any disclosure of the mediation process means that Sherwin-Williams was at least to some extent a participant in the process. While the Court cannot consider the extent of that participation the fact of it is another factor supporting the conclusion that the process was adversarial for purposes of the good faith analysis.

[8] As previously noted, there is no challenge to the settlement amounts to be paid by each party but only to how the total is allocated. Thus the Court does not need to recount here the exposure of each of the settling defendants and the reasonableness of the amount each is contributing to the settlement. It is simply

all the settlements to date be allocated as follows: (a) $9,546,000 to cover future groundwater remediation costs, (b) $8,454,000 towards the costs incurred to date for soil remediation and (c) $4,400,000 for Emeryville's attorney's fees. The effect of this allocation would be to (a) resolve the statutory claim for attorneys' fees, (b) set aside enough to cover the low end of the estimated the cost of future groundwater remediation that could total anywhere from $8.5 million to $17.1 million, and (c) leave almost $7 million still outstanding of the approximately $15 million spent on soil remediation.

18. In evaluating the above proposed allocation, it is important to keep in mind the fundamental differences in the figures used. When considering the soil remediation costs, the figures are the actual costs incurred to date, and it is highly unlikely that any future costs will be incurred for that category. The groundwater costs, on the other hand, are largely future costs and difficult to determine as evidenced by the 2:1 range in the estimate between the high and low end. The settling parties are paying a portion of their settlement to relieve them of this contingent liability, the uncertainty as to the amount it may eventually come to and the attorneys' fees they would incur were they to remain not only in this case through trial but in any follow-on litigation to recover the actual cost of the groundwater contamination. The question is, in effect, whether it is reasonable for the settling defendants to pay half of the soil costs, all of the attorneys' fees incurred to date and a sum sufficient to cover the low-end of the potential groundwater remediation costs? Or does that formula place a disproportionate burden on the sole remaining defendant, who may end up paying more than its proportionate share of the soil costs?

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undisputed that the settlement amount contributed by each of the settling parties is in what *Tech-Bilt* refers to as "the ballpark" of its potential liability. (38 Cal.3rd at 498-99.)

19. In considering a similar proposal in the context of the Chevron settlement, the Court placed significant weight on the danger posed by allocating "too much" to future costs because of the uncertainty surrounding those costs and the potential for a windfall to Emeryville if the costs were not as high as estimated. It is argued that that risk remains as the new proposal only reduces the amount allocated to the groundwater costs by roughly 12%. That reduction in the allocation to the groundwater portion of liability is said to be too modest to eliminate the risk of a windfall. While it is indeed true that the reduction is relatively modest and thus the risk of a windfall to Emeryville is not eliminated, it is also true that the risk runs both ways and Emeryville might also incur costs at the higher end of the range. It is also true that the settling defendants would incur attorneys fees to remain in this litigation and any follow-on suit and that they would also remain potentially liable for Emeryville's fees in this case and the next. Given all these considerations, it is not unreasonable for the settling parties collectively to value the incremental value of a global release at $9.5 million.

20. As for Sherwin-Williams, while the proposed allocation leaves it exposed to a substantial portion of the soil costs, the allocation of sums to groundwater remediation costs is not without value to it. Assuming for purposes of argument that Sherwin-Williams' current motion for summary judgment fails,[9] it would not only face exposure for the balance of the soil costs but would also be the sole remaining defendant in any future litigation to recover the cost of groundwater remediation. These settlements provide it with substantial protection in any such future litigation, and if the settling defendants have overpaid with respect to those claims, it still cannot be gainsaid that

[9] If Sherwin-Williams prevails on the pending motion, it is not harmed at all by these settlements because it will not face liability for either the soil or the groundwater remediation costs. It would thus have no stake in the allocation.

Sherwin-Williams derives substantial benefit from "both sides" of the allocation. In other words, Sherwin-Williams does receive real value from moneys allocated to groundwater; it is just that those dollars are not as valuable to it because they reflect a credit against a contingent liability, while the dollars allocated to the soils claim mitigate a more immediate liability.

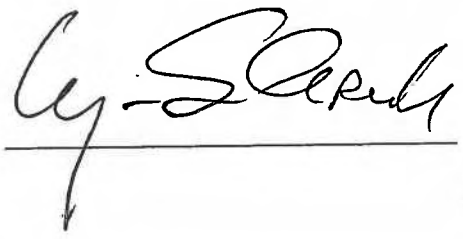
21. In the end, the Sherwin-Williams "windfall objection" proves too much. If by this objection Sherwin-Williams would have this Court require that any allocation to the groundwater claims be tailored so as to eliminate any risk of a windfall, the possibility of any settlement would be seriously impaired. Such a standard might so greatly limit the amount allocated to groundwater that Emeryville would have little or no incentive to entertain a global settlement because it would receive insufficient consideration for a release of the contingent groundwater costs, and the defendants who wished to settle would be unable to negotiate a global release. This predicament would frustrate the policy of promoting settlement as well as that of maximizing the recovery to the injured party – two of the key underlying policies – and it would do so without appreciably advancing the interest in the equitable apportionment of liability among joint tortfeasors because, whatever the allocation, Sherwin-Williams derives benefits from both sides of it. For these reasons, the "windfall objection" as well as the objection that the proposed allocation to the groundwater claim unfairly exposes Sherwin-Williams to disproportionate liability on the soils claim are both rejected.

22. The Court finds that there is evidentiary support for the estimated cost of each of the three kinds of liability the funds are allocated to (soils, fees and groundwater). The soils costs are largely fixed; counsel's declaration is sufficient to establish the

magnitude of the attorneys' fee claim; and the expert declarations provide a basis for estimating the approximate range of groundwater remediation costs. The liability is joint and several, and if Sherwin-Williams is unsuccessful in its summary judgment motion, it is exposed to liability on all outstanding claims other than for statutory fees. The Court further finds that the allocation of the settlement funds among the three kinds of liability has a rational basis and does not prejudice Sherwin-Williams because, among other things, if it is found liable for the soils clean-up, it would also share in the liability for any future groundwater remediation. This latter fact distinguishes this case from those allocation situations where the non-settling party objects to an allocation of funds to a claim on which it has no exposure. As Sherwin-Williams has exposure on both the soils and the groundwater remediation costs, the allocation of the settlement funds between the two categories of remediation does not result in either the settling defendants or Sherwin-Williams bearing a disproportionate share of the aggregate liability. For all of the foregoing reasons, the Court finds the allocation of the settlement funds to be in good faith and thus each of the proposed settlements, including the Chevron settlement, to be entered in good faith and the settling parties are entitled to an order barring all future claims against them for implied or equitable indemnity or contribution of any kind.

23. The Court intends to enter the form of order as to each settling party that was submitted with the moving papers. Any party objecting to the form of any such order shall have ten (10) days from the date of this order to file an objection to the form of order or a proposed alternative order.

July 23, 2010



CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk in Dept. 21 of the Superior Court of California, County of Alameda and not a party to this cause. I served the ORDER ON JOINT MOTION FOR GOOD FAITH SETTLEMENT AND SETTLEMENT ALLOCATION by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

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Executive Officer/Clerk of the Superior Court

By _____
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Date: July 23, 2010

APPENDIX F

RESPONSIVENESS SUMMARY
FOR
THE DRAFT FEASIBILITY STUDY/ REMEDIAL ACTION PLAN
SOUTH BAYFRONT SITE B
1525 &1535 POWELL ST., 5760 &5770 SHELLMOUND ST., AND FORMER RAIL SPUR,
EMERYVILLE, CALIFORNIA
January 2008

SECTION I: INTRODUCTION

Between October 15, 2007 and November 14, 2007, the Department of Toxic Substances Control (DTSC) and the City of Emeryville Redevelopment Agency (Agency) held a 30-day public comment period for the Draft Feasibility Study/Remedial Action Plan (FS/RAP) for the South Bayfront Site B site located at 1525 Powell Street, 1535 Powell Street, a Former Rail Spur, 5760 Shellmound Street, and 5770 Shellmound Street, in Emeryville, California. This document was placed in the information repositories listed below to provide the public with information regarding the proposed remedial action and to solicit public comments on the adequacy of the document.

On October 15, 2007, a fact sheet was mailed to the site mail list which summarized the draft RAP and proposed site cleanup methods. A Public Notice display advertisement for the Draft FS/RAP was placed in the Oakland Tribune on October 15, 2007. Copies of the fact sheet and display advertisement are found in Attachment A. A public meeting was held by the Agency on October 30, 2007 to discuss the project and receive oral comments.

The Draft FS/RAP provided the findings of the investigations, remedial action objectives and remedial alternatives evaluated to address metals (arsenic, antimony, and lead), total extractable petroleum hydrocarbons, sulfide, and chlorinated volatile organic compounds contamination in soil and groundwater at the site. The Draft FS/RAP proposed to excavate soil containing contaminants above cleanup levels for commercial land use and dispose of it at an approved offsite facility, as well as dewatering saturated zone soil of impacted groundwater for proper treatment and disposal. Monitored natural attenuation would be performed to determine if groundwater extraction and treatment would be necessary to reach remedial goals. A Land Use Covenant would be implemented to restrict site use, and indoor air vapor mitigation would be required of future developments.

DTSC and the Agency received verbal and written comments during the public comment period. DTSC's responses to these comments are provided below. After review and consideration of the comments, DTSC approved and adopted the draft RAP as the Final FS/RAP. A copy of the Final FS/RAP and other site-related documents is available for review at the following locations:

Department of Toxic Substances Control
File Room
700 Heinz Avenue
Berkeley, California 94710
(510) 540-3800
Monday thru Friday
Excluding State Holidays
8AM to 5PM

Emeryville City Clerk's Office
1333 Park Avenue
Emeryville, California 94608
(510) 450-7800
Mon. & Tues. (9AM – 9PM)
Wed. (12PM – 9PM)
Thurs. thru Sat (9AM – 6PM)
Sunday (1-5PM)

This Responsiveness Summary is organized as follows:

- Section I is the introduction.
- Section II lists the comments received and provides responses to those comments.
- Attachment A provides copies of the fact sheet and display advertisements.
- Attachment B provides a map showing the location of the South Bayfront Site B site.
- Attachment C includes a copy of the transcript for the public meeting held on October 30, 2007.
- Attachment D includes copies of the written comments received.

SECTION II: RESPONSE TO COMMENTS

This section provides responses to comments received during the public comment period. Comments have been grouped by topic and either included verbatim or summarized. Comments containing similar content have been combined where a similar response is appropriate. The comments are followed by reference numbers that indicate which commenter(s) made the comment (each commenter has been assigned a reference number). A list of the reference numbers, commenters, and the media through which the comment was received is located on page 35.

EXTEND PUBLIC COMMENT PERIOD

Comment 1

We request a 30-day extension of the public comment period for the Draft RAP because as entities potentially responsible for cleanup costs, we have not had adequate time to review the documents. **(1, 2, 3)**

Response 1

In November 2005, the Redevelopment Agency notified parties that were identified as responsible parties for contamination at Site B under the Polanco Redevelopment Act, and they were offered an opportunity to submit a remediation plan at that time; however, no acceptable remediation proposals were received. In addition, the parties have been involved in the cost-recovery litigation over Site B since June 2007, before the Draft RAP was released and were given a variety of documents prior to their release to the public. These requests for an extension was denied by DTSC in a letter dated November 9, 2008

Comment 2

If our client is to be held responsible for the cost, it should have appropriate input: The cost of the proposed RAP is very significant and the Agency is seeking to shift those costs to our client. Before our clients are presented with such a liability, they should have a full and fair opportunity to provide input into the proposed remediation plan. They have not had that opportunity because they have only recently been named in the cost recovery action, and because they have not had adequate time to review the RAP. To the extent that the Agency wishes to proceed with a RAP which is unnecessary and overdone at its expense, it is free to do so; however, it should not be permitted to impose the cost of the RAP on our client. Accordingly, we renew our request that we be given a reasonable opportunity of time within which to review, analyze, and comment on the proposed RAP. **(6, 8)**

Response 2

The RAP is appropriate for the conditions at Site B and was developed in accordance with all applicable guidance. DTSC is not making a determination regarding who bears the financial responsibility of cleanup activities outlined in the RAP. Also see Response 1.

DECONTAMINATION

Comment 3

How do you prevent the decontamination water from truck washing from being released into the storm drain? **(4)**

Response 3

Trucks will be washed in a designated decontamination area, which will be bermed. Waste water will be contained in this area, and will be pumped out and stored in a holding tank on site for proper disposal.

NOT ENOUGH ALTERNATIVES WERE EXPLORED

Comment 4

In general, the *Draft RAP* does not adequately consider a range of cleanup alternatives. In particular, the *Draft* RAP inappropriately screens out consideration of an alternative of containment of soil contaminated with relatively immobile metals. The *Draft* RAP should be revised to consider the containment option, as it represents a more cost-effective remedy than the recommended excavation and offsite disposal. **(5)**

Response 4

The remedial action objectives identified for soil at the site are:

1. Mitigate or reduce direct human exposure that may occur through direct contact with soil impacted by chemicals of concern at concentrations exceeding human health risk-based remedial goals based on plausible exposure scenarios, including potential exposures to future maintenance personnel and workers performing underground construction. Mitigate or reduce direct human exposure to chemicals volatizing from soil into indoor and outdoor air to levels that are considered protective of human health.
2. Mitigate or reduce the levels of chemicals of concern in soil, or limit the potential for their migration from soil to groundwater so that chemical concentrations in ground water potentially leaving Site B do not pose a

threat to surface water quality goals for protection of aquatic organisms in Temescal Creek and San Francisco Bay.

The remedial action objectives identified for groundwater at the site are:

1. Mitigate or reduce direct human exposure to chemicals volatilizing from groundwater into indoor and outdoor air to levels that are considered protective of human health.
2. Mitigate or reduce the level of chemicals of concern in shallow groundwater, or limit the potential for groundwater migration, so that groundwater concentrations do not threaten surface water quality goals for protection of aquatic organisms in Temescal Creek and San Francisco Bay.

Containment of the impacted soils at the project site would not meet the Remedial Action Objectives (RAOs) for soil and groundwater. Construction workers would still come in contact with contamination during development construction and utility maintenance activities. Capping only also does not prevent the possible migration of contaminants from soil into groundwater, which could then reach ecological receptors in the San Francisco Bay.

Comment 5

There is no adequate explanation or exploration of acceptable alternatives: The RAP selects an alternative plan which has the “greater certainty” of achieving the Agency’s objectives relative to the cleanup. However, because development is not defined, it appears that the cleanup proposed goes well beyond applicable regulatory requirements, and goes beyond the natural condition of the property in that geographic location. The goal of the work is to meet regulatory requirements, not achieve a “greater certainty.” There is no explanation why the “greater certainty” standard is used, nor what it means with respect to the scope or cost of the cleanup. Many of the metals identified in the RAP appear to be attributable to naturally occurring geologic deposits and preexisting fill materials. And it does not appear that alternatives were seriously considered with respect to metals other than excavation and off-site disposal, nor was potential reuse of materials considered. **(6, 7, 8)**

Response 5
Based on collected information, DTSC believes the high concentrations of contaminants present at the site are not naturally occurring.

The Draft RAP describes the Remedial Action Objectives (RAOs) established for the site. Cleanup alternatives are developed and evaluated against nine federally required criteria to deem their appropriateness and applicability in achieving the site’s RAOs.

EVALUATE SITE AS OPERABLE UNITS RATHER THAN A WHOLE

Comment 6

The retention of only one remedial technology for metals appears to stem from the approach to address the multiple sources and varying suites of contaminants on a site-wide basis rather than using operable units, e.g., the area of CVOCs in soil gas and groundwater is distinct from the area where metals are found on the southern portion of the Site. The *Draft* RAP does not "establish whether the site may best be remedied as one or several separate operable units," in a manner consistent with the types of evaluations conducted pursuant to the NCP. Sites addressed in a manner consistent with the NCP "should generally be remediated in operable units when...appropriate given the size and complexity of the site.'"

Since certain contamination is limited to discrete portions of the Site, an analysis of operable units is appropriate, e.g., CVOCs in soil gas and groundwater do not require remedial actions on the 5760 Shellmound Street portion of the Site. The analysis of alternatives solely on a site-wide basis biased the analysis and thereby excluded more cost-effective options, such as capping, from consideration. **(5)**

Response 6

A site may be subdivided into operable units (OUs) to address geographical portions of a site, specific site problems, or initial phases of an action, in order to incrementally step toward comprehensively addressing site problems. Site B is not a large area (it consists of a little more than three acres) and the site has been fully characterized. DTSC does not see a significant benefit to subdividing the project site into operable units. Currently there are no determined future uses for the site, and thus the remedial goals are applied equally across the entire site so as not to limit the future development of any portion of the site. The Draft RAP evaluates the remedial alternatives for the individual source areas described in the conceptual model and evaluated a range of potential technologies for remediation of the identified source areas, consistent with NCP guidance.

HYDROGEN SULFIDE, ARSENIC, AND TPH REMEDIATION

Comment 7

The *Draft* RAP does not adequately support the conclusion that soil has been "impacted by hydrogen sulfide." In the anoxic environment found along the bay shoreline, hydrogen sulfide is formed by the biologically mediated reduction of sulfate to sulfide." Since hydrogen sulfide is a naturally occurring condition, it should not require remediation as "Cal/EPA generally does not require cleanup of soil to below background level." Therefore, it is neither appropriate to

characterize hydrogen sulfide's occurrence in subsurface sediments as an "impact"; nor appropriate to consider cleanup actions to address its presence. **(5)**

Response 7

The hydrogen sulfide in soil gas in this area is not the result of naturally occurring conditions. As documented on the adjacent South Bayfront property, the hydrogen sulfide gas is the result of the use of a pit and other activities involved with the manufacture or disposal of calcium polysulfide and other pesticides. The remediation proposed for the southwest corner of the 5760 Shellmound Street property is consistent with the remediation required by the DTSC on the adjacent South Bayfront property.

Comment 8

The investigations revealed arsenic and hydrogen sulfide odor in the southwestern part of the Site, where the historical shoreline of the San Francisco Bay was previously located. CVOCs were not found in soil gas or groundwater in this portion of the Site as they were in other portions of the Site. To a limited extent, Total Petroleum Hydrocarbons (TPH) were found above remedial goals in the southern portion of the Site.

Based on this data, EKI developed a remediation plan as depicted on Figure 5-6 (Schematic of Alternative 6), which shows excavation of soil from the southern portion of 5760 Shellmound Street is limited to the unsaturated zone, i.e., from approximately 6-feet above mean sea level (MSL) to 3-feet MSL. The excavation is proposed to address the presence of arsenic, TPH and hydrogen sulfide odor. Remedial measures for groundwater are not proposed for the southern portion of the Site.

The relative immobility of the metals and the absence of proposed actions for soil gas and groundwater indicate that capping would be an appropriate remedy for the southern portion of the Site. For example, it is likely more cost-effective to cap the 120 cubic yards of soil present in the approximately 100-foot by five-foot strip of land along the property boundary with the South Bayfront property rather than to excavate it. It is likely that this portion of the Site would be present under a parking area where capping would be compatible with future commercial use and would provide a similar level of protection as excavation and offsite disposal. **(5)**

Response 8

The proposed remedial plan allows for a reasonable range of potential future uses. Given the groundwater impacts (arsenic, TPH potentially releasing to the storm drain) associated with the soil contamination, removal of soil sources

provides a higher level of protection and is consistent with the remedial action objectives.

See Response 7 regarding the hydrogen sulfide contamination.

Comment 9

Further, remediation does not even appear necessary to address conditions in the southwestern portion of the Site, because samples from borings ROBI, SFM-1, ROB2 were not reported to contain metals or other chemical of concern above remedial goals. The soil is this area is apparently being excavated to address "hydrogen sulfide odor only.'" However, a remedial goal for hydrogen sulfide odor has not been proposed, nor are we aware of any requirement to remediate odor in soil. The approach to address soil with hydrogen sulfide odor in the same manner as soil containing CVOCs highlights the limitations of the "one size fits all" remedy that has resulted from the RDA's evaluate the Site in operable units. **(5)**

Response 9

The remediation proposed for the southwest corner of the 5760 Shellmound Street property is consistent with the remediation required by DTSC on the adjacent South Bayfront property, as outlined in the May 1999 Final Remedial Action Plan for the property to remove the material which produces hydrogen sulfide below the depth that construction related excavations might be expected to be conducted - thereby protecting the possible future construction worker.

In addition to hydrogen sulfide concerns, remediation in this area is necessary primarily because concentrations of arsenic in soil on the southwest portion of Site B are as high as 188 mg/kg as compared to remedial goals of an average of 60 mg/kg and a peak concentration of 140 mg/kg. The arsenic in this area is affecting groundwater, with a concentration 1,330 ug/L detected in the southwest corner of Site B as compared to a remedial goal of 36 ug/L. The groundwater in this area is within 150 feet of the Shellmound Street storm drain, which is in direct communication with Temescal Creek and San Francisco Bay.

Comment 10

As an example of the apparent failure of the RAP to delineate soil zones for excavation, compare the proposed excavation at the 1535 Powell St. property (Figures 5-2 and C-2 of the RAP) with the actual data (Figure 3-la from the May 2007 Revised Draft Remedial Investigation and Human Health Risk Assessment Report). It is noteworthy that bold, underlined, and/or shaded values in these figures are not necessarily in excess of PRGs, but rather simply exceed "background" (see Comment 4) or CHHSLS. The proposed excavation covers more than half of the property, yet only 2 of 37 soil samples exceeded the PRG

range for arsenic (60-140 ppm) and none of the samples exceeded the PRG range for antimony (110-320 ppm) or lead (1,200-5,000 ppm).

Similar evaluation of the TPH-g soil concentrations indicates that only two samples from within the proposed excavation exceeded the PRG for TPH-g (both of which were from the top five feet of bore SBA-C), whereas an additional two samples exceeding the PRG were observed below the proposed zone of excavation. TEPH is discussed in detail in the following comment. However, comparison of TEPH concentrations with the 26,000 ppm HBHC PRG used for the TPH above the gasoline range at South Bay Front illustrates that none of the soil samples from the 1535 Powell St. property exceed that remedial goal.

Thus, the proposed excavation of approximately 27,000 cubic feet of soil at the 1535 Powell St. property is based on 4 samples (from 3 locations), all of which have nearby soil samples with contaminant concentrations below appropriate PRGs.

"Excavation cells," defined in Figure C-2 and Table C-1, are generally on the order of approximately 5,000 cubic feet, and are almost exclusively defined by a single soil sample per excavation cell. No measures of relative standing, central tendency, dispersion, or association appear to have been calculated or reported. No statistical (e.g., variograms or h-plots) or subjective evaluation of the spatial variability is presented. Simple subjective evaluation of tabulated results (e.g., non-detects within several feet of high TPH concentrations) indicates that the spatial variability of the data is grossly disproportionate to "excavation cell" volumes to which individual samples have been applied. In spite of the unjustified assertion that "the density of sampling is sufficient" (pages ES-6 and 7-1), there appears to be no statistical evaluation of the adequacy of the data set for characterization. Nor does there appear to have been any numerical evaluation of the extent and spatial continuity of soil contamination (e.g., contouring and associated statistical analyses recommended in appropriate guidance document).

EPA guidance (EPA. 1998. Guidance for data quality assessment. EPAl600lR-961084) for evaluation of characterization data provides standard preliminary data review approaches, which "should be performed whenever data are used, regardless of whether they are used to support a decision, estimate a population parameter, or answer exploratory research questions." The minimum requirements of that review are not met by the RI and/or RAP. **(8)**

Response 10

The Revised Draft RI/HHRA Report presented results of the remedial investigations. The soil and groundwater data, as presented in tables and figures in the Revised Draft RI/HHRA Report, were compared to screening levels for soil and regulatory levels or applicable screening levels for groundwater to screen

sites for potential human health concerns and to preliminarily identify primary chemicals of concern ("COCs"). Screening levels for soil such as CHHSLs, EPA Region 9 PRGs, and LBNL background metal concentrations were not used to determine either the cleanup standards or the areas targeted for remediation. A site-specific HHRA was conducted to evaluate human health risks from identified COCs based on the suite of chemicals detected at Site B and to assist in the development of site remedial goals.

The proposed remedial goals were subsequently presented in the Revised Draft RAP. Based on those remedial goals, Section 5.0, Tables 5-1b, and Figures 5-1a and 5-1b of the Revised Draft RAP describe the process for delineating unsaturated zone excavation areas. The excavation areas for COC-impacted soils were delineated based on sampling locations with target COC unsaturated zone soil concentrations greater than the unsaturated zone average soil remedial goal. Therefore, the proposed excavation areas on the 1535 Powell Street property are appropriate and are consistent with the stated application of soil remedial goals in the Revised Draft RAP.

Two soil samples, SBA-C(1.5-2) and SBA-C(4-4.5), on the 1535 Powell Street property exceeded the unsaturated zone average soil remedial goal for TPH-g of 500 mg/kg. Soil samples at the 1535 Powell Street property greater than 6 feet below ground surface ("bgs") did not exceed the weathered TPH-g saturated zone soil remedial goal of 6,200 mg/kg.

TEPH in soil on the 1535 Powell Street property generally consists of diesel range and heavier than diesel range components. Therefore, the application of an HBHC soil remedial goal is not appropriate.

The proposed excavation areas on the 1535 Powell Street property are reasonable based on the following:

- TPH is not the only COC identified as a basis for excavation at the 1535 Powell Street property. Table 5-1b of the Revised Draft RAP also indicates that metals and VOCs exceed unsaturated zone average soil remedial goals.
- Historical site use also indicates that TPH was prevalent across the majority of the 1535 Powell Street property.
- The 1535 Powell Street property is approximately 0.4 acres. The collection of the amount of data needed to perform the suggested statistical analyses for such a small site is not standard practice.

Comment 11

Section 5.2.2.2 - ultimately, the RAP utilized TPH "nuisance odor" as the driver for the revised PRG. Utilization of odor thresholds for calculation of nuisance odor derived-PRGs was based on inappropriate parameter values (fresh gasoline and fresh fuel oil No. 1 vs. weathered unidentified petroleum compounds

observed on the site). Adequate nuisance odor evaluation requires appropriate evaluation of the TPH-g, TPH-d, and HBHC fractions, as well as identification of the compounds comprising each fraction. Furthermore, soil types utilized for risk assessment were inconsistent with reasonably foreseeable development. The MADEP S-2 soil standards consider incidental ingestion of the soil and dermal contact with the soil, in which the potential receptor may come into frequent but passive contact with the contaminated soil. **(8)**

Response 11

The odor threshold used for nuisance odor is from fresh petroleum products. The scientific and regulatory literature was reviewed for published odor thresholds for weathered petroleum products but none were identified. Therefore, the best available data was used to calculate the odor index.

Proposed TPH soil remedial goals for odor were developed based on ceiling concentrations identified in the MADEP MCP (2006) given the odor index and the MADEP S-2 type soil (EKI, 2007b). The proposed Site B nuisance-based average unsaturated zone soil remedial goal of 500 mg/kg for TPH-g is consistent with the recently re-issued San Francisco Regional Water Quality Control Board Screening for Environmental Concerns at Site with Contaminated Soil and Groundwater Environmental Screening Level ("ESL") of 500 mg/kg (ceiling value for shallow soil under commercial/industrial land use). The proposed Site B nuisance-based average unsaturated zone soil remedial goal for TEPH is 1,000 mg/kg and the SFRWQCB ESLs are 500 mg/kg for TPH middle distillates and 2,500 mg/kg TPH residual fuels. Considering the difficulty in quantifying individual TEPH factions separately, an average unsaturated zone soil remedial goal for TEPH of 1,000 mg/kg was chosen.

Site-specific risk-based TPH remedial goals were developed for Site B for the protection of the site construction worker. If no odor is observed during remediation excavation in the unsaturated zone, soils will be removed to meet the risk-based TPH remedial goal of 2,000 ppm (Table 5-1a of the draft RAP); however, if odor associated with TPH is observed during excavation, soils will be removed to meet the nuisance-based goal of 500 ppm for TPH-gasoline, and 1,000 ppm for TPH-diesel and HBHC (high boiling point hydrocarbons.) This information will be added to Section 5.3 of the Final RAP.

In Section 5.2.2.1, the TPH goal for direct exposure to petroleum products was based on the MADEP S-2 type soil classification criteria and the definitions of frequency of use, intensity of use, and accessibility, as defined in the Massachusetts Contingency Plan ("MADEP MCP"). The MADEP S-2 type soil classification is considered appropriate for development of odor based goals for the potential redevelopment options because the following MADEP MCP criteria were met: the soil is considered "potentially accessible" because soil is located less than 3 feet from the surface in an area completely paved and soil is located

at a depth of 3 to 15 feet below the surface (with or without pavement). Therefore, the MADEP S-2 type soil is the most appropriate soil type.

Comment 12

Evaluation of the heavier hydrocarbon concentrations for this property is confounded by the lumping of hydrocarbons into a single category, "TEPH." Furthermore, the reported TEPH values are presented and used inconsistently (and apparently inappropriately), with the RI stating (on page 6-3, footnote 5) that TEPH represents TPH-d and HBHC. However, this usage of TEPH values conflicts with data in Table 3-3b that indicate TEPH is inclusive of the "lighter than diesel range" as well. In fact, of the 22 samples (from the 1535 Powell St. property having reported TEPH product interpretations), only 7 are not comprised at least in part by TPH-g range hydrocarbons.

The ranges of potential remedial goals reported in Tables 3-2 and 3-3 of the RAP and Tables 6-2 and 6-3 of the RI clearly indicate that distinguishing between the various carbon fraction ranges is critical to the determination of adequate risk-based cleanup standards. However, quantification of the TPH-g TPH-d and HBHC fractions has not been performed as part of these assessments. Therefore, the utility of TEPH concentrations for risk assessment and remedial action planning appears to be inadequate. **(8)**

Response 12

In regards to the “inconsistency” between footnote 5 on page 6-3 and Table 3-3b, footnote 5 refers to the evaluation of solubility of the various TPH fractions presented in Section 6.2.1. Section 6.2.1 concludes that both TPH-d and HBHCs are insoluble. Therefore, laboratory analyses that combine these fractions are appropriate for evaluating the solubility of any detected TPH compounds.

In regards to the issue of TPH-g range hydrocarbons being quantified at the lab as TEPH, the gas chromatograms generated by EPA Method 8015 were used to qualitatively evaluate the nature of reported TPH as described in Appendix J of the Revised Draft RI/HHRA Report. Key indicators for interpreting chromatograms are the boiling range (which implies carbon range) and the pattern of peaks and humps. As further described in Appendix J of the Revised Draft RI/HHRA Report, carbon ranges of petroleum products overlap, for example, the following petroleum and carbon ranges are: jet fuel A - C8 to C18, diesel fuel #2 - C10 to C25, fuel oils #4 through #6 (Bunker C) - C10 to higher than C35, and motor oil - C20 to C30. Because of the overlapping carbon ranges, if more than one type of fuel is present in a sample, quantification of individual petroleum types using standard practice is not feasible. However, quantification within carbon ranges is included in laboratory reports from Calscience (see Appendix K of the Revised Draft RI/HHRA Report).

The results of the qualitative analysis for samples collected at Site B are included in Table 3-3b of the Revised Draft RI/HHRA Report. Tables 5-1b and 5-2 of the Revised Draft FS/RAP present the rationale for excavation in the unsaturated and saturated zones and application of the proposed soil remedial goals for TPH. For application of saturated zone soil remedial goals where more than one type of petroleum is reported for a sample with TEPH, it is appropriate to use the most stringent remedial goal for the petroleum types reported. In instances when only heavier than diesel components (i.e., HBHC) is found in a TEPH sample, it is appropriate to use the remedial goal for HBHC.

Comment 13

Deviation from the PRG (26,000 ppm) used at the adjacent South Bay Front Site (TPH is the only constituent for which PRGs deviated from those of South Bay Front) further confounds the evaluation of the heavier hydrocarbon concentrations. In addition to the problems with utilization of TEPH values for comparison with TPH-d and HBHC PRGs highlighted in Comment 2, the site-specific remedial goals developed for TPH are based on inappropriate assumptions, including: Section 6 - utilization of receptor pathways without corroborative data (although a potential pathway was identified, no effort was made to determine if off-site migration of TPH was occurring through the storm sewer and evaluation of metals provided no indication of transport from site groundwater to surface water). In Section 2.2, the RAP states: "An evaluation of downgradient groundwater migration pathways indicates that surface water, Sun Francisco Bay via Temescal Creek via the Shellmound storm drain, is the receptor of concern for Site B groundwater. " The stormwater drain sampling performed by Erler & Kalinowski, Inc. ("EKI") does not validate this statement. Section 2.4 states that according to the RI: "TPHs in groundwater were the only identified CECs at Site B that may threaten surface water quality." EKI performed sampling of the storm water line and did not analyze for TPH, reportedly because of the likelihood of non-point sources of TPH being present in the storm water. Unless more focused sampling in and around the storm water line can demonstrate that TPH from Site B groundwater is entering the storm water line, it cannot be considered a complete receptor pathway, and should not be the focus of remedial goals. Similarly, with respect to Section 3.2.1 (2), there is no evidence that TPH concentrations in soil on Site B pose a material threat to surface water quality in Temescal Creek or San Francisco Bay. **(8)**

Response 13

TPH was not a primary COC at the adjacent South Bayfront site, and therefore, site-specific TPH soil remedial goals were not calculated there. At Site B, however, TPH is a primary COC, so site-specific TPH remedial goals were developed for Site B.

The storm drain and groundwater data and water level map show that the San Francisco Bay via the Shellmound storm drain is the downgradient receptor for groundwater from Site B. Section 3.4 Groundwater Fate and Mobility Assessment of the Revised Draft RI/HHRA report provides an evaluation of the downgradient groundwater migration pathway based on Site B storm drain and groundwater sampling data. This identified groundwater migration pathway for Site B is also consistent with the data and experience developed at the adjacent South Bayfront site.

The TEPH at Site B is predominantly weathered. For weathered TEPH including diesel range or heavier than diesel range that are not considered to be soluble, the basis of the saturated zone remedial goals for the protection of surface water is the residual saturation to address migration of bulk oil.

Comment 14

Section 6.2.1 - calculation of eco-based soil remedial goals utilized generic literature values (for Koc) and the low-end of the observed range of organic carbon fractions in soil (Foc). These are inadequate surrogates for site-specific data from the TPH-contaminated zones. Evaluation of mobility should be based either on site-specific benchscale testing of mobility from the zones of interest or on Koc values for the primary petroleum compounds present and Foc values measured within each contaminated zone. **(8)**

Response 14

The Site B saturated zone soil remedial goals proposed for the protection of groundwater (Table 3-3 of the Revised Draft FS/RAP) are consistent with the SFRWQCB ESLs for groundwater protection when the groundwater is not a current or potential drinking water source. Therefore, this indicates the Koc and Foc values used to develop the Site B saturated zone soil remedial goals are appropriate. The ESL groundwater protection goal for TPH-g is 4,200 mg/kg; the proposed Site B saturated zone soil remedial goals for fresh and weathered TPH-g are 100 mg/kg and 6,200 mg/kg, respectively. The ESL groundwater protection goal for TPH middle distillates is 2,100 mg/kg; the proposed Site B saturated zone soil remedial goals are 4,800 mg/kg and 8,000 mg/kg for fresh and weathered TPH-d, respectively. Although the SFRWQCB did not provide a leaching goal for TPH residual fuels, the text of the ESL notes that the Los Angeles RWQCB provides a conservative value of 1,000 mg/kg for TPH residual; the proposed Site B saturated zone soil remedial goal for HBHC is 17,000 mg/kg.

Comment 15

Section 6 - the RAP fails to acknowledge that even if the alleged receptor pathway (discharge of TPH contaminated groundwater to the storm sewer) was present, either active or passive institutional controls could preclude pathway

completion, nullifying the need to modify the TPH PRGs based on any surface water receptors.

Response 15

Active or passive institutional controls are not likely to be technically effective, implementable, or cost effective to preclude completion of the downgradient groundwater migration pathway. Site B consists of heterogeneous soils, so studies will not produce values that can used with a high level of confidence. The heterogeneous nature of soils would further complicate characterization of “zones of interest”.

SHERWIN WILLIAMS PESTICIDE IS NOT ARSENIC-BASED

Comment 16

Page 2-2, 1'" bullet, "Former Sherwin Williams Pesticide Facility: The former Sherwin Williams Pesticide facility, located on South Bayfront to the south, was historically an arsenic-based pesticide manufacturing facility. " The historical documentation does not support EKI's conclusion that the Sherwin-Williams facility on Shellmound was an "arsenic-based pesticide manufacturing facility." Historical Sanborn Fire Insurance Maps denote the subject facility as "Insecticide & Spray Plant of the Sherwin-Williams Co." Consistent with Sherwin-Williams records, which indicate that this facility manufactured lime-sulfur insecticides, the Sanborn Fire Insurance Map for the Shellmound facility notes the presence of "Lime Stg. Bins." Lead-arsenic based pesticides were manufactured at the facility located on Sherwin Avenue in Emeryville, California, not at South Bayfront. **(5)**

Response 16

The characterization of the adjacent former Sherwin-Williams pesticide manufacturing facility was conducted as part the remediation of the South Bayfront site. The historical use information presented in the 1998 Remedial Investigation Report prepared by EKI for the South Bayfront/former Sherwin Williams property indicates that arsenic based pesticides were formulated on the adjacent property along with a variety of other agricultural products that were produced or handled, including calcium polysulfide.

SITE CONCEPTUAL MODEL

Comment 17

Page 2-3. *Section 2.2 Summary of Remedial Investigations and Site Conceptual Model, "The site conceptual model, described below, summarizes the understanding of geologic and hydrogeologic influences on the migration of* COCs *and the potential sources of COCs.* " The conceptual site model (CSM)

presented in the *Draft RAP* is not adequate. The CSM should include "known or expected locations of contaminants, potential sources of contaminants, media that are contaminated or may become contaminated, and exposure scenarios (location of human health or ecological receptors)." The CSM does not adequately explain the source of arsenic, antimony, lead and hydrogen sulfide on the 5760 Shellmound Street portion of the Site. In addition, there appear to be data gaps associated with the sources of CVOCs in groundwater. **(5)**

Response 17

The arsenic, antimony, lead and hydrogen sulfide detected on the southern portion of the 5760 Shellmound property are consistent with the adjacent former Sherwin-Williams pesticide facility being the source. Data are presented in the Remedial Action Plans for the South Bayfront and South Bayfront Site B properties indicating CVOCs contributions from on-site and off-site sources.

FUTURE USE NOT YET DETERMINED

Comment 18

Page 5-2, Section 5.2 *Alternative* 2; *MNA for On-site Groundwater and Institutional Controls, Institutional Controls, 2nd paragraph "Due to the extent of impacted soil and groundwater remaining in place, the specific LUC provisions would be so restrictive as to preclude the proposed redevelopment plan for Site B.* " The conclusion that land use controls (LUCs) would preclude the "proposed redevelopment plan," conflicts with the representations provided in other sections of the *Draft* RAP. Specifically, the *Draft RAP* states "at this time, no specific redevelopment plan has been approved for Site." Alternatively, although this scenario may preclude certain developmental uses, the thought that engineering controls could not be designed to allow redevelopment of the site is unfounded. **(5, 8)**

Response 18

The statement "LUC provisions would … preclude the proposed redevelopment" refers to the range of potential redevelopment options for the site as described in Section 1 of the Draft RAP, rather than a specific plan and is therefore not in conflict with previous statements. The type of land use restrictions required under Alternative 2 would not be consistent with those uses mentioned in Section 1, including ground floor commercial and residential occupancy.

Comment 19

The RAP is premature and proposes unnecessary remediation: To the best of our knowledge, there is no defined development proposed or approved for the Site B Project Area. Absent some indication of the nature of the uses and the

specific plan of development relative to Site B, an appropriate and efficient remediation plan cannot be developed by the Agency or any other person. An appropriate remediation plan must take into account the type and location of development planned for the site, including the physical nature of, and constraints present, on the site and appropriate placement of uses. For example, remediation of that portion of the site on which a parking garage is proposed may be handled differently than a portion on which ground level residences are to be located. Instead of taking into account a specific proposed development, the RAP proposes to remediate the site to a virtually "pristine" condition; this level of remediation is both unwarranted and inconsistent with the geographic location and environment of this site and surrounding area of Emeryville, and has not been required on neighboring sites.

The draft RAP should not be adopted until specific redevelopment uses have been designated for the subject property. It is impossible to properly evaluate the RAP without knowing the uses to which the subject property will be applied. **(6, 7, 8)**

Response 19

Clean up plans can be developed and implemented without knowing a specific redevelopment plan. The cleanup of sites is driven by remedial action objectives (RAOs). For South Bayfront Site B, the RAOs of particular concern are the protection of the underlying groundwater and the San Francisco Bay; the mitigation or reduction of direct human exposure to impacted soils (in particular, construction workers); and mitigating the volatilization of chlorinated volatile organic compounds, which may impact the indoor air of future buildings.

The range of potential future uses evaluated for Site B is consistent with the neighboring South Bayfront site (Bay Street Mall). Remediation of South Bayfront was conducted in 1999 in accordance with DTSC approved soil remedial goals (EKI, 1999). The proposed soil remedial goals for Site B are also consistent with South Bayfront soil remedial goals.

Comment 20

There is no reason to rush approval of the RAP. Related to the above, there is no indication in the RAP that there is any significant reason which compels a RAP to be approved and implemented immediately. There is no imminent public health risk, and most of the chemicals concentrations reported do not exceed applicable regulatory standards. Indeed, the RAP indicates that some of the identified contaminants are decreasing over time. There is no reason to undertake the extensive remediation proposed without knowing and taking into account how the site will be developed. Doing so simply creates the risk that time and money will be spent on remediation efforts and activity that are unnecessary and/or duplicative. **(6, 8)**

Response 20

See Response 19.

CAPPING IS MORE COST EFFECTIVE.

Comment 21

Table 4-1, Screening of Technologies and Process Options for Unsaturated and Saturated Zone Soil; Soil Containment Options; Construction of Engineering Cap; Implementability: "Not implementable because impacted areas of soil would require cap construction to extend over a majority of Site B, which would limit future use options, and long-term management requirements would make it difficult to obtain approvals from relevant governmental agencies."
The conclusion regarding the implementability of an engineering cap is not supported and is erroneous. The use of engineering caps is and has been an implementable option on sites addressed by the RDA with similar types of contamination in Emeryville, California, and has been approved by relevant government agencies for commercial development. For example the IKEA store was developed over the capped former Barbary Coast Steel site, and the Emeryville Market was developed over the capped former tar paper plant. So even if development is proposed over the impacted areas of the Site, capping is an implementable option. Therefore, the presumptive rejection of consideration of an engineered cap was improper. **(5)**

Response 21

Proposed remedial alternatives are evaluated against remedial action objectives (RAOs) to determine their appropriateness in cleaning up the site; in the case of Site B, protection of the underlying groundwater, reducing exposures to construction workers, and decreasing the concentrations of contaminants that can potentially volatilize from groundwater into indoor air of future structures are objectives that can decrease or eliminate significant long-term impacts and costs. Because the focus of the cleanup is to fulfill these RAOs, capping “only” was not deemed an acceptable remedial option.

The contaminants found at the IKEA and the Public Market sites (heavy petroleum products such as Bunker C oils) were not the same as those found at the South Bayfront Site B site. Extensive evaluation was done at the IKEA site (as was done at the Site B site) to ensure the protection of underlying groundwater and surface water.

Comment 22

Table 4-1, Screening of Technologies and Process Options for Unsaturated and Saturated Zone Soil; Soil Containment Options, Construction of Engineering Cap; Cost: “Potential high capital cost.” The evaluation of the cost was not performed in a manner consistent with the NCP or applicable guidance. Our analysis indicates that capping would be more cost-effective than the retained options. Capping is a remedy that is routinely selected to address similar types of contamination. The USEPA's Presumptive Remedy for Metal-in Soil Sites identifies that containment is a "preferred technology" and the presumptive remedy for "low-level threat wastes," i.e., surface soil containing relatively immobile contaminants." As a presumptive remedy, the USEPA has found containment to be "protective and cost-effective" for metals in soil. **(5)**

Response 22

One of the RAOs listed in the Site B Draft RAP is the protection of underlying groundwater and surface water to protect potential ecological receptors; if impacted soil is in fact the source of groundwater contamination, the containment of soil at the site may pose an ecological endangerment risk to receptors in Temescal Creek and San Francisco Bay. Although capping may be considered an acceptable option at other sites, the groundwater under the South Bayfront Site B is within 150 feet of the Shellmound Street storm drain, which is in direct communication with Temescal Creek and San Francisco Bay. Concentrations of arsenic in soil on the southwest portion of Site B are as high as 188 mg/kg. The arsenic in this area is affecting groundwater, with a concentration 1,330 ug/L detected in the southwest corner of Site B as compared to a remedial goal of 36 ug/L.

Comment 23

Most of the reported chemical concentrations on the subject property are less than the regulatory limits for commercial/industrial use. Even those few chemical concentrations that exceed regulatory limits for commercial/industrial use were beneath pavement or buildings at the subject property. They presented no risk of injury to persons or property. **(7)**

Response 23

There are no promulgated regulatory limits for soil. The California Human Health Screening Levels (“CHHSLs”) and the San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (“SFRWQCB ESLs”) are not intended to establish policy or regulation. Therefore, a site-specific Human Health Risk Assessment (“HHRA”) was conducted using site-specific chemicals to evaluate human health risks associated with current and potential future land uses at Site B and to assist in the development of appropriate site-specific

remedial goals. In the HHRA, the protection of construction workers drove the development of remedial goals for soil, while the concern of possible vapor intrusion drove the development of groundwater remedial goals.

The range of potential future uses for Site B is consistent with the neighboring South Bayfront site (Bay Street Mall). Remediation of South Bayfront was conducted in 1999 in accordance with DTSC approved soil remedial goals. The proposed soil remedial goals for Site B are consistent with South Bayfront soil remedial goals.

Comment 24

The chemical concentrations reported for soil and groundwater at the subject property are largely the result of naturally-occurring geologic deposits, pre-existing fill material, or impact from historical uses. **(7)**

Response 24

There is no indication that the contaminants on the 5760 Shellmound Street property were present at the concentrations of concern in naturally occurring geologic deposits. The contaminants are present in fill soil and as a result of releases from historic operations. In addition, as indicated in the Remedial Investigation Report releases are ongoing from an underground storage tank that is present on the property located at 5760 Shellmound Street and which has not been removed.

UPGRADIENT PLUME

Comment 25

Remediation of upgradient plume: A significant percentage of the petroleum and chlorinated volatile organic chemicals (CVOC's) are the result of off-site parties. The RAP includes remediation costs of alleged groundwater contamination resulting from an offsite upgradient plume which is allegedly moving onto our client's property. Our client should not be responsible for remediation of offsite sources. **(6, 7)**

Response 25

In order to be protective of future use of the property, contamination coming on to the property from off site must be addressed. DTSC is not making a determination that the current/former landowners at Site B are responsible, only that the contamination must be addressed prior to redevelopment of the Site B property.

There is no indication that petroleum related chemicals are present on Site B as a result of upgradient releases. CVOCs are the only identified upgradient source impacts on Site B. The purpose of the Draft RAP is as a remedy selection document for Site B. The proposed remedy includes a remedial component to address upgradient impacted off-site groundwater migrating onto Site B to protect human health for potential future land uses at Site B. This component of the proposed remedy may not be necessary if the upgradient impacted off-site groundwater is remediated or mitigated by the responsible party prior to migrating onto Site B.

Comment 26

Alternative 6 includes extensive soil excavation on Site B and long-term groundwater extraction on site using groundwater extraction wells, and groundwater extraction trenches to prevent impacts from off-site contamination. (See, e.g., Section 5.1.6 at p. 5-5). It appears that on-site groundwater extraction is not warranted if a groundwater to surface water pathway for TPH is not proven to exist. A barrier to prevent migration of CVOC-impacted groundwater from off-site sources would be a better alternative than long term groundwater extraction from trenches, especially since the magnitude and extent of the off-site contamination does not appear to be well understood, and groundwater extraction could draw higher concentrations of CVOCs towards the site. Other listed alternatives or modified combinations would be more appropriate. Soil excavation into the saturated zone would remove the majority of any COC mass, and would likely make the need for any long-term vapor mitigation measures unnecessary. MNA is an appropriate method for remediation of any residual dissolved concentrations of COCs in groundwater, provided a barrier to recontamination from offsite sources is utilized. **(8)**

Response 26

The onsite groundwater extraction is primarily directed at the CVOC groundwater contamination. It is not primarily driven by TPH impact to surface water. The proposed remedy utilizes a combination of monitored natural attenuation and groundwater extraction implemented in a phased manner to address CVOC concentrations remaining on the site after source soil removal. MNA will be implemented first and extraction wells will be employed if the MNA evaluation indicates that CVOC concentrations in groundwater have not been reduced by source soil removal. The extraction trenches at the upgradient property boundary are the most effective way to limit ongoing migration from off-site sources onto the property. Further, the use of a barrier would only divert any upgradient contamination to another location.

Comment 27

There will be significant efficiencies, including cost efficiencies, if work relating to the remediation is also performed to meet the predevelopment and development goals of the site. Many of the costs (permits, fencing, dust control, well destruction, etc.) included within the RAP relate to, and would be incurred in any event in connection with geotechnical and other development costs. It appears that the RAP proposes an alternative that will result in those costs being duplicated when the site is developed. The majority of the tasks listed in the tables detailing the proposed alternatives to prepare the site for redevelopment would be required regardless of the need for soil and/or groundwater remediation. **(6, 7, 8)**

Response 27

While efficiencies may be gained by doing cleanup work at the same time as redevelopment, DTSC can not require that this occur.

TRUCK TRAFFIC

Comment 28

Has any consideration been given to taking that dirt off in the rail cars, which eliminates the truck traffic? **(4)**

Response 28

The use of the railroad in transporting contaminated soils off-site may be considered; however, it would be dependent upon the destination landfill to which the contaminated soils would be transported. The use of the railroad may be infeasible, since there is no existing rail spur on the site.

REMEDIAL INVESTIGATION / HUMAN HEALTH RISK ASSESSMENT

Comment 29

The Human Health Risk Assessment relies on inaccurate data and does not accurately reflect human health hazards. Contamination levels do not exceed the regulatory threshold for what presents a human health hazard. **(7)**

Response 29

The data set used in the HHRA was generated by U.S. EPA- and Cal/EPA-approved laboratories using U.S. EPA-recommended laboratory methods, and the HHRA was conducted in accordance with U.S. EPA and DTSC guidance. The results of the HHRA indicate that Site B is not appropriate for potential future

land uses identified in Section 1 of the Draft RAP without the implementation of remediation and/or risk management practices.

Comment 30

Metal and metalloid concentrations, particularly in artificial fill materials, should be compared to background concentrations as part of the risk assessment process. Naturally-occurring concentrations of such parameters as arsenic often exceed RI levels. If concentrations in fill material and soils are not due to artificial contamination and are within background levels, remediation for those parameters should not be necessary.

Published background datasets should be used to calculate upper bounds of the background distributions for comparison to site concentrations. Upper tolerance limits are recommended in EPA guidance to establish background-based action levels and should be calculated using available data for California soils. The California Environmental Protection Agency (2005) states that "Background concentration of arsenic or other metals of potential concern at a site should be determined from analysis of site-specific samples in uncontaminated areas using guidance published by CalEPA and or reference to published data for nearby sites (Cal EPA 1997). However, background data for nearby sites may only be used as a surrogate for uncontaminated site data if those data are obtained from soil of the same lithology as that found on-site." Similarly, Section 5.1.3, footnote 2 describes excavation of hydrogen sulfide-impacted soil to prevent migration of hydrogen sulfide into future structures. There is no discussion or analysis of whether the hydrogen sulfide described is naturally occurring in bay mud or the result of environmental impacts related to Site B. Please provide the background concentrations calculated for fill materials at Site B and the methodology and references utilized in those calculations. **(8)**

Response 30

Section 2.2.2 Background Analysis of Metals of the HHRA (Appendix R of the Revised Draft RI/HHRA report) describes the use of Lawrence Berkeley National Laboratory background metal concentrations in soil to identify metal COCs for evaluation in the HHRA. Metals that were eliminated as COCs based on this background analysis were not considered in the HHRA evaluation.

The remediation proposed for the southwest corner of the 5760 Shellmound Street property is consistent with the remediation required by the DTSC on the adjacent South Bayfront property. The hydrogen sulfide in soil gas in this area is not the result of naturally occurring conditions. As shown on the adjacent South Bayfront site, the hydrogen sulfide gas is the result of the use of a pit for the manufacture or disposal of calcium polysulfide and other pesticides on the adjacent South Bayfront site when it was in use as the Sherwin-Williams pesticide facility.

Comment 31

Table 5-3 (of the RI) provides site-specific exposure point concentrations ("EPCs") for antimony, arsenic, and lead below the proposed remedial goals ("PRGs"). Please explain why remedial action is still proposed for these constituents. **(8)**

Response 31

Remedial actions for antimony, arsenic, and lead are proposed because the maximum detected concentrations area well above the remedial goals and represent apparent source areas on Site B.

Comment 32

Groundwater and soil remedial goals do not appear to be consistent with the foreseeable future development of the site. Neither the RAP nor the RI specifically identifies the Agency's plan for redevelopment of Site B. The RI and RAP generically refer to proposed future use of Site B in their respective Executive Summaries as including "commercial land use, urban residential land use, or a mixture of commercial and urban residential land use" "consistent with developed neighborhood properties." The remedial goals in the RAP, however, are based on assumptions that are inconsistent with such uses: Section 3.2.2 - the RAP states that groundwater remedial goals "...were driven by protection of future on-site residents and office/retail workers.." However, it is unlikely that single family housing will be constructed on the site. Current plans suggest any development will be consistent with surrounding land use, which would suggest upper floor condominium style housing above ground level retail or office units. This scenario will result in vastly different risks (versus single family slab on grade housing). For this reason, no cleanup goals should be developed based on an "onsite" resident living in a single family home situated directly on site soil. **(8)**

Response 32

The residential receptor referred to in the document is an “urban” resident that is different in potential exposure scenarios from a single family resident. No cleanup goals have been applied in the analysis for a typical detached single family home with backyard residential scenario. However, the future development could include multi-unit ground floor residential, similar to other developments that are present in the neighborhood. Further, remediation plans are frequently developed and implemented without being tied to a specific development or redevelopment plan. Federal Environmental Protection Agency guidance states that a range of future land uses should be considered when assessing remedial alternatives. See “Land Use in the CERCLA Remedy

Selection Process," OSWER Directive No. 9355.7-04, U.S. Environmental Protection Agency, May 25, 1995 at p. 2. The RAP identifies reasonably anticipated future land uses, and the proposed remediation is appropriate for a range of potential future uses, as described in Section 1 of the RAP.

Also see response 19.

Comment 33

The particulate emission factor (PEF) of 1 x $l0^{-6}$ mg/kg is appropriate for the construction worker exposure scenario but overly conservative for the maintenance worker exposure who is expected to be involved in less labor intensive earth moving (if any) activities (i.e., utility line and elevator maintenance, p. 17). The PEF of 2 x $l0^{-7}$ mg/kg. It is difficult to ascertain the appropriateness of this value. Additional information is required regarding the basis for the respirable dust concentration of 0.05 mg/m3 including the percent of expected exposed soils that are expected at this time. PEF of 3.33 x 10^{7} mg/kg. CalEPA 1993 is cited as the basis for the RDC of 0.03 mg/m^3. However, the reference is missing. Please provide the complete reference.

In addition, the RI cites the 1996 US. EPA Soil Screening Guidance for the general approach. However, the U.S. EPA updated the PEF approach in the 2002 Supplemental Guidance for Developing Soil Screening Levels. In this document, the U.S. EPA calculates a PEF as an estimate of the relationship between the concentration of constituent in soil and concentration of the constituent in air as a consequence of predicted particle suspension due to fate and transport mechanisms at the site during the exposure scenario.
As such, the U.S. EPA recommends calculating a PEF based on the following components - a ratio between the air concentration and the source emission flux (of PM10) and the predicted source emission flux (of PM10), which is based on site activities (e.g., wind erosion, grading, tilling, truck traffic) and the exposure duration of the receptor. A dispersion correction factor is also required for PEFs used to estimate exposure to receptors with exposure durations less than one year. The PEFs used in the RI are calculated solely based on estimates of particulate concentrations in air, without respect to the source of these particulates *(ie.,* site soils as opposed to dust transported from other properties). As such, these concentrations are extremely conservative in that they assume all dust in outdoor/indoor air originates from the site. **(8)**

Response 33

Regarding the specific PEF values, the State of California, Environmental Protection Agency, Office of the Science Advisor has performed extensive modeling assuming that contaminants are present in respirable dust at the respective weight fractions as in site soils, assuming a default value of 0.05 mg/ m^3.

The requested reference is:

> California Environmental Protection Agency, 1993. *Parameter Values and Ranges for CALTOX, Draft,* Office of Scientific Affairs, California Department of Toxic Substances Control, Sacramento, July.

In addition, while it is acknowledged that the U.S. EPA revised the PEF approach, State of California guidance was used to estimate PEFs for this report in accordance with direction from the DTSC. Thus, the approach employed was appropriate pursuant to DTSC policy and direction.

Comment 34

As noted in the RI, adding EPCs for VOCs detected in both soils and groundwater is likely to overestimate emissions. It is not unreasonable to assume that vapor emissions emanating from the soil reflect conditions in both soil and groundwater. Using the highest of the two emission estimates (not a sum of both) has been implemented for risk assessments at other sites. **(8)**

Response 34

This approach was necessitated by the shallow groundwater table at the site which precluded the collection of soil gas data. The actual contribution of the soil column is low because there is only a 3 foot unsaturated zone assumed at the site, consistent with the groundwater elevation data.

Comment 35

The exploratory data analysis and calculations of 95UCLs were conducted with ProUCL 3.0. In 2006, U.S. EPA updated their guidance for calculating 95UCLs with left-censored data. In spring of 2007, U.S. EPA released Pro UCL 4.0, which is available online. Among the many upgrades, this software now applies many more UCL methods, including methods designed to provide robust estimates of the 95UCL for datasets with nondetects (i.e., left-censored data). This software facilitates the implementation of techniques that have been discussed in the statistics literature for more than 20 years. There are other extensive updates in Pro UCL 4.0 that can significantly impact the EPC estimates. Some related detailed comments regarding the statistical analysis used in the RI are summarized below.

It is unclear what statistical properties were considered and what criteria were applied. For example, what minimum total sample size and number of detects was required to calculate a 95UCL U.S. EPA recommends a decision process that considers sample size, number of detects, multiple measures of skew, and

goodness-of-fit testing. Please provide greater detail regarding the decision process for selecting a method to represent the 95UCL. **(8)**

Response 35

The general method of calculating exposure point concentrations (EPCs) is described in Section 3.3.1. If a dataset had a detection frequency of greater than 85%, the 95UCL method recommended by ProUCL 3.0 was used as the EPC. If a dataset had a detection frequency of less than or equal to 85%, the median of detected values was used as the EPC. The 95UCL method recommended by ProUCL 3.0 is based on the sample size, skewness, and how well the dataset fits standard statistical distributions. The decision tree used by ProUCL 3.0 to recommend a 95UCL method is described in the ProUCL 3.0 documentation (USEPA 2004a).

Comment 36

This appears to be inconsistent with US EPA guidance. US EPA's simulation experiments demonstrated that certain UCL methods perform well for up to 70 percent nondetects - and Chevron and Unocal's consultant's experiments have shown that reliable 95UCLs can be calculated for data with an even greater degree of censoring. While it is true that the sample mean is biased when it includes nondetects, there are techniques to adjust parameter estimates (e.g., mean, standard deviation) to account for censoring. U.S. EPA's ProUCL 4.0 implements Kaplan Meier statistics for parameter estimation with left-censored data. "There is no prescribed EPA protocol for handling data sets with large numbers of non-detects. " (Section 3.3.1 atp. 18, 13.) This appears to be incorrect as discussed above. U.S. EPA has very specific recommendations for calculating 95UCLs for left censored data. **(8)**

Response 36

The newest version of ProUCL (Version 4.0) was not available at the time the EPC calculations were being completed. To investigate the suitability of the methods for calculating 95UCLs from datasets with nondetects that were newly implemented in ProUCL 4.0, one of the project datasets was analyzed using ProUCL 4.0 and the resulting 95UCL compared to the EPC presented in the report. The dataset selected for evaluation was vinyl chloride in groundwater, one of the risk drivers for exposure due to inhalation of indoor air. ProUCL 4.0 suggests using the 95% Kaplan Meier (KM) Chebyshev UCL, which it calculates as 96 ug/L. In contrast, the EPC presented in the report is 27 ug/l (see Table 6b), calculated using the median of the detected values since the percent detected was less then 85%. Therefore, the risk assessment prepared by the Agency's consultant cannot be considered overly conservative.

It is important to note that the reports produced by contractors for the USEPA National Exposure Research Laboratory such as those referenced in the

comment (USEPA 2006, 2007a) do not represent official USEPA guidance. This is clearly noted on the front page of each of these documents in a notice that reads: “Although this work was reviewed by EPA and approved for publication, it may not necessarily reflect official Agency policy.” The major USEPA risk assessment guidance that addresses the issue of EPC calculation includes USEPA (1992a, 2002). Neither of these guidance documents requires the use of a particular method for dealing with nondetects when calculating EPCs. They recommend that the project team select a method that will yield a conservative estimate of the average chemical concentration based on site-specific conditions. Such a method was utilized in this analysis.

Comment 37

It appears that two separate issues are being confused: 1) presence of non-detects; and 2) non-random sampling. The sample mean (and corresponding UCL) can be biased by both and the solution is different for each. Left-censored data can be evaluated with Kaplan Meier statistics. Bias associated with non-random sampling can be addressed with spatially-explicit methods such as Thiessen Polygons, inverse distance weighting, and kriging. **(8)**

Response 37

Both the presence of non-detects and non-random sampling may lead to biased sample means. An example of an UCL calculation using ProUCL 4.0 described above yielded a significantly higher EPC based on the KM method as compared to the approach used in the risk assessment report. Therefore, the risk assessment cannot be characterized as overly conservative, and it is consistent with DTSC procedures.

Comment 38

"For chemical data sets that contained less than 15 percent non-detects or 85 percent or greater positive detects. Chemical-specific EPCs were represented by 95UCL concentrations: consistent with US. EPA guidance (US. EPA 1992). The 95UCL EPCs were derived using the bootstrap statistical method and the US. EPA's ProUCL software (U.S. EPA 2004a). This approach was applied to arsenic, barium, copper, nickel, vanadium and zinc in soil: and arsenic, barium, chromium, nickel, vanadium, and zinc in groundwater. As recommended using ProUCL, alternate EPCs were also used such as the approximate gamma UCL (cobalt in soil; barium in groundwater) or 97.5% Chebyshev UCL (chromium, lead. And zinc in soil:molybdenum and nickel in groundwater)." (Section 3.3.1 atp. 19, 71.) This approach is outdated. Please refer to the more recent U.S. EPA guidance, specifically Table 16 of U.S. EPA.

Use of the median is likely to underestimate the 95UCL. It's unclear if the authors are implying that they used an upper confidence limit on the median. The median

would be a particularly poor choice for data sets with over 50 percent nondetects since they would be greatly influenced by the reporting limit of the nondetects. US EPA's simulation experiments (footnote 1) demonstrated that certain UCL methods perform well for up to 70 percent nondetects - and our own experiments have shown that reliable 95UCLs can he calculated for data with an even greater degree of censoring.

Bootstrap refers to a family of UCL methods – its unclear which bootstrap UCL authors used (percentile, bootstrap-t, BCA ?). Current US. EPA guidance recommends methods that combine bootstrap with Kaplan Meier estimates of the mean and the standard deviation. **(8)**

Response 38

As noted previously, the EPA reports referenced in the comment are not official EPA guidance. Under EPA guidance, any approach which yields EPCs that are conservative and representative estimates of average concentrations can be used.

In cases where the detection frequency was less than 85%, the median of the detected values was used as the EPC. Since the nondetected values are not used in the calculation of the median, the detection limits do not affect the calculation.

For datasets with a detection frequency greater than 85%, the UCL method recommended by ProUCL 3.0 was used as the EPC. The exact type of bootstrap method used was also selected based on the ProUCL 3.0 recommendation.

Comment 39

Given the prevalence of high density housing in the state of California exposures associated with the ingestion of homegrown produce is minimal. This pathway should not be quantified for any resident receptor. The exposure algorithms for ingestion of homegrown produce are not included in Table 1-1 or Appendix C either. The exposure assumptions used for the ingestion of homegrown produce may not be correct. The Exposure Factors Handbook is cited as the source for ingestion rates; however, in Table C-2**,** ingestion rates for adult and child are expressed in units of mg/day when the US. EPA guidance uses gkg-day. There is no description in the text as to how these values were derived or if as suggested by US EPA they were converted to reflect dry weight basis. The US EPA suggested values for this area are indicative of subsistence level harvesting and given the location of the site, it is highly unlikely that any resident will be subsisting on homegrown produce. **(8)**

Response 39

The algorithm used for estimating exposure from homegrown produce is based on 1992 DTSC guidance:

$$ADD = \frac{(C_{plant} \times F_{ing} \times IR_{plant} \times EF \times ED) + (C_{plant} \times F_{ing} \times IR_{plant} \times EF \times ED)}{BW \times AT}$$

Where:

ADD = average daily dose (mg/kg-day)
C_{plant} = chemical concentration in plant (mg/kg)
F_{ing} = fraction ingested
IR_{plant} = ingestion rate of produce (kg/day)
EF = exposure frequency (days/yr)
ED = exposure duration (yrs)
BW = body weight (kg)
AT = averaging time (days)

The homegrown produce exposure concentrations (C_{plant}) are estimated from soil exposure concentration (C_{soil}) and water-octanol partition coefficient (Kow) for nonionic organic compounds using the following equation:

$$C_{plant} = 0.0034 \times C_{soil} + C_{soil} \times 7.7 \times Kow^{(-0.58)}$$

The homegrown produce exposure concentration for arsenic is estimated from soil exposure concentration using the following correlation:

$$C_{plant} = 0.0014 * C_{soil} + 0.0054$$

The home produce exposure concentrations for other metals are conservatively estimated as soil exposure concentrations since no appropriate plant uptake factors are available.

Comment 40

Inhalation of dust indoors by the on-site indoor/outdoor adult worker (security guard; post demolition); the off-site indoor/outdoor urban resident; and the offsite indoor office retail worker (post demolition and during construction activities) is overly conservative. The potential risks related to this pathway are minimal and typically are not evaluated. However, there is no text in Section 3.3, tables or exhibits summarizing the approach and algorithm for converting soil EPCs to indoor air for non-VOCs and, thus, it is impossible to understand how meaningful the analysis is and to provide further detailed technical comments on the approach. **(8)**

Response 40

The algorithm used to convert soil EPCs to indoor air for non-VOCs is given below:

$$ADD = \frac{C_{soil} \times InhR \times Portion \times EF \times ED}{BW \times AT}$$

Where:

C_{soil} = chemical concentration in soil (mg/kg)
InhR = inhalation rate (m^3/day)
Portion = portion of the day spent indoors and outdoors
EF = exposure frequency (days/yr)
ED = exposure duration (yrs)
BW = body weight (kg)
AT = averaging time (days)

The dust inhalation pathway as performed in the document was evaluated in accord with DTSC guidance.

Comment 41

Intake exposure assumptions are for children between 0 and 6 years of age and this age group will never access this area as suggested by the exposure assumptions. This range - including values for children in their first couple of years of infancy may be inappropriate given that they are not likely to be anywhere outside especially playing alone on a fenced-in property. A more reasonable receptor for this scenario is a teenager. For example, the ingestion rate of 200 mgtday is used but this rate is based on 24-hour tracer studies when the exposure scenario is for 2 hours per day for 50 days per year. The ingestion rate should be 100 mg/day based on upper bound soil ingestion rate from Calabrese, 1990 as cited by US EPA with a fraction ingested from the site of 0.5. The exposure frequency should be 10 days per year and the body weight 53 kg. Both a trespasser child exposure scenario and a security guard exposure scenario fall under the post-demolition exposure scenario. If there are security guards present there is a small chance of trespassers visiting the site, especially when under this scenario all buildings have been demolished (hence nowhere for trespassers to hide). Conversely, the likelihood of trespassers increases with the absence of guards. **(8)**

Response 41

The trespasser soil ingestion rate is based on DTSC's recommended value for children in the age range 0-6 years old. While it is possible that trespass

occurrences could be reduced with the presence of onsite security guards, this scenario does not render the employed approach either inappropriate or unreasonable under the circumstances at the site. **(8)**

Comment 42

For soil, the text indicates that Jury et al. (1984) was used; however, caveats summarized in US EPA were not made in the RI. Specifically, the Jury et al. model may not be appropriate for the parking lot attendant because one of the assumptions of the Jury et al. model is that there is no boundary layer and asphalt may be considered a boundary layer which prohibits vapors from diffusing to the surface. In addition, US EPA indicates that time dependent contaminant flux must be solved for various times and then averaged. Please clarify how the Jury et al. model was used in the RI. For groundwater, ASTM includes an algorithm for modeling ground water volatilization to ambient (outdoor) air. The text on page 21 does not cite to an exhibit with an algorithm so it is not transparent how the volatilization factor was estimated. The first sentence in Section 3.3.4 reads, "outdoor air EPCs for VOCs that may be released from groundwater to ambient air were estimated by calculating chemical partitioning from groundwater, the vapor emission rate through the soil to the surface, and the vapor concentrations in outdoor air." In this sentence, it is unclear what "vapor concentration in outdoor air" refers to when in fact the algorithm should include a dispersion factor for ambient air as indicated by ASTM. Please clarify. **(8)**

Response 42

For soil, the steady-state Jury model was combined with a dispersion factor (Q/C) to estimate ambient air concentrations. Boundary layer effects were taken into account through the use of a surface pavement crack factor which limits diffusion through the pavement as compared to bare soil. For groundwater, the Farmer model was combined with a box model of dispersion. The source concentration in soil vapor at the groundwater table was calculated using equilibrium partitioning theory. The emission rate at the soil surface was calculated from the source concentration assuming steady-state diffusion. Finally, dispersion in outdoor air was modeled using a simple box model based on the wind speed, mixing height, and source length. This approach is consistent with DTSC procedure.

Comment 43

Background metals values are not provided or referenced anywhere in this section. These data are critical in order to verify this step in the COPC selection process. **(8)**

Response 43

Background metals concentrations as cited in the HHRA report text can be found in this study: Lawrence Berkeley National Laboratory and Parsons Engineering Science, Inc., 2002. *Analysis of Background Distributions of Metals in the Soil at Lawrence Berkeley National Laboratory*, June 2002. The proposed upper estimates of background metals concentrations for LBNL are the 99th percentile values based on approximately 1,400 data points.

Comment 44

Ambient concentrations of some metals (e.g., arsenic) contribute significantly to the total risk estimates reported in the RI. For example, the upper bound background concentration for arsenic is 24 mg/kg compared to the EPC of 44.9 mg/kg used in the RI. Section 5.0 should discuss the background contributions to the results. Furthermore, any potential cleanup goals should also take these background levels into consideration. **(8)**

Response 44

The presence of naturally-occurring metals in soils is recognized. Please refer to the Revised Draft RAP, Table 3-2, which summarizes proposed unsaturated zone soil remedial goals.

Comment 45

The RI evaluates lead as a carcinogen. While U.S. EPA identifies lead as a "probable human carcinogen" based on sufficient animal evidence but inadequate human evidence, U.S. EPA and CalEPA do not recommend evaluating lead cancer risk using a CSF. Instead, lead nonMichelle carcinogenic risks (identified as neurological effects) are evaluated by predicting blood lead concentrations using toxicokinetic modeling. The lead concentration of concern is 10 micrograms (mg) per deciliter (dl) of whole blood based on adverse effects in children. **(8)**

Response 45

Calculation of candidate soil remedial goals for lead are presented in Appendix F of the Human Health Risk Assessment. On-site construction workers was identified as the future population potentially having the highest blood lead exposure because of their potential for direct contact with Site soil. Therefore, the on-Site construction worker exposure scenario was used to calculate a range of the potential remediation goals for lead. The resulting candidate remedial goals for lead in soil range from 480 mg/kg to 5,200 mg/kg. The recommended candidate remedial goal for lead is 1,200 mg/kg because it is based on a 99th

percentile blood lead level and health-conservative exposure assumptions that are consistent with the rest of the risk assessment.

Comment 46

The text in Section 6.1 does not match Table 15A. This section should include a discussion of background. For example, the remedial goals developed for a $1x10^{-5}$ to $1x10^{-6}$ risk for arsenic are below background. Provided the data set is "robust" enough, guidance developed by DTSC should be used to develop a background upper tolerance limit (UTL) for arsenic. Similarly, UTLs should be developed for all metals and those values included in Table 15A. **(8)**

Response 46

The remedial goals presented in Table 15A were based on setting the HQ at 1 and cancer risk equal to a range of 10^{-4} to 10^{-6} for chemicals of potential concern. However, cleanup goals for metals are generally established at concentrations that are at or greater than background. The proposed remedial soil goals are presented in Table 3-2 of the revised Draft RAP and are generally consistent with the South Bayfront Soil Remedial Goals.

Comment 47

Given the concerns over reliability (e.g., collection methodologies), please confirm that groundwater data did not consist of any grab samples. Also it is standard practice to exclude any ND values that exceed the maximum detected concentration for that chemical. Please confirm this approach was implemented. **(8)**

Response 47

Groundwater data used in the risk assessment were not based on samples collected as grab samples. The data evaluation did not exclude any ND values that exceed the maximum detected concentration for that chemical (i.e., the maximum concentration reported was ½ the detection limit).

PREVIOUS VERSION OF THE DRAFT FS/RAP

Comment 48

On Page 1-2, under the heading Report Organization: "Section 6.0 - Public Participation" should read "Section 6.0 - Proposed Remedy"**(8)**

In Section 2.3, the RAP states that: "Separate risk-based and aesthetic-based unsaturated zone soil remedial goals for TPH were developed for Site B as TPH

was not a primary COC at South Bayfront. These risk-based and aesthetic-based remedial goals will be discussed in further detail in Section 3.0. " The reference to Section 3.0 appears to be incorrect, as there is no additional explanation given for "aesthetic-based" criteria in Section 3.0. **(8)**

Response 48

These changes have been made in the September 2007 version of the draft FS/RAP.

List of Commentors:

(1) Letter dated November 6, 2007 from Wactor & Wick LLP

(2) Letter dated November 6, 2007 from Miller Starr Regalia

(3) Letter dated October 29, 2007 from Glynn & Finley, LLP

(4) Oral comments received from Mayor Nora Davis at the October 30, 2007 public meeting, transcript pages 35-36

(5) Comment letter dated November 14, 2007 from Wactor & Wick LLP

(6) Comment letter dated November 14, 2007 from Miller Starr Regalia

(7) Comment letter dated November 14, 2007 from Erickson Beasley & Hewitt LLP

(8) Comment letter dated November 14, 2007 from Geomega

ATTACHMENT A:
FACT SHEET AND DISPLAY ADVERTISEMENTS

CITY OF EMERYVILLE REDEVELOPMENT AGENCY
1333 PARK AVENUE
EMERYVILLE, CA 94608

Remediation Activity Fact Sheet

South Bayfront Site B Project Area 1535 Powell Street, 1525 Powell Street (and adjoining Former Rail Spur Property), 5770 Shellmound Street, and 5760 Shellmound Street, Emeryville, California

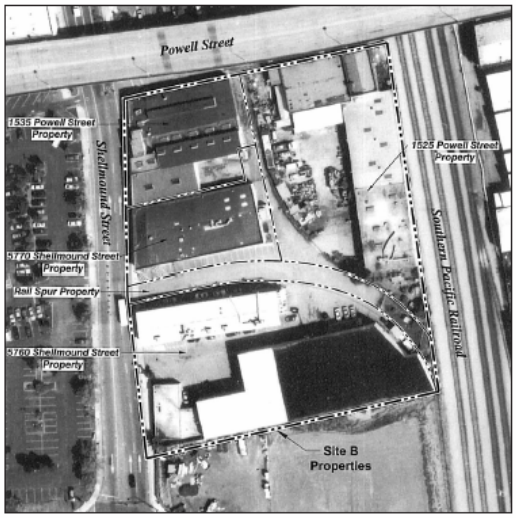
September 2007

INTRODUCTION

The Emeryville Redevelopment Agency, in conjunction with the California Environmental Protection Agency's Department of Toxic Substances Control (DTSC), has prepared this fact sheet to provide information about the investigation and proposed cleanup of soil and groundwater contamination at the South Bayfront Site B Project Area (Site B) in Emeryville, California. This fact sheet summarizes information contained in project documents and is intended to facilitate community awareness.

LOCATION AND BACKGROUND

Site B is approximately three acres and consists of five parcels located at the northeast corner of the intersection of Shellmound Street and Christie Avenue in Emeryville. The five parcels are: 1535 Powell Street, 1525 Powell Street, 5770 Shellmound Street, 5760 Shellmound Street, and a Rail Spur Property along the north side of the 5760 Shellmound parcel.



Site B has a long history of industrial uses. In the early 1900s, Union Oil operated a distribution yard on the northern portion of the site. Additional historic industrial facilities at Site B include, among others, the Western Carbonic Acid Gas Co., a metal working operation, a radiator hose facility, warehouses, various manufacturing facilities and a lumberyard. Most recently, Site B has been used for commercial and light industrial activities.

Industrial operations at Site B and at nearby properties used a variety of materials such as petroleum products, solvents and metals. These materials have been found in the soil and groundwater at Site B in concentrations that require a cleanup before the site can be redeveloped.

The cleanup is being conducted under the Polanco Redevelopment Act (Health & Safety Code §§ 33459-33459.8). The Act authorizes the Emeryville Redevelopment Agency to remove hazardous substances from property within a redevelopment project and recover costs from parties responsible for the contamination.

SITE INVESTIGATION

Extensive investigations of the soil and groundwater at Site B were conducted between 2005 and 2007, and the results are presented in the *Revised Draft Remedial Investigation and Human Health Risk Assessment Report* (RI/HHRA) dated May 31, 2007 (see information below for document availability).

The most significant contaminants at Site B include petroleum hydrocarbons and metals (arsenic, antimony and lead) in the soil and chlorinated volatile organic compounds (CVOCs), metals and petroleum hydrocarbons in groundwater. The CVOCs in groundwater include tetrachlorethene (PCE), trichloroethene (TCE) and associated breakdown products such as cis 1,2 dichloroethene (cis1,2-DCE).

Petroleum hydrocarbon contaminated soil is found across much of Site B, except for the southeast corner, and is found as deep as 10 feet below the ground surface. Most of the metals are found in fill soils near the surface. There is also an area of arsenic contamination along the southern border of Site B – most likely from an off-site former pesticide facility.

A plume of groundwater contaminated with CVOCs traverses the north/central portion of the site in a west-southwest direction. The CVOCs appear to derive from both on- and off-site sources, including an old asphalt plant to the northeast of Site B.

RISK EVALUATION AND PROPOSED REMEDIAL ACTION

The RI/HHRA includes a health risk assessment and outlines remedial goals for the contaminants of concern in both soil and groundwater. The remedial goals were calculated to protect potential future residents and workers at Site B, as well as the environment. The clean-up objectives for Site B include:

- mitigating or reducing human contact with contaminated soil;
- mitigating or reducing human exposure to chemicals volatilizing from groundwater into indoor and outdoor air; and
- protecting the quality of groundwater and surface water, including Temescal Creek and San Francisco Bay.

The Redevelopment Agency has evaluated a range of methods for addressing the contaminants of concern at Site B and the results of that analysis are presented in the Feasibility Study and Draft Remedial Action Plan (FS/DRAP) dated September 27, 2007 (see information below for document availability). The preferred alternative identified in the FS/DRAP includes the following key components:

- Excavation of unsaturated and saturated soils where contamination levels exceed the remedial goals;
- A combination of monitored natural attenuation and groundwater extraction wells (for pumping and treating groundwater) to address on-site groundwater contamination;
- Groundwater extraction trench to address off-site contaminated groundwater migrating onto the site; and
- A vapor mitigation program for new buildings constructed on the redeveloped site.

Excavated soil will be treated and/or disposed of off-site. After the excavation is complete, monitored natural attenuation will be employed to assess the effectiveness of the excavation for removing CVOCs from groundwater. If necessary, the pumping and treating of groundwater using groundwater extraction wells will be employed to address residual CVOC contamination in groundwater. In situ chemical or biological treatments may also be considered in this contingency phase of the groundwater remediation.

The proposed remedy should achieve the remedial objectives and it satisfies applicable state and federal criteria. The proposed remedy protects human health and the environment, is effective in the short-and long-term, and can be implemented with existing technology in a cost-effective manner.

PUBLIC REVIEW OF FS/DRAP

A 30-day public review period for the FS/DRAP is scheduled to begin on Monday, October 15, 2007. A public meeting to present an overview of the FS/DRAP and to receive comments will be held on October 30, 2007 at 6:30 p.m. at Emeryville City Hall, City Council Chambers, 1333 Park Avenue, Emeryville, CA. Comments on the FS/DRAP should be submitted in writing (email preferred) to the Redevelopment Agency's project manager identified below before the close of the public comment period on November 14, 2007.

FOR MORE INFORMATION

The Redevelopment Agency's project manager is available to answer questions and discuss the proposed remedial action for Site B. Please contact:

Michelle E. De Guzman
Community Economic Development Coordinator
Economic Development and Housing Dept.
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Tel: 510-596-4357
Fax: 510-596-4389
mdeguzman@ci.emeryville.ca.us

The Redevelopment Agency's environmental consultant:

Joy Su, P.E.
Erler & Kalinowski, Inc.
1870 Ogden Drive
Burlingame, CA 94010
Phone: 650-292-9100
Fax: 650-552-9012
jsu@EKICONSULT.COM

SITE B REMEDIATION DOCUMENTS

The Revised Draft RI/HHRA and FS/DRAP are available for review at:

City Clerk
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
www.ci.Emeryville.ca.us

Department of Toxic Substances Control
700 Heinz Street
Berkeley, CA 94710
www.dtsc.ca.gov

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PUBLIC NOTICE

NOTICE OF PUBLIC COMMENT PERIOD
FEASIBILITY STUDY AND DRAFT REMEDIAL ACTION PLAN AND MITIGATED NEGATIVE DECLARATION FOR THE SOUTH BAYFRONT SITE B PROJECT AREA

1535 Powell Street, 1525 Powell Street, 5770 Shellmound Street, 5760 Shellmound Street (and adjoining Former Rail Spur Property), Emeryville, California.

The Emeryville Redevelopment Agency, in conjunction with the California Environmental Protection Agency's Department of Toxic Substances Control (DTSC), is considering approval of a Feasibility Study and Draft Remedial Action Plan and associated Mitigated Negative Declaration for the cleanup of soil and groundwater contamination at the South Bayfront Site B Project Area (Site B). The Redevelopment Agency is soliciting public comment on the Draft Remedial Action Plan and associated Mitigated Negative Declaration during the period from October 15 to November 14, 2007. The Redevelopment Agency welcomes your participation in the review and comment of the Feasibility Study and Draft Remedial Action Plan.

A brief summary of Site B environmental investigations completed to date and the proposed cleanup actions are provided in a fact sheet, which is available on the City of Emeryville and DTSC websites or by contacting the project manager for either entity at the addresses provided below.

The Feasibility Study and Draft Remedial Action Plan, which contains more thorough discussion of the proposed project, and associated Mitigated Negative Declaration are available for review from the Emeryville City Clerk's Office located at 1333 Park Avenue in Emeryville and at the DTSC office at 700 Heinz Avenue in Berkeley. It is also available electronically at the following websites: www.ci.Emeryville.ca.us and http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=70000131.

A public meeting to present an overview of the Feasibility Study and Draft Remedial Action Plan and to receive comments will be held on October 30, 2007 at 6:30 p.m. at Emeryville City Hall, City Council Chambers, 1333 Park Avenue, Emeryville, CA Comments on the Feasibility Study and Draft Remedial Action Plan and associated Mitigated Negative Declaration may be submitted at the public meeting or in writing to the Redevelopment Agency's project manager (email preferred) at the address below on or before November14, 2007. Redevelopment Agency and DTSC staff are also available to answer questions about the Feasibility Study and Draft Remedial Action Plan.

Please contact:

Michelle E. De Guzman
Community Economic Development Coordinator
City of Emeryville
Tel: (510) 596-4357
mdeguzman@ci.emeryville.ca.us

Jovanne Villamater
DTSC Project Manager
(510) 540-3876
jvillam1@dtsc.ca.gov

Oakland Tribune
c/o ANG Newspapers
7677 Oakport St., #950
Oakland, CA 94621
Legal Advertising
(800) 595-9595 opt.4

EMERYVILLE, CITY OF
ATTN: VALORIE MAXWELL/PUBLIC WORKS
DEPT,1333 PARK AVENUE
EMERYVILLE CA 94608

PROOF OF PUBLICATION

FILE NO. South Bavfront Site

In the matter of

1535 Powell St., 1525 Powell St., 5770 Shellmound St., 5760 Shellmound

The Oakland Tribune

I am a citizen of the United States; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the Legal Advertising Clerk of the printer and publisher of The Oakland Tribune, a newspaper published in the English language in the City of Oakland, County of Alameda, State of California.

I declare that The Oakland Tribune is a newspaper of general circulation as defined by the laws of the State of California as determined by this court's order, dated December 6, 1951, in the action entitled In the Matter of the Ascertainment and Establishment of the Standing of The Oakland Tribune as a Newspaper of General Circulation, Case Number 237798. Said order states that "The Oakland Tribune is a newspaper of general circulation within the City of Oakland, and the County of Alameda, and the State of California, within the meaning and intent of Chapter 1, Division 7, Title 1 [§§ 6000 et seq.], of the Government Code of the State of California. "Said order has not been revoked, vacated, or set aside.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

10/15/2007

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Public Notice Advertising Clerk

Legal No. **0000816970**

PUBLIC NOTICE

NOTICE OF PUBLIC COMMENT PERIOD FEASIBILITY STUDY AND DRAFT REMEDIAL ACTION PLAN AND MITIGATED NEGATIVE DECLARATION FOR THE SOUTH BAYFRONT SITE B PROJECT AREA

1535 Powell Street, 1525 Powell Street, 5770 Shellmound Street, 5760 Shellmound Street (and adjoining Former Rail Spur Property), Emeryville, California.

The Emeryville Redevelopment Agency, in conjunction with the California Environmental Protection Agency's Department of Toxic Substances Control (DTSC), is considering approval of a Feasibility Study and Draft Remedial Action Plan and associated Mitigated Negative Declaration for the clean-up of soil and groundwater contamination at the South Bayfront Site B Project Area (Site B). The Redevelopment Agency is soliciting public comment on the Draft Remedial Action Plan and associated Mitigated Negative Declaration during the period from October 15 to November 14, 2007. The Redevelopment Agency welcomes your participation in the review and comment of the Feasibility Study and Draft Remedial Action Plan.

A brief summary of Site B environmental investigations completed to date and the proposed cleanup actions are provided in a fact sheet, which is available on the City of Emeryville and DTSC websites or by contacting the project manager for either entity at the addresses provided below.

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A public meeting to present an overview of the Feasibility Study and Draft Remedial Action Plan and to receive comments will be held on **October 30, 2007** at 6:30 p.m. at Emeryville City Hall, City Council Chambers, 1333 Park Avenue, Emeryville, CA Comments on the Feasibility Study and Draft Remedial Action Plan and associated Mitigated Negative Declaration may be submitted at the public meeting or in writing to the Redevelopment Agency's project manager (email preferred) at the address below on or before November14, 2007. Redevelopment Agency and DTSC staff are also available to answer questions about the Feasibility Study and Draft Remedial Action Plan.

Please contact:

Michelle E. De Guzman
Community Economic Development Coordinator
City of Emeryville
Tel: (510) 596-4357
mdeguzman@ci.emeryville.ca.us

Jovanne Villamater
DTSC Project Manager
(510) 540-3876
jvillam1@dtsc.ca.gov

The Oakland Tribune, #816970
October 15, 2007

ATTACHMENT B:
MAPS OF SOUTH BAYFRONT SITE B

Reference: The Thomas Guide; San Francisco, Alameda and Contra Costa Counties.

Note:

1. Locations are approximate.

N

0 1000 2000

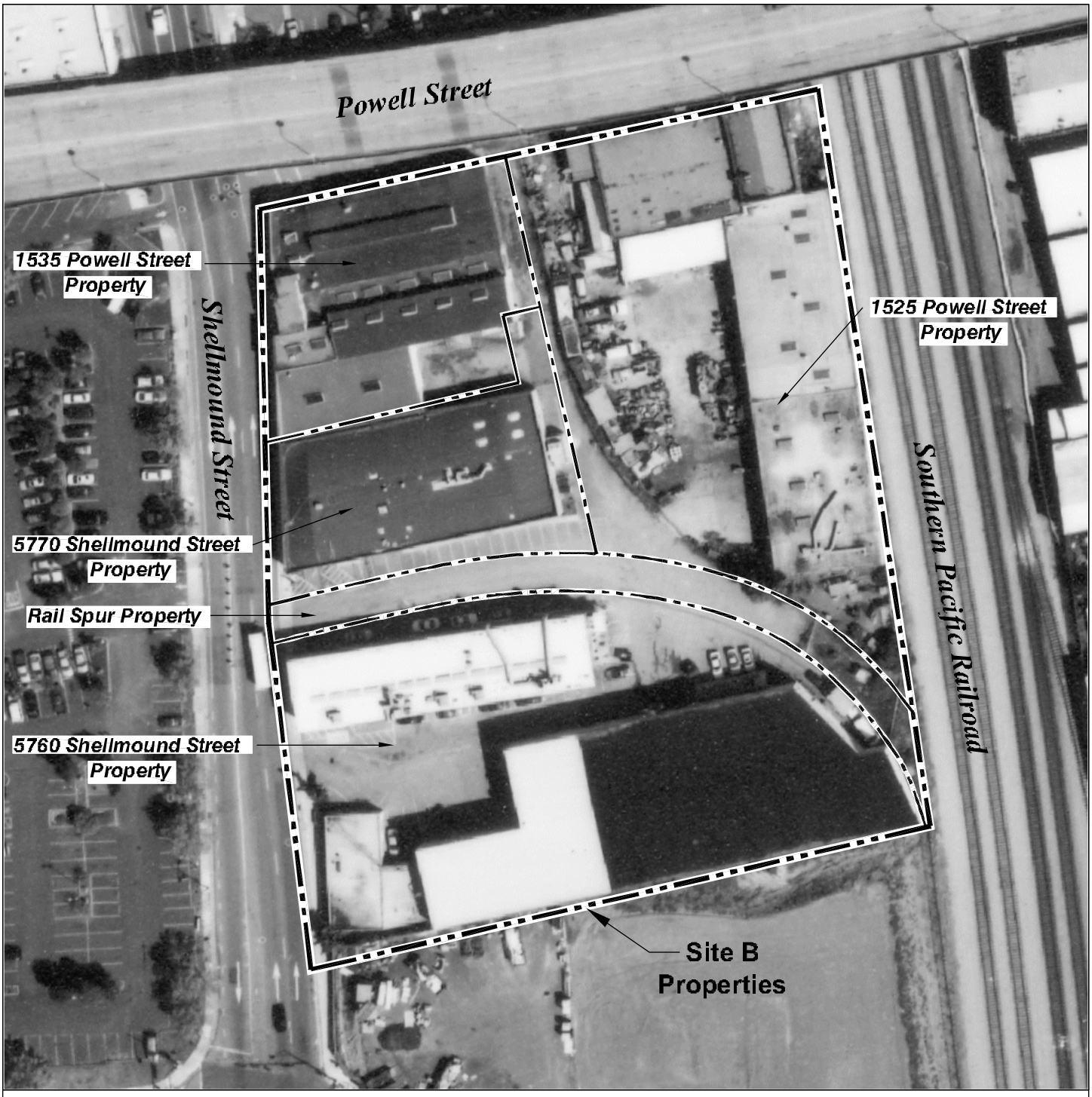
(Approximate Scale in Feet)

Erler & Kalinowski, Inc.

Site Location Map

Site B Project Area
Emeryville, CA
September 2007
EKI A40028.00

Figure 1-1



Reference: Pacific Aerial Surveys, Oakland, CA 2003

Notes:

1. All locations are approximate.

N

0 80 160

(Approximate Scale in Feet)

Erler & Kalinowski, Inc.

Property Location Map

Site B Project Area
Emeryville, CA
September 2007
EKI A40028.00

Figure 1-2

ATTACHMENT C:
TRANSCRIPT OF THE PUBLIC MEETING
(HELD OCTOBER 30, 2007)

CITY OF EMERYVILLE SPECIAL MEETING

IN RE:)
)
Special Meeting Re: SITE B)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

_____

TUESDAY, OCTOBER 30, 2007

REPORTED BY: ALESIA L. COLLINS-HUDSON, CSR 7751

(Job No. 2001-402186)

--o0o--

APPEARANCES:

EMERYVILLE CITY STAFF:

Michael G. Biddle, City Attorney

TUESDAY, OCTOBER 30, 2007 6:50 p.m.

PROCEEDINGS

--o0o--

MR. BIDDLE: My name is Mike Biddle. For those of you who don't know me, I'm the city attorney for the city of Emeryville, and I'm also the general counsel to the Redevelopment Agency.

This meeting we have a court reporter, so those who are speaking, if you would do so clearly and not speak over each other.

What we're holding tonight is a public meeting to present an overview of the feasability study and draft remedial action plan and to receive comments on the feasability study and draft remedial action plan as well as the associated mitigated negative declaration that was prepared relative to the impacts from the project.

The Redevelopment Agency, in consultation with

the California Environmental Protection Agency, the Department of Toxic Substance Control, is considering approval of the feasability study and draft remedial action plan and the associated mitigated negative declaration that was prepared pursuant to the California Environmental Quality Act for the cleanup of soil and groundwater contamination at the South Bay Fund Site B

project area.

On the -- up on the screen is Site B -- and I'll use Pearl's magic pen. So, this is the outline of what we call Site B. These are the Union Pacific -- it says Southern Pacific, but it's Union Pacific railroad tracks. Here is the Powell Street overcrossing, Shellmound Street. On the other side of the street is where you will find the Sheraton Four Points hotel. To the south is vacant presently, and then a little bit further south is the Bay Street shopping mall.

Site B is approximately three acres and consists of five parcels, as you can see the outline of up there, and it's located at the northeast corner of Shellmound Street and Christie Avenue, which is a little

bit down below in that general location. And it's obviously located in Emeryville.

The five parcels are 15 -- and, I apologize. It's a little bit blurry on the screen. The parcels are 1535 Powell Street, 1525 Powell Street, 5770 Shellmound Street, 5760 Shellmound Street, and this former rail spur.

The Emeryville Redevelopment Agency, we presently own fee title to 1525 Powell Street, 1535 Powell Street, and the rail spur. The Redevelopment Agency has filed eminent domaine proceedings on 5770

Shellmound Street and 5760 Shellmound Street to acquire those parcels.

The Agency has deposited the amounts of probable just compensation with the court and has obtained orders of possession to those parcels, and so presently we -- the Agency does control them.

The Agency is holding this meeting to solicit public comments on the draft remedial action plan and the mitigated negative declaration, and the comment period is from October 15th through November 14th, 2007.

So, those of you here who want to provide comments, if you don't do so orally, you can do so in writing prior to November 14th.

A brief summary of Site B environmental investigation completed to date and the proposed cleanup actions are provided in a fact sheet, which is available on the city of Emeryville and DTSC's website. I have copies of the fax sheet as well as the copy of the public notice for tonight's meeting that are here.

The feasability study and draft remedial action plan -- which contains a more thorough discussion of the proposed cleanup project -- and the mitigated negative declaration are available for review at the Emeryville city clerk's office, which is located in this building, as well as at DTSC's offices at 700 Heintz Avenue in

Berkeley. It's also available on the City's and DTSC's websites, and those websites are in these -- the public notice information, so you can get that there.

Site B has a long history of industrial uses. The industrial operations at Site B and at nearby properties used a variety of materials such as petroleum products, solvents and metals. These materials have

been found in the soil and groundwater at Site B in connection -- or, in concentrations, rather, that require cleanup before the site can be redeveloped.

The cleanup is being conducted under the authority of the Polanco Redevelopment Act, which can be found in the Health and Safety Code at Section 33459. And the Act authorizes the Redevelopment Agency to remove hazardous substances from the property within a redevelopment project and to recover costs from parties that are responsible for the contamination.

The Agency has filed a companion lawsuit with the eminent domaine proceeding to seek to recover its costs to clean up the hazardous materials from the potential responsible parties.

The Agency's environmental consultant, Earl James of Erler Kalinowkski, is here tonight. He will provide a presentation of the historical uses at the site, the site geology and hydrology, a summary of the

investigations that were undertaken by the Agency on the site, discussion of the risk assessment undertaken, remedial roles and remedial alternatives, and then will

give a description of the Agency's recommended remedial alternative, and likewise the issues that the Agency will face in the context of implementing the cleanup in -- out on the field.

Finally, Environmental Science Association -- ESA -- the City's CEQA consultant, will provide an overview of the CEQA analysis that was prepared in the proposed mitigation measures. And, so, finally at the end of ESA's presentation, the public will be provided an opportunity to provide comments on both the draft remedial action plan and the mitigated declaration. And again, as I said, the public comment period is open through November 14th, and written comments can be submitted up through that date.

So, Earl, at this point if you would go for it and provide a presentation. Again, I will let people know that in addition to the fact sheet and the public notice, there is a handout for those who want it of the Powerpoint that Earl is going to provide as well as the Powerpoint from ESA.

If anybody would like copies, show of hands, and I will give you a copy. Anybody?

MR. JAMES: Also, we have a sign-in sheet, and I will pass that around.

MR. BIDDLE: That would be to the extent anybody wants to speak.

MR. JAMES: Is that just for speaking is the only reason we have a sign-up sheet? I thought it was to get a record of who came. Well, I -- I got her to sign in, and she didn't need to if she is not going to talk.

As Mike said, by name is Earl James. I'm a professional geologist in the state of California. I have been working on soil and groundwater environmental issues for 18, 19 years now. I have been working in the city of Emeryville on various sites for the past 10 years.

In the draft remedial action plan that we submitted we took a look at the various issues related to soil and groundwater investigation and assessment of different remedial approaches and have developed a recommended remedial alternative for the site.

I am going to go through, as Mike outlined for you, the historical use, the hydrogeology, the description of the chemicals of concern that we have detected in soil and groundwater and soil gas at the

site and explain a little bit of how we developed the numerical remedial goals for cleanup of those chemicals. And then talk about our site conceptual model of where the chemicals are, where they may travel, and how they may create harm to human health and the environment. And then take a look at the remedial alternatives that we put together to evaluate what we believe is the most appropriate way to clean up the site, and then talk about that recommended remedial alternative and what we're going to need to do to implement it.

The site is located -- I think Mike described this pretty clearly -- at the intersection of Powell and Shellmound with the railroad tracks on one side and the south bay front development on the southern end.

This is a historical aerial photograph from 19 -- I can't read that -- 2005 -- '3 -- 2003, that shows the four properties and the buildings and improvements that were on the four properties, plus the railroad spur at the time that we started working on the project.

1535, which is the site up here in the northwest corner, in the early 1900's had a rock

crushing operation on it. Also in the early 1900's a portion of it was occupied by the Union Oil storage facility distribution yard. And then from the mid 1900's to the 1990's there was a metal working facility that was on the property that included various paint

operations.

1525 Powell Street, which is the property on the northeast corner extending down towards the southern portion of the site, early 1900's had a portion of the -- what was called the Western Carbonic Acid Gas company on the property. It had a portion on the northern end of this property of the Union Oil distribution yard.

There were various occupants of the buildings in the mid-1900s, including wax and polish and cleaner manufacturing, radiator hose facility, fiberglass boat manufacturing. And then in the 1990's there was a machine shop on it, which was the activity that was on the property when we took a look at it for the first time in 2005. This property also includes the rail spur in terms of how we investigate and discussed it in our document.

5770 Shellmound Street is the little parcel here in the middle of the site. This also had a portion of the Western Carbonic Acid Company operation on it. It was a machine shop in the mid 1900's, a dental materials warehouse, and then at the time that we looked at the property for our initial investigation was housing the Nano-Tex fabric treatment facility.

5760 Shellmound Street comprises the southern portion of the property. Early 1900's it also had a

portion of the Western Carbonic Acid Company on it. Then it was occupied for a long period of time in the mid-1900's by a lumber supply company.

Recently, one of the buildings was occupied by an electronic equipment warehouse and a plaster mix factory, and most recently it had the -- a retail flower outlet and a pasta shop in the building on that property.

This is a Sandborn fire insurance map from 1911, and this shows -- it is hard to read from where you all are sitting -- it is a figure in the document. The Western Carbonic Gas factory sat here, sort of in

the middle of the property. You can see the shoreline of the San Francisco bay was right here along the southwest edge of the property at that period of time, and up here on the northern portion of the property was the Union Oil distribution facility with above ground storage tanks, a loading yard in this area.

This is a historical aerial photograph from 1947. Again, very fuzzy and difficult for you all to see, I know, but what it illustrates is up here on the 1535 property, that building was in place by this period of time.

5770 Shellmound, this was when the machine shop was in operation. There was a building here, another

building here, and an open yard in between.

There were a collection of buildings up here on the northern portion of the 1525 Powell Street property, the rail spur coming across through here, and then the lumber company was developed -- the buildings relatively similar to what they are today down here on the southern portion.

This is a more recent photograph from 1983 showing the buildout of the property and the condition

pretty much as it was when we did our initial site inspections in the early 2000's.

Other potential historical impacts include along that border of San Francisco Bay that I showed you. There were refineries here in Emeryville and other different operations that apparently discharged petroleum hydrocarbons out into the bay, which was the practice at that period of time. We think that we see an accumulation of petroleum hydrocarbons along that old shoreline.

The adjacent Sherwin Williams pesticide facility, which was along the southern property boundary, was the subject of a lot of remedial work that was conducted on Site A has impacted the southern boundary of these properties. The upgradient -- and we will talk more about it -- and I will show you some

other figures.

Chevron's asphalt plant has been a source of chlorinated volatile organic compounds -- CVOCs -- in groundwater to this site, and there may be other CVOC sources upstream at the site. Upstream being to the

east, across the railroad tracks.

This aerial photograph, which is of recent vintage, shows the other sites that may have impacted Site B. Here is Site B sort of in the center of the photo. Site A is down here, and the Sherwin Williams pesticide facility impacts are along this boundary here and here at the southwest corner of the site. The former Chevron asphault plant is across Powell Street to the northeast, over in this area.

The geologic model is relatively simple, although there is what we believe a significant effect on the direction of groundwater gradients and the apparent groundwater flow in the area, and that there is a thin covering of fill soils over most of the site, a couple of feet, three feet. Down in that southwest corner where the old bay margin was there was up to 10 feet of fill soils that we see. And then underlaying that is young bay mud, which is approximately 5.5 to 20 feet thick. The 20 foot thick section fills a trough that runs through the middle portion of the site -- and

I will show you a slide of where that is in a second --

and apparently creates a sort of a barrier to groundwater flow so that the groundwater flow is restricted to the northern portion of the site in the way that water moves from the east towards the west.

Below the young bay mud is the San Antonio formation, which is the main acquifur unit, the main shallow groundwater zone that we are testing the groundwater in, and then below that -- below 30 feet, 40 feet below the ground surface is the Yerba Buena formation old bay mud that goes to at least 80 feet below the ground surface, which is the depth to which we have investigated so far.

This is a geologic cross section that runs from north to south across the eastern portion of the site. And, a little difficult to see, I'm sure for all of you, but these are the fill soils up at the top, and then this is the boundary between the young bay mud and the Yerba Buena formation.

And this feature right here, where the young bay mud fills in a trough and the underlying Yerba Buena is what restricts the groundwater flow on the northern portion of the site and creates a sort of a concentration of CVOCs in groundwater in this area, which you will see on some of the subsequent maps.

Shallow groundwater flows generally towards the west. It's influenced by this filled in channel feature, and the gradients are locally influenced by the storm drains that are out in Shellmound Street and Powell Street, and there is tidal mixing along Shellmound Street because the big five foot diameter storm drain that runs up Shellmound Street is interconnected to Tamiscal creek.

Tidal water comes up Tamiscal creek and up that storm drain and then drains back out. So, we see tidal mixing right there along Shellmound Street because the pipe is not watertight, or the water not only goes into the inlet but moves in and out through cracks that are in the pipe likely. The deeper groundwater units are isolated in that deeper Yerba Buena old bay mud section.

This figure is that same wider angle historical aerial photograph, recent -- fairly recent, but historical. It shows the groundwater gradients here in purple in feet above mean sea level. This purple feature that cuts east to west is that filled in trough where the young bay mud fills in the trough that's in the underlying formation, and so groundwater comes from

here and kind of bumps along that trough and moves off to the west. And you can see this pull up in the groundwater gradients here is the influence of that

trough feature on the way groundwater is moving.

Farther to the south, this is Tamiscal creek moving through here, and the groundwater gradients open up in this direction, showing the movement towards Tamiscal creek. Up in here it still looks like it's moving pretty much straight out towards San Francisco Bay.

The investigations that the city of Emeryville conducted in 2005 and 2007 are quite extensive. I won't go through the entire list here, but 83 soil borings, 16 groundwater monitoring wells, 11 soil vapor probes, hundreds of individual soil, groundwater and soil gas samples submitted to state certified analytical laboratories to characterize these different media as to the presence of the chemicals of concern that we have identified at the site that we will talk about in a minute that include petroleum hydrocarbons, metals and the CVOCs.

Chevron also conducted some investigations on the 1525 Powell Street property in 2006, and we have incorporated those data into our reports as well.

This is a map that shows the location of the soil borings that were conducted on the site, and you can see that we have done a pretty extensive grid of samplings. These soil borings are both targeted at what

we knew were potential source areas, places that we had from our historical records search and investigations, and ideas that chemicals had been used, stored, handled in some way that might result in a release of soil or groundwater.

And then we also, because of the fact that some of the fill soils that have been brought in, we don't know what the sources of those might have been, and just random things that occur over 100 years, drilled a fair number of borings on just kind of a grid pattern to see what might be there.

Similarly, this shows the -- all the groundwater sampling locations. These are both monitoring wells that have been installed and repeatedly sampled and grab locations where we drilled a hole,

grabbed some water out of the hole and sent it off to the lab.

The definition of the chemicals of concern is based on the site specific remedial goals that we developed by doing a human level and environmental risk assessment for the site.

In soil we have metals, primarily arsenic, antimony and lead. In -- we have total extractable petroleum hydrocarbons -- TEPH. Extractable being more toward the diesel, motor oil, fuel oil range of

petroleum hydrocarbons as opposed to gasolines, sort of lighter end hydrocarbons. We are seeing more of the heavier end hydrocarbons, which is pretty much across the site.

And then down in the southwest corner, the portion of the site that's been impacted by the Sherwin Williams pesticide plant activities to the south that we dealt with in -- on Site A, there are sulfites there, including hydrogen sulfites that were created by some of the processes that were on that particular property, and they have migrated up onto this property.

In groundwater the primary chemicals of concern are metals, again, arsenic, antimony, TEPH and the CVOCs, which includes tetrachloroehene -- TCE -- trichloroethene -- PCE -- and others. Some of these, particularly Cis-1,2, dichloroethene and vinyl chlorides, are indications that there are the natural processes occuring in the subsurface that are breaking down the primary CVOCs.

Eventually that breakdown process -- which is called natural attenuation -- can lead to those chemicals being broken down into harmless substances, and we believe that that process is active at the site.

As we will talk about, one of the measures that we are -- have looked at and are considering is to try

to help those natural processes along to try to clean the CVOC chemicals up more completely in groundwater in a good way.

So, this is the map that you probably can't see at all -- or a series of the maps that you can't see at all -- but it's the best representation. It is in the report, but I will go through it for you quickly.

We have four primary CVOCs here in soil, arsenic, lead, antimony and TEPH, and then we're looking at them and at three slices of soil depths below the ground surface, and then we're looking at them in groundwater. And on each of these maps you will see individually, or in clusters, color highlighted dots which are the sampling points where for that chemical and this depth interval the chemical's above the remedial goal -- the numerical remedial goal for the site. It's at a concentration that could create harm to human health or the environment.

And you can see looking across here, much of the site for one chemical or another -- and these are pretty much three foot slices. So, this bottom one is six to nine foot above -- below the ground surface. This is three to six feet below the ground surface. This is zero to three below the ground surface. So, across the entirety of the site for the different

chemicals, much of the site soil above the groundwater table has been impacted by one chemical or another above levels that we consider safe for human health and the

environment.

In groundwater, the picture is a little bit more localized with arsenic being up here along the northern property boundary and down along the southern property boundary.

Petroleum hydrocarbons up here below the old Union Oil facility and down here in the southwest corner related to an underground storage tank that's down in that portion of the site.

In the next two maps, this is the distribution of PCE, tetrachloroehene, TCE, trichloroethene, sort of primary CVOCs in groundwater. And these lines, purple for PCE and green for TCE, show you the boundaries of where those chemicals are at concentrations above drinking water standards. And the highest concentrations come from the upgradient property boundary here along the northeast portion of the site and traverse the site all the way across to the western property boundary.

The sharp line here on the southern side is apparently generated by the water coming up against that mud-filled trough that's in the subsurface. So, it sort

of controls the way groundwater and chemicals that are coming on to the site -- primarily from the Chevron former asphalt plant up here -- and then also from some various onsite sources related to the previous uses are concentrated right there through the middle of the site.

Risk assessments: We performed a human health risk assessment, and -- following guidance from the Department of Toxic Substances Control -- and it might be a good place to mention that these documents were reviewed by the Department of Toxic Substances Control and that they are the agency that provides us with technical review and approval of the documents -- and we evaluated the risks associated with the current -- at the time that the site was still in use by the other parties -- uses of the site, and a range of potential future uses that include single family and multi-family, residential and commercial retail type uses.

We developed a range of goals for carcinogenic chemicals are concerned that represent a 1 in 10,000 to a 1 in 1 million increased risk of cancer for a person who might occupy the site for 30 years, basically. There are different time periods that get involved in these evaluations, but basically it's 30 years. And that 1 in 10,000 to 1 in 1 million range is the range

that US EPA considers acceptable for these types of sites.

It's a very conservative calculation that's made. So, even though the risks calculate out to this range, it's probably not that high in reality, as well as people can tell from this type of assessment work.

For non-carcinogenic chemicals or concern, we developed goals that are below the U.S. EPA hazard index of one. Non-carcinogenic chemicals -- the types of effects that you get from those are rashes, nose bleeds, things that can be chronic and debilitating, but they aren't cancers.

We also looked at the potential indoor air risks from the CVOCs. The primary pathway of exposure to humans from those chemicals are -- they're volatile, so that they want to move from the water phase into the air phase. They're basically moving from high concentration to low concentration both in the water and up in the area atop the groundwater table.

They have been shown at other sites to move from the groundwater through the soil and up into buildings and be at concentrations that can create human

health risks.

This pathway -- the indoor air pathway -- once the site might be redeveloped is the -- really the only potential exposure pathway that is real, that -- people

wouldn't have contact with the soil, people wouldn't have contact with the groundwater due to deed restrictions that will have to be placed on the site, but that you can't control the air, particularly. So, this is one of the focuses of the remediation work that we recommend is cleaning up groundwater in order to protect that indoor air quality.

Petroleum hydrocarbons were evaluated separately and based primarily on their potential to move from the soil into the groundwater and migrate through the storm sewers into surface water, although we also looked at them for their potential to cause human health risks during construction activities and other activities where you might have contact with them.

Separately we performed an ecological impact assessment, and in that evaluation total petroleum hydrocarbons were the only chemical with ecologiccal

concern that we found could move from the site into surface water out into Tamiscal and could create a problem for ecological receptors. The remedial goals in the end, the numerical values that we have in the report to which soils will be cleaned up are in the end adopted from the Site A remedial goals that we worked on seven years ago or so, eight years ago, and that was to be consistent so that we have a consistent set of cleanup

goals throughout this portion of Emeryville.

That work was also conducted by the DTSC oversight and review, and the goals are within the range that were calculated. The numerical ones are within that 1 and 10,000 and 1 to 1 million number for carcinogenic chemicals.

TPH, as I said, is based on the economical protection of surface water. The other COCs are -- in groundwater are a calculated site specific value or a maximum contaminant level, which is the drinking water standard for ground water.

Our site conceptual model is that we've got 100 years of industrial use of various types. We do define

some of the primary what we believe uses that related in the most significant soil and groundwater contamination. Shallow groundwater flow through the San Antonio formation controlled by the top structure filled with young bay mud.

COCs in soil are the metals, TPH. We've got the potential for hydrogen sulfites in the southwest corner. COCs in groundwater are primarily the CVOCs, Tamiscal creek and San Francisco Bay are the primary downgradient receptors through the Shellmound Street storm drain.

And, in the report you would be able to study

this picture, which is a representation of that. We've got a source of CVOCs up here at the former Chevron asphalt plant that puts some of the CVOCs in groundwater through this middle portion of the site in place. We have other individuals sources there. The trough filled structure controls groundwater flow. We've got the H2S and other chemicals that have impacted the southern property boundary from the former Sherwin Williams pesticide plant operations.

The Unocal TPH distribution facility resulted in TPH impacts along most of the northern property boundary. And then surface water and groundwater interact along the Shellmound Street storm drain and float down and out to San Francisco bay.

We developed seven remedial alternatives that deal with the five media that are impacted, soil, groundwater, soil vapor, and we screened a broad range of potential remedial technologies and options to put together the seven specific alternatives for which we did cost analysis and took a look at the various plusses and minuses of how those would work -- and I will talk a little bit more about that in a minute.

Basically, these are somewhat additives starting with doing nothing, letting nature take care of itself, doing a little bit of soil excavation to -- up

to a lot of soil excavations, a lot of groundwater extractions.

And then the last alternative here, seven, is a lot of soil excavations and some additional reliance on natural processess and enhanced processess to break down the CVOCs in groundwater. There is a detailed analysis

of this presented in tables and figures in the RAP document itself.

We looked at those remedial alternatives and evaluated several of them against the seven -- against the criteria described in the national contingency plan, which is sort of the governing document for this type of work. They include overall protection of human health and the environment. We identified the appropriate standards that we needed to comply with. We looked at long term effectiveness, reduction of toxicity, mobility of volume of the contaminants and then finally how well we could implement the particular alternative, what a cost would be, and whether or not the state and local community would be accepting of those remedies.

We also looked at the state -- California state health and safety code criteria, which includes evaluation of health and safety risk, effect of contamination on beneficial use of resources, effect on groundwater resources, cost effectiveness and

environmental impact of remedial actions. And there is a matrix in the RAP that looks at all of those factors

and ranks the seven alternatives against those 16 factors.

So, the recommended remedial alternative is six. We have a map up in -- sitting up here if you wanted to look at it afterwards in close detail.

Alternative 6, the primary components are to excavate and dispose offsite approximately 16,00 cubic yards of contaminated soils, backfill those excavations with clean, imported soils. As part of the excavations, excavate down into the groundwater table where we believe there are CVOC sources on-site and pump the groundwater out of those deeper holes that we make so we try to pull out some of the source of the CVOCs so that it can't continue to move off in groundwater.

Once the excavations are complete and the site is backfilled we will install a network of groundwater monitoring wells and see what changes occurred to the groundwater chemistry, primarily look to see how well we reduced the concentrations of CVOCs in groundwater, and then evaluate the need for additional pumping or measures to enhance the natural biological breakdown of those chemicals that is occurring.

The estimated cost of the remedial measures are

12.2 million to 20.8 million. The swing in the costs being driven by changes in the disposal characterization of the soils whether they go off as non-toxic, as a California hazardous waste, as a federal hazardous waste, which will depend on the final concentration which we dig up the volume of soil of the chemicals that are in it. And each of those increases in sort of characterization of the soils, classifications of the soil as type of waste leads to increased dollars.

Implementation issues during the remediation work are going to be truck traffic. There are thousands of truck trips that will be associated with this, and both taking soil out and bringing it back in. Dust and odor control is going to be a concern. We have a very detailed program for monitoring dust and odor emissions, and realtime feedback while the excavation work is being done in order to control those measures.

Odors are going to be related primarily to excavations down in that southwest corner where the hydrogen sulfide is. It's difficult to completely control those hydrogen sulfide odors. And some people can detect them at very, very low levels that are below levels that will cause them any real harm but may cause

complete.

This is a summary figure out of the RAP that shows four -- in the gray here is the areas that will be excavated. The colored dots show why we are having to excavate those soils and remove them. This is the groundwater figure that's similar showing the area of groundwater that needs to be treated, including the areas where we will dig the deeper holes to remove what we believe are sources on-site of those chemicals.

And then this is sort of a summary of that with the striped area being where the above groundwater table excavations are and the darker gray areas where the below groundwater tables excavations will continue.

Implementation schedule: Public comment period open until 14 November. Final RAP, depending on comments and changes that we have to make in early December, and contractor bid period early December to mid-January. We hope to begin implementation of the remedial activities in February 2008.

And, with that I think I am going to turn it over to ESA.

MS. BROWN: Thank you. I am Crescentia Brown with Environmental Science Associates. We are an environmental consulting firm, about 20 years old, been around since CEQA.

We are based out of San Francisco, and -- home-based out of San Francisco and Oakland, and I am the project manager for preparation of the initial study.

I have with me tonight Eric Schnewin, who can help us -- help me out with any particularly technical questions, specifically about hazardous materials, geology, hydrology as it relates to the environmental documents. Earl has a lot of information on that as well.

I -- you know what? I have one initial study document. I don't think there -- there are more. Okay. If you don't have one, please get one, and if somebody needs this one tonight you can certainly take it with you.

I have about eight slides and a couple of minutes to do an overview of the document.

So, ESA prepared, consistent with an CEQA allowance, an initial study to just assess whether and identify any significant impacts that could occur with the activities that Earl has described that would occur on the site for the cleanup.

In one of Earl's later slides you started to -- you start to segue into this because most of the impacts that have been identified are associated with --

with impacts that would occur during excavation work, during digging, during truck traffic, related to the activity.

Let's go air quality first. Exposure to construction dust is pretty straightforward. As you get trucks going, as you get excavation going there is the potential for dust to emit into the atmosphere, and particularly contaminated dust. So, the Bay Area air quality management district gives us some guidance about standard mitigation that would be employed. And down in the corner I have page 2 of 7, because I anticipated

everybody might have one of these. When you do get one, and if you have the handout of these you can see the full text of the mitigation measures there.

But, just briefly, some of the mitigation involved watering of the site, which can minimize -- minimize dust, limiting speed limits of the trucks that are bringing soils in and off the site, limiting the work area of the site, wherever work is going, limiting the work area at any one time, and also just the cleaning of vehicles at the end of the day as they're leaving the site so as to not track contaminated materials onto, you know, adjoining streets and other areas.

All right. Also related to air quality would

be the exposures to exhaust that would come from any construction, any construction equipment that might be used on the site. We've got carbon monoxide, sulfur oxide, DPM, which is diesel particulate materials. And, again, we have guidance from the air distict on the standard mitigations that are employed to address those impacts, and they have to deal with particular exhaust mufflers that can be placed on certain equipment that

are used to minimize the exposure to the -- I should say the disposal of exhaust from those.

Maintain diesel power equipment. That refers to -- we have also guidance from the state that speaks to regular maintenance and upkeep, making sure that the equipment that is used is, you know, state of the art and -- you know, state of the art. All right.

And I think we have one more for air quality. Earl also talked about this a little bit. The potential impact to exposing folks to odor related to excavating certain areas of site. And we have guidance here for mitigation we have identified as an odor control plan, and it sounds like some of that is already described in the RAP, as well as, of course, in the initial study.

Cultural resources, as clearly as we started excavating potentially to depths to, I don't know, 9, 10 feet, and coupled with our proximity to a location where

we know there are known archeological resources, there is a potential impact to possibly disturb Native American cultural remains or human resources.

This, again, is a standard impact for

activities that are involved, subsurface work, and we have standard mitigations identified in the initial study, primarily to have monitoring on the site.

This is a very brief list of bullets from a very long, standard mitigation, but generally what you have is a monitor that is there in case during excavation something that looks very interesting is unearthed, someone who is qualified to stop, slow, move work around on the site in order to avoid potentially damaging something that is potentially a significant find.

Also on cultural resources, very similar, we have another standard mitigation similar to the prior one, but this one is should anything be discovered that appears to be human remains there is the requirement for notification to the coroner and also to the Native American Heritage Commission. And this, again, is a standard condition.

For hazardous materials, you know, the project itself clearly in some ways is a mitigation because this is resulting in remediation of the site. But, in doing

that, of course there is the potential to expose the public and the workers who are -- who are doing the cleanup activities to be exposed to potential contaminants, whether it's in the air, or in the water, or in the soil.

Earl had a slide that indicates that they have already prepared a human health risk assessment, and similar to that the standard mitigation identified in the initial study is for preparation of the health and safety plan that focuses on measures to prevent exposure to the public and to employees during work activity.

That plan would need to be approved by DTSC. It would identify and evaluate anything -- if there is anything possibly left that has not been already identified, and it would also speak in quite a bit of detail -- again, I think which is also in the RAP -- about guidance for transporting materials off the site and to ensure that those are disposed of appropriately and in compliance with the regulatory requirements.

Noise: Again, Earl admitted lots of trucks. We have the potential for increasing temporarily ambient noise levels in the area.

Standard mitigation: We have got a various number of noise control measures that could be employed. Again, mufflers, silencers, things to minimize to the

extent feasible any equipment that's being used for the cleanup activity. Similarly for construction, the trucks used in construction as well as to the extent feasible locating the work area, you know, away from sensitive -- sensitive receptors. I don't know how typical that is, or feasible, I should say, that is here because we know that the area is where we have to do the work.

Air quality also resources noise and hazardous materials was the test. Again, make sure you get one of these, and I'm available for questions, as is Eric, if you have any.

MR. BIDDLE: That sort of concludes our presentation. If there are any members of the public who want to provide any comment, you can do so at this time. You additionally have until November 14th to provide written comments to both the city and to DTSC.

All of these -- the documents, the draft feasability study and remedial action plan, as well as the initial study and mitigated negative declaration, they're available for review at the city's offices at

DTSC's offices, and they're also on -- available on our website, and so you can get access to those documents there as well.

So, at this time if anybody wants to provide

any comments, you are welcome.

MAYOR DAVIS: Michael, I have a question. It concerns taking the dirt off the property. Here you are right adjacent to a main rail line. Has any consideration been given to taking that dirt off in rail cars, which eliminates the truck traffic?

I mean, you're adjacent to the rail line.

MR. BIDDLE: You're adjacent to the rail line, but you don't really have any facility that allows you to stop a rail car on the rail line and do excavations. You're going to have to -- you know, you're going to be doing excavations on one part of the site and haul it over and dump it into a rail cart that is on the Union Pacific right-of-way, and it's something we quite frankly really didn't look at because we don't believe it's feasible.

Any other comments?

MR. JAMES: There could be some transport by rail, depending on what landfill the contractor proposes to use.

MAYOR DAVIS: It's unfortunate --

MR. JAMES: We have to truck it to a facility where we can do the transfer, but the longest --

MR. BIDDLE: I believe the object is to try to avoid trucking it across the site.

MAYOR DAVIS: And the other question I have is at the end of the day when we're washing off all the trucks and tires and things like that, how do you avoid getting that residue going into the storm drains? You know, you're washing stuff off.

MR. BIDDLE: You would have a facility where the trucks would drive on -- we did this on Site A. It's sort of a self-contained facility where you, you know, you wash off the tires. It catches the water there, and it goes into a -- you know, there is a holding tank on the site so it doesn't go back on the site.

MAYOR DAVIS: It's not going into the storm drain?

MR. BIDDLE: Wash it and contain it there on site.

MAYOR DAVIS: Very thoughtful plan.

MR. BIDDLE: Any other comments? Okay. Well, again, as I say, the comment period is open through November 14th, and you can provide comments care of the city or DTSC, and there is a documentation up front that will give you the addresses that you can send those comments to. Thank you.

(Meeting adjourned at 7:45 p.m.)

CERTIFICATE OF REPORTER

I, ALESIA L. COLLINS-HUDSON, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision.

Dated: November 10, 2007

_____
ALESIA L. COLLINS-HUDSON
CSR No. 7751

ATTACHMENT D:
COPIES OF WRITTEN COMMENTS RECIEVED

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November 6, 2007

Via Email and U.S. Mail

Barbara J. Cook, P.E., Chief, Northern California Coastal Cleanup Operations Branch
Jovanne Villamater
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94610

Re: Site B Project Area (Emeryville Redevelopment Agency)
Draft Feasibility Study and Remedial Acton Plan (July 2007)

Dear Ms. Cook and Ms. Villamater:

We represent The Sherwin-Williams Company. I am writing to request a 30-day extension of the public comment period (now set to end on November 14, 2007) for the Draft Feasibility Study and Remedial Acton Plan for the Site B Project Area (Emeryville Redevelopment Agency).

As you may know, the Redevelopment Agency has filed a lawsuit against Sherwin-Williams, alleging that it is liable for costs in the Site B Project Area. Therefore, Sherwin-Williams has a significant interest in evaluating and commenting on the draft FS/RAP. A 30-day extension would allow for an adequate review and would not significantly delay the cleanup.

Sincerely,

William D. Wick

cc: Peter M. Morrisette, Esq.

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November 6, 2007

VIA EMAIL AND U.S. MAIL
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VIA EMAIL AND U.S. MAIL
Jovanne Villamater
Site B Project Manager
California Environmental Protection Agency
Department of Toxic Substances Control
700 Heinz Ave., Suite 200
Berkeley, CA 94710-2721

Re: Emeryville Site B Remediation Project: Draft Feasibility Study and Remedial Action Plan and Mitigated Negative Declaration

Dear Ms. Cook and Ms. Villamater:

This office represents Mary Lou Adam as trustee of (a) Trust A u/t/o the Adam Family Trust dated October 10, 1977 and restated on October 14, 2003 and (b) the Adam Family Trust, Survivor's Share, Christopher D. Adam, and Hilary A. Jackson. Enclosed please find a copy of a letter to Peter Morrisette, requesting on behalf of our clients an extension of time to comment on the Draft Feasibility Study and Remedial Action Plan ("FSRAP") and Mitigated Negative Declaration for the Emeryville South Bayfront Site B Project Area. We are requesting a 30-day extension of the public comment period to provide comments on the FSRAP. The new deadline would be December 15, 2007.

By this letter, we are also formally making this same request to the Department of Toxic Substances ("DTSC").

Please let us know at your earliest convenience if DTSC has any objections to this request.

Very truly yours,

MILLER STARR REGALIA

Carolyn Nelson Rowan

CNR/kli

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November 6, 2007

Peter M. Morrisette, Esq.
Cox, Castle & Nicholson LLP
555 Montgomery Street, Fifteenth Floor
San Francisco, CA 94111

Re: Emeryville Site B Remediation Project: Draft Feasibility Study and Remedial Action Plan and Mitigated Negative Declaration

Dear Peter:

This letter relates to the Draft Feasibility Study and Remedial Action Plan for the Site B Project Area ("FSRAP"), dated September 27, 2007, and Initial Study/Mitigated Negative Declaration, dated October, 2007, prepared for the Emeryville South Bayfront Site B Project Area. As you know, this office represents Mary Lou Adam, as trustee of (a) Trust A u/t/o the Adam Family Trust dated October 10, 1977 and restated on October 14, 2003, and (b) the Adam Family Trust, Survivor's Share, Christopher D. Adam, and Hilary A. Jackson (collectively, the "Adams"). As former owners of certain real property within the Site B Project Area, the Adams have been named as defendants in litigation related to the cleanup of Site B. To the extent the Agency intends to seek recovery from the Adams of some or all of the remediation costs incurred by the Redevelopment Agency, the Draft FSRAP and Initial Study/Mitigated Negative Declaration have the potential to significantly affect our clients' interests.

The Adams should have an opportunity to meaningfully comment on the content of the FSRAP and Mitigated Negative Declaration. We understand that the comment period is open only until November 14, 2007, and that the Redevelopment Agency intends to begin cleanup work at Site B in January of 2008. However, as you know, the Agency only recently asserted claims against the Adams relating to Site B. Unlike other potentially responsible parties, who have been involved in litigation concerning remediation of this area for over a year, the Adams have not had enough time to assess the nature and extent of necessary remediation action. The November 14 comment deadline simply does not provide the Adams enough time to complete their analysis and provide comments on the contents of the FSRAP or Mitigated Negative Declaration.

Accordingly, the Adams hereby request a 30-day extension of the public comment period to provide comments on the FSRAP. The new deadline would be December 15, 2007.

By copy of this letter, we are also formally making this same request for an extension of time to the DTSC.

Please let us know at your earliest convenience if the Redevelopment Agency has any objections to the request.

Thank you for your consideration in this regard.

Very truly yours,

MILLER STARR REGALIA

Carolyn Nelson Rowan

CNR/kli

cc: Barbara Cook (California Environmental Protection Agency, Department of Toxic Substances Control)
Michael G. Biddle, Esq. (Emeryville City Attorney)
Michelle E. DeGuzman (Site B Project Manager, Emeryville) (via email)
Jovanne Villamater (Site B Project Manager, DTSC) (via email)

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October 29, 2007

Site B Project Area – Draft Feasibility Study and Remedial Acton Plan prepared by Erler & Kalinowski for the City of Emeryville Redevelopment Agency, dated July 2007.

VIA FACSIMILE

Peter M. Morrisette, Esq.
Cox, Castle & Nicholson LLP
555 Montgomery Street, Fifteenth Floor
San Francisco, CA 94111

Dear Peter:

This follows up on our conversations regarding the above-entitled Draft Feasibility Study and Remedial Action Plan ("FSRAP"). This confirms that Union Oil of California and Chevron request a 30-day extension of the public comment period to **provide comments on the FSRAP. The new deadline would be December 15, 2007.**

As we discussed, by copy of this letter, we are formally making this same request for an extension of time to the DTSC.

Please let us know at your earliest convenience if the City has any objections to the request.

Thank you for your consideration in this regard.

Sincerely,

Andrew T. Mortl

cc: Barbara Cook (California Environmental Protection Agency, Department of Toxic Substances Control)

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November 14, 2007

Via Email and U.S. Mail

Ms. Michelle E. De Guzman
Community Economic Development Coordinator
Economic Development and Housing Department
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Ms. Jovanne Villamater
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94610

Re: Site B Project Area (Emeryville Redevelopment Agency)
Draft Feasibility Study and Remedial Acton Plan (July 2007)

Dear Ms. De Guzman and Ms. Villameter:

We represent The Sherwin-Williams Company. I am writing to submit Sherwin-Williams' comments on the *Revised Draft Feasibility Study and Remedial Action Plan for the South Bayfront Site B Project Area* ("*Draft RAP*"). Sherwin-Williams' technical comments were prepared by West Environmental Services & Technology, Inc., and are attached.

The *Draft RAP* is fatally deficient for a variety of reasons. It is inconsistent with the most fundamental principles embodied in the National Contingency Plan, and inconsistent with common sense. The *Draft RAP* is arbitrary and capricious because:

- It proposes a cleanup plan without indicating the property use, and without evaluating whether the cleanup plan is appropriate for the ultimate use.

- Instead of assessing parcels based on historic use or based on common contaminants, the *Draft RAP* treats the separate parcels as one large homogeneous site.

■ The *Draft RAP* simply asserts that excavation of soils is necessary, without even considering capping or containment options which would be more cost-effective.

■ There is no justification provided for the need for remediation in the southwestern portion of the site, as concentrations of metals and other chemicals of concern did not exceed remedial goals. Instead, the *Draft RAP* asserts that excavation is necessary to address "hydrogen sulfide odor only." However, hydrogen sulfide is a naturally-occurring condition. Moreover, there is no indication of the basis for "remediating" odor in soil, nor any remedial goal proposed for odor in soil.

Sherwin-Williams sought an extension of time (beyond the 30 days provided) to comment on the *Draft RAP*, but the Redevelopment Agency (and DTSC) denied that request.[1] Because Sherwin-Williams has not had sufficient time to review and comment upon the *Draft RAP* or to prepare an alternative, Sherwin-Williams reserves its rights to comment further and to prepare an alternative. Sherwin-Williams is proceeding to prepare an alternative FS/RAP for 5760 Shellmound that is consistent with the principles of the NCP, cost-effective, and not arbitrary and capricious, and plans to submit that alternative FS/RAP to the RDA (and DTSC) in the near future.

Sincerely,

William D. Wick

Enclosure

[1] The RDA has sued Sherwin-Williams and others for cost recovery in the case of *Emeryville Redevelopment Agency v. Chevron Corp., et al.* (No. RG07332012, Alameda County Superior Court). However, there have been no substantive proceedings or discovery relating to the *Draft RAP* in that litigation. Sherwin-Williams' comments on the *Draft RAP* are submitted in response to the RDA public notice and request for comments, and do not waive or otherwise limit Sherwin-Williams' defenses or positions in the litigation.

WEST
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November 13, 2007

Subject: Review of *Revised Draft Feasibility Study and Remedial Action Plan Site B,* Emeryville, California

West Environmental Services & Technology, Inc. (WEST) has reviewed the *Revised Draft Feasibility Study and Remedial Action Plan Site B Project Area*, Emeryville, California (*Draft RAP*) prepared by Erler & Kalinowski, Inc. (EKI) for the City of Emeryville Redevelopment Agency (RDA). In general, the *Draft RAP* does not adequately consider a range of cleanup alternatives. In particular, the *Draft RAP* inappropriately screens out consideration of an alternative of containment of soil contaminated with relatively immobile metals. The *Draft RAP* should be revised to consider the containment option, as it represents a more cost-effective remedy than the recommended excavation and offsite disposal. Our comments are interlineated below with selected excerpts from the *Draft RAP*.

BACKGROUND

The approximately three-acre Site B is located along Shellmound Street near the Powell Street overpass in Emeryville, California ("the Site"). The Site is comprised of five parcels including: 1535 Powell Street, 1525 Powell Street, 5770 Shellmound Street, 5760 Shellmound Street, and a rail spur property along the north side of the 5760 Shellmound Street parcel.

The Site is located near the historic fringes of the San Francisco Bay. Commercial and industrial facilities operated on and near the Site beginning in the 1900s. In the early 1900s, Union Oil reportedly operated a distribution yard on the northern portion of the site. Other historic industrial facilities at the Site included Western Carbonic Acid Gas Company, a metal working operation, a radiator hose facility, warehouses and a lumberyard. Most recently, Site B has been used for commercial and light industrial activities.

In anticipation of development of the Site by the RDA, soil and groundwater investigations were initiated by the RDA at the Site in 2005. According to the RDA, the investigations revealed the presence of: petroleum hydrocarbons; chlorinated volatile organic compounds (CVOCs); metals (antimony and lead); and metalloids (arsenic). The majority "of the metals are found in fill soils near the surface."[1] EKI, on behalf of the RDA, then conducted a feasibility study of remedial options to address chemicals of concern posing an unacceptable risk to human health and/or the environment. Based on the feasibility study evaluations, a recommended remedial alternative has been identified.

The recommended alternative includes: excavation of unsaturated and saturated soil where contamination levels exceed the remedial goals; excavation of potential CVOC groundwater sources areas in unsaturated and saturated zone soil; excavation of unsaturated zone hydrogen

[1]City of Emeryville Redevelopment Agency, *Remediation Activity Fact Sheet, South Bayfront Site B Project Area 1535 Powell Street, 1525 Powell Street (and adjoining Former Rail Spur Property), 5770 Shellmound Street, and 5760 Shellmound Street*, Emeryville, California (September 2007) (Emervyille, 2007). p.2.

sulfide impacted soil in the southwest corner of the Site; a combination of monitored natural attenuation and groundwater extraction wells (for pumping and treating groundwater) to address on-site groundwater contamination; a groundwater extraction trench to address off-site contaminated groundwater migrating onto the site; and a vapor mitigation program for new buildings constructed on the redeveloped Site. Excavated soil is to be treated and/or disposed of off-site. After the excavation is complete, monitored natural attenuation will be employed to assess the effectiveness of the excavation for removing CVOCs from groundwater. If necessary, the pumping and treating of groundwater using groundwater extraction wells will be employed to address residual CVOC contamination in groundwater. In situ chemical or biological treatments may also be considered in this contingency phase of the groundwater remediation.

The results of the feasibility study and a description of the proposed remedy were presented in the *Draft RAP*.

GENERAL COMMENTS

The primary objective of a feasibility study is to develop an "appropriate range of options."[2] While the RDA's consultant states that it "evaluated a range of methods for addressing the contaminants of concern at Site B,"[3] the analysis was incomplete. The *Draft RAP* includes only one option in the various alternatives to address metals in soil and groundwater. i.e., excavation with offsite disposal. The NCP provides that a "range of alternatives should be preserved, as practicable, so that the decisionmaker can be presented with a variety of distinct, viable options from which to choose."[4] The range of alternatives should be developed "varying primarily in the extent to which they rely on long-term management of residuals and untreated wastes...varying in the type and degrees of treatment and associated containment/disposal."[5] The consideration of only one technology to address metals does not meet the minimum goals of the NCP and inappropriately limits the alternatives presented to the public for consideration.

The retention of only one remedial technology for metals appears to stem from the approach to address the multiple sources and varying suites of contaminants on a site-wide basis rather than using operable units, e.g., the area of CVOCs in soil gas and groundwater is distinct from the area where metals are found on the southern portion of the Site. The *Draft RAP* does not "establish whether the site may best be remedied as one or several separate operable units," in a manner consistent with the types of evaluations conducted pursuant to the NCP.[6] Sites addressed in a manner consistent with the NCP "should generally be remediated in operable units when...appropriate given the size and complexity of the site."[7]

Since certain contamination is limited to discrete portions of the Site, an analysis of operable units is appropriate, e.g., CVOCs in soil gas and groundwater do not require remedial actions on

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[2] USEPA, *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA*, Interim Final, October 1988. (USEPA, 1988). p. 4-7.
[3] ,p. 1.
[4] USEPA, 1988.p.1-9.
[5] USEPA, 1988.p.1-7.
[6] USEPA, 1988. p.1-6.
[7] 40 CFR Part 300.430(a)(ii)(A).

the 5760 Shellmound Street portion of the Site. The analysis of alternatives solely on a site-wide basis biased the analysis and thereby excluded more cost-effective options, such as capping, from consideration.

Specifically, according to the RDA, the investigations revealed arsenic and hydrogen sulfide odor in the southwestern part of the Site, where the historical shoreline of the San Francisco Bay was previously located.[8] CVOCs were not found in soil gas or groundwater in this portion of the Site as they were in other portions of the Site. To a limited extent, Total Petroleum Hydrocarbons (TPH) were found above remedial goals in the southern portion of the Site.

Based on this data, EKI developed a remediation plan as depicted on Figure 5-6 (Schematic of Alternative 6), which shows excavation of soil from the southern portion of 5760 Shellmound Street is limited to the unsaturated zone, i.e., from approximately 6-feet above mean sea level (MSL) to 3-feet MSL. The excavation is proposed to address the presence of arsenic, TPH and hydrogen sulfide odor. Remedial measures for groundwater are not proposed for the southern portion of the Site.

The relative immobility of the metals and the absence of proposed actions for soil gas and groundwater indicate that capping would be an appropriate remedy for the southern portion of the Site. For example, it is likely more cost-effective to cap the 120 cubic yards of soil present in the approximately 100-foot by five-foot strip of land along the property boundary with the South Bayfront property, rather than to excavate it.[9] It is likely that this portion of the Site would be present under a parking area where capping would be compatible with future commercial use and would provide a similar level of protection as excavation and offsite disposal.

Further, remediation does not even appear necessary to address conditions in the southwestern portion of the Site, because samples from borings ROB1, SFM-1, ROB2 were not reported to contain metals or other chemical of concern above remedial goals. The soil is this area is apparently being excavated to address "hydrogen sulfide odor only."[10] However, a remedial goal for hydrogen sulfide odor has not been proposed, nor are we aware of any requirement to remediate odor in soil. The approach to address soil with hydrogen sulfide odor in the same manner as soil containing CVOCs highlights the limitations of the "one size fits all" remedy that has resulted from the RDA's evaluate the Site in operable units.

SPECIFIC COMMENTS

Comments on specific sections are interlineated below with selected excerpts of the Draft RAP.

Page 1, 1.0 Introduction, paragraph 1, "The FS/RAP has been prepared by following guidance consistent with National Oil and Hazardous Substances Pollution Contingency Plan ("NCP").."

[8] Draft RAP, p. 2-3.
[9] Draft RAP, Figure 5-1b; One soil sample (A-C-SW-1.5-001) was reported to contain 370 mg/kg of arsenic, apparently residual from the South Bayfront remediation.
[10] Draft RAP, Figure 5-1b.

The feasibility study portion of the *Draft RAP* is not consistent with the NCP. The *Draft RAP* deviated from an evaluation conducted consistent with the NCP in that it neither evaluated alternatives in operable units nor evaluated a range of alternatives for metals in soil.

Page 1, footnote 1, "The results of the hydrogen sulfide screening study conducted in accordance with the Revised Work Plan for Remedial Screening Studies. The screening study was conducted to determine if pre-excavation hydrogen sulfide mitigation is a potential feasible remedial technology for soils that are impacted by hydrogen sulfide."

The *Draft RAP* does not adequately support the conclusion that soil has been "impacted by hydrogen sulfide." In the anoxic environment found along the bay shoreline, hydrogen sulfide is formed by the biologically mediated reduction of sulfate to sulfide.[11]

Since hydrogen sulfide is a naturally occurring condition, it should not require remediation as "Cal/EPA generally does not require cleanup of soil to below background levels."[12] Therefore, it is neither appropriate to characterize hydrogen sulfide's occurrence in subsurface sediments as an "impact"; nor appropriate to consider cleanup actions to address its presence.

Page 2-2, 1st bullet, "Former Sherwin Williams Pesticide Facility: The former Sherwin Williams Pesticide facility, located on South Bayfront to the south, was historically an arsenic-based pesticide manufacturing facility."

The historical documentation does not support EKI's conclusion that the Sherwin-Williams facility on Shellmound was an "arsenic-based pesticide manufacturing facility." Historical Sanborn Fire Insurance Maps denote the subject facility as "Insecticide & Spray Plant of the Sherwin-Williams Co."[13] Consistent with Sherwin-Williams records, which indicate that this facility manufactured lime-sulfur insecticides, the Sanborn Fire Insurance Map for the Shellmound facility notes the presence of "Lime Stg. Bins."[14] Lead-arsenic based pesticides were manufactured at the facility located on Sherwin Avenue in Emeryville, California, not at South Bayfront.[15]

Page 2-3, Section 2.2 Summary of Remedial Investigations and Site Conceptual Model, "The site conceptual model, described below, summarizes the understanding of geologic and hydrogeologic influences on the migration of COCs and the potential sources of COCs."

The conceptual site model (CSM) presented in the *Draft RAP* is not adequate. The CSM should include "known or expected locations of contaminants, potential sources of

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[11] Chambers, R.M., Hollibaugh, J.T., and Vink, S.M., *Sulfate reduction and sediment metabolism in Tomales Bay, California*, Biogeochemistry, January 1994. p.18.
[12] California Environmental Protection Agency (CalEPA), *Use of California Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties*, January 2005. p.2-10.
[13] D.A. Sanborn Co., Oakland 1912-Nov. 1951, Volume 3. Sheet 323.
[14] Ibid.
[15] The Austin Company, *Plant Layout & Underground Piping Plan, Sherwin-Williams Co., Emeryville*, April 1937. Sheets 1-30.

contaminants, media that are contaminated or may become contaminated, and exposure scenarios (location of human health or ecological receptors)."[16] The CSM does not adequately explain the source of arsenic, antimony, lead and hydrogen sulfide on the 5760 Shellmound Street portion of the Site. In addition, there appear to be data gaps associated with the sources of CVOCs in groundwater.

Page 2-5, Identified Potential Sources of Contamination: First bullet, "Former Sherwin Williams Pesticide Facility operations on the adjacent South Bayfront property have created antimony, arsenic, lead, and hydrogen sulfide impacted soil and/or groundwater in the southwest corner of Site B."

As noted above, the historical data do not support the conclusion that operations on the Sherwin-Williams property to the south of the Site included manufacturing operations using arsenic. In addition (as also noted above), the *Draft RAP* does not provide an adequately supported CSM that explains the nature and source of the contaminants. An adequate CSM should be developed for the Site that both explains the source and distribution of contaminants and identifies potential exposures and receptors.

In contrast to the attribution of arsenic, antimony and lead on the 5760 Shellmound Street portion of the Site, the *Draft RAP* attributes the presence of similar contamination to "fill materials across much of Site B [that] are impacted by arsenic, lead and antimony." Numerous historical operations at and near the Site are likely sources of fill materials containing these chemicals, e.g., former Barbary Coast Steel, Pfizer Pigments, etc. To the extent any antimony, arsenic and lead were present on the former Sherwin-Williams property to the south of the Site, the source may have been historic fill material.

Further, as noted above, the presence of hydrogen sulfide was not "created" by Sherwin-Williams. Hydrogen sulfide is naturally occurring in the reducing conditions of the bay sediments, which are present on the Site.[17]

Page 4-3, Section 4.3.2 Screening of Potential Remedial Technologies and Process Options for Soil, "Table 4-1 evaluates potential remedial technologies and process options for soil using the three screening criteria outlined in Section 4.3.1."

The *Draft RAP* does not provide a discussion to explain the basis for retaining or rejecting particular technologies. The *Draft RAP* should be revised to explain the basis for retaining and rejecting technologies. In addition, as noted above, the *Draft RAP* should be revised to include a full range of technologies among the alternatives evaluated, including containment for metals.

Page 5-2, Section 5.2 Alternative 2: MNA for On-site Groundwater and Institutional Controls, Institutional Controls, 2nd paragraph "Due to the extent of impacted soil and groundwater

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[16] USEPA, *Guidance on Systematic Planning Using the Data Quality Objectives Process*, EPA QA/G-4, February 2006. (USEPA, 2006).p.17.

[17] EKI, *Revised Draft Remedial Investigation and Human Health Risk Assessment Report*, (EKI, May 2007), Appendix A.

remaining in place, the specific LUC provisions would be so restrictive as to preclude the proposed redevelopment plan for Site B."

The conclusion that land use controls (LUCs) would preclude the "proposed redevelopment plan," conflicts with the representations provided in other sections of the *Draft RAP*. Specifically, the *Draft RAP* states "[a]t this time, no specific redevelopment plan has been approved for Site."[18]

Table 4-1, Screening of Technologies and Process Options for Unsaturated and Saturated Zone Soil; Soil Containment Options; Construction of Engineering Cap; Effectiveness: "Not effective in removing or treating COCs and CECs in soil"

As containment options are not designed to "remove or treat" chemicals of concern, the evaluation of this technology using the subject criteria is inappropriate. The NCP indicates the evaluations should include "one or more alternatives that involve little or no treatment, but provide protection of human health and the environment primarily by preventing or controlling exposure to hazardous substances, pollutants, or contaminants, through engineering controls, for example, containment."[19] Similarly, the USEPA identifies that "one or more containment option(s) involving little or no treatment should be developed" in performing feasibility studies in a manner consistent with the NCP.[20] Therefore, the alternative analysis in the *Draft RAP* should be revised to include containment as a remedial technology.

Table 4-1, Screening of Technologies and Process Options for Unsaturated and Saturated Zone Soil; Soil Containment Options; Construction of Engineering Cap; Implementability: "Not implementable because impacted areas of soil would require cap construction to extend over a majority of Site B, which would limit future use options, and long-term management requirements would make it difficult to obtain approvals from relevant governmental agencies."

The conclusion regarding the implementability of an engineering cap is not supported and is erroneous. The use of engineering caps is and has been an implementable option on sites addressed by the RDA with similar types of contamination in Emeryville, California, and has been approved by relevant government agencies for commercial development. For example the IKEA store was developed over the capped former Barbary Coast Steel site, and the Emeryville Market was developed over the capped former tar paper plant.[21,22] So even if development is proposed over the impacted areas of the Site, capping is an implementable option. Therefore, the presumptive rejection of consideration of an engineered cap was improper.

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[18] Draft RAP, Section Page 1, 1.0 Introduction, paragraph 2
[19] 40 CFR Part 300.430 (e) (3)(ii) Remedial investigation/feasibility study and selection of remedy
[20] USEPA, 1988. p.1-9.
[21] DTSC, Environmental Restriction: Covenant to Restrict Use of Property, Barbary Coast Steel Site, April 10, 1997. p.1.
[22] DTSC, Covenant to Restrict Use of Property Located at Christie Avenue and Shellmound Street, Emeryville, California, May 25, 1995. p. 2.

WEST

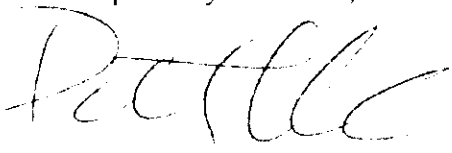
Table 4-1, Screening of Technologies and Process Options for Unsaturated and Saturated Zone Soil; Soil Containment Options; Construction of Engineering Cap; Cost: "Potential high capital cost."

The evaluation of the cost was not performed in a manner consistent with the NCP or applicable guidance. Our analysis indicates that capping would be more cost-effective than the retained options. Capping is a remedy that is routinely selected to address similar types of contamination. The USEPA's *Presumptive Remedy for Metals-in Soil Sites* identifies that containment is a "preferred technology" and the presumptive remedy for "low-level threat wastes," i.e., surface soil containing relatively immobile contaminants.[23] As a presumptive remedy, the USEPA has found containment to be "protective and cost-effective" for metals in soil.[24]

Table 4-1, Screening of Technologies and Process Options for Unsaturated and Saturated Zone Soil; Soil Containment Options; Construction of Engineering Cap; Conclusion: "Reject"

The single word characterization of "reject" or "retain" provided in Table 4-1 is inadequate to explain the basis for rejecting potential remedial technologies. The screening process inappropriately removed several technology types in a manner not consistent with NCP feasibility study evaluations. In particular, the NCP provides that in conducting feasibility studies, one should "select a representative process for each technology type" to use in the evaluations.[25] Specifically, the USEPA advises that "one or more containment option(s) involving little or no treatment should be developed" as part of the feasibility study.[26] Therefore, the *Draft RAP* should be revised to include evaluation of alternatives with capping for those portions of the Site where metals in soil is the basis for remedial actions.

Respectfully submitted,



Peter M. Krasnoff, P.E.
Principal Engineer

[23] USEPA, *Presumptive Remedy for Metals-in-Soil Sites*, EPA 540-F-98-054, September 1999. (USEPA, 1999). P.1.
[24] USEPA, 1999. p.11.
[25] USEPA, 1988. p.4-4.
[26] USEPA, 1988. p.1-9.

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November 14, 2007

Via E-mail (mdeguzman@ci.emeryville.ca.us) and U.S. Mail
Michelle E. Deguzman
Community Economic Development Coordinator
Economic Development and Housing Department
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Re: Revised Draft Feasibility Study and
Remedial Action Plan for South Bayfront Site B

Dear Ms. Deguzman:

Our office represents Mary Lou Adam, Christopher D. Adam and Hilary A. Jackson, defendants in a cost recovery action filed by the Emeryville Redevelopment Agency ("Agency") relative to Site B. Mrs. Adam acquired ownership of the portion of Site B commonly known as 1525 Powell Street by inheritance as the widow of her predeceased husband. Christopher and Hilary are her children, and minority owners with Mrs. Adam of a small portion of the property. The cost recovery action naming our clients was filed by the Agency on June 21, 2007 and served on our clients thereafter.

On September 27, 2007, the Agency presented a revised Draft Feasibility Study and Remedial Action Plan ("RAP") for the Site B Project Area. We understand that the Redevelopment Agency, in conjunction with the DTSC, is considering approval of the RAP and associated mitigated negative declaration, and "is soliciting public comment" on the plan. We understand that the public comment period extends through November 14, 2007. Because of the extensive nature of the plan, and the exceedingly short time period within which we have had to review and analyze the plan, we asked for an extension of time within which to comment. That request, which was made in writing on November 6, 2007, was denied by both the Agency and the DTSC. Accordingly, of necessity, the comments set forth herein may not be exclusive or exhaustive, and we reserve all rights to supplement and/or modify these comments as appropriate.

We also understand that other parties have been named as defendants by the Agency in other cost recovery actions with respect to the Site B Project Area, and that those other parties may be providing their own comments with respect to the

RAP, and may prepare and submit their own RAPs. We reserve the right to join in comments made by other interested parties, and/or RAPs submitted by other interested parties, as appropriate. We also reserve our right to submit our own proposed RAP with respect to this Project Area. We request that the Agency and the DTSC accept and consider all comments and/or RAPs submitted by all interested parties before approving a RAP.

We believe that the RAP proposed by the Agency should not be approved for the following reasons:

1. The RAP is premature and proposes unnecessary remediation: To the best of our knowledge, there is no defined development proposed or approved for the Site B Project Area. Absent some indication of the nature of the uses and the specific plan of development relative to Site B, an appropriate and efficient remediation plan cannot be developed by the Agency or any other person. An appropriate remediation plan must take into account the type and location of development planned for the site, including the physical nature of, and constraints present, on the site and appropriate placement of uses. For example, remediation of that portion of the site on which a parking garage is proposed may be handled differently than a portion on which ground level residences are to be located. Instead of taking into account a specific proposed development, the RAP proposes to remediate the site to a virtually "pristine" condition; this level of remediation is both unwarranted and inconsistent with the geographic location and environment of this site and surrounding area of Emeryville, and has not been required on neighboring sites.

2. There is no reason to rush approval of the RAP: Related to the above, there is no indication in the RAP that there is any significant reason which compels a RAP to be approved and implemented immediately. There is no imminent public health risk, and most of the chemicals concentrations reported do not exceed applicable regulatory standards. Indeed, the RAP indicates that some of the identified contaminants are decreasing over time. There is no reason to undertake the extensive remediation proposed without knowing and taking into account how the site will be developed. Doing so simply creates the risk that time and money will be spent on remediation efforts and activity that are unnecessary and/or duplicative.

3. There are efficiencies if remediation occurs at the same time as site development: We believe that there will be significant efficiencies, including cost efficiencies, if work relating to the remediation is also performed to meet the predevelopment and development goals of the site. Many of the costs (permits, fencing, dust control, well destruction, etc.) included within the RAP relate to, and would be incurred in any event in connection with geotechnical and other development costs. It appears that the RAP seeks to shift to our client, and to other alleged responsible parties, geotechnical and other costs of development of the site, and/or will result in those costs being duplicated when the site is developed.

4. There is no adequate explanation or exploration of acceptable alternatives: The RAP selects an alternative plan which has the "greater certainty" of achieving the Agency's objectives relative to the cleanup. However, because development is not defined, it appears that the cleanup proposed goes well beyond applicable regulatory requirements, and goes beyond the natural condition of property in that geographic location. The goal of the work is to meet regulatory requirements, not achieve a "greater certainty." There is no explanation why the "greater certainty" standard is used, nor what it means with respect to the scope or cost of the cleanup. Many of the metals identified in the RAP appear to be attributable to naturally occurring geologic deposits and preexisting fill materials. And it does not appear that alternatives were seriously considered with respect to metals other than excavation and off-site disposal, nor was potential reuse of materials considered.

5. Remediation of upgradient plume: A significant percentage of the petroleum hydrocarbon and chlorinated volatile organic chemicals (CVOC's) are the result of off-site parties. The RAP includes remediation costs of alleged groundwater contamination resulting from an offsite upgradient plume which is allegedly moving onto our client's property. Our client should not be responsible for remediation of offsite sources.

6. If our client is to be held responsible for the cost, it should have appropriate input: The cost of the proposed RAP is very significant and the Agency is seeking to shift those costs onto our client. Before our clients are presented with such a liability, they should have a full and fair opportunity to provide input into the proposed remediation plan. They have not had that opportunity because they have only recently been named in the cost recovery action, and because they have not had adequate time to review the RAP. To the extent that the Agency wishes to proceed with a RAP which is unnecessary and overdone at its expense, it is free to do so, however, it should not be permitted to impose the cost of the RAP on our client. Accordingly, we renew our request that we be given a reasonable opportunity of time within which to review, analyze, and comment on the proposed RAP.

In sum, it appears that the proposed RAP contemplates a cleanup which is grossly inappropriate and excessive, and which is untethered from the actual future use of the site. Cleanups of many of the surrounding properties have been approved and undertaken utilizing less costly and elaborate approaches. We believe a large part of this unnecessary cost is driven by the fact that the RAP has been developed in the absence of any clear indication of how the site will be developed. We request that the Agency and the DTSC consider a range of alternative remediation approaches which relate to a specific development proposal before approving the RAP.

We appreciate the opportunity to comment on the RAP, and welcome any questions or comments which you may have.

Very truly yours,

MILLER STARR REGALIA

Basil S. Shiber

BSS/sls
cc: Jovanne Villamater (By Email jvillam1@dtsc.ca.gov and U.S. Mail)
Michael Biddle (Via U.S. Mail)
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Via Email and U.S. Mail

November 14, 2007

Michelle E. De Guzman
Community Economic Development Coordinator
Economic Development and Housing Department
City of Emeryville
1333 Park Avenue
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Re: Draft Remedial Action Plan for the South Bayfront Site B Project Area
Emeryville Redev. Agency v. Robinson, et al., Alameda Superior Court No. RG06267594

Dear Ms. De Guzman:

This office represents Howard F. Robinson, who owns the property located at 5760 Shellmound Street ("subject property") in Emeryville, California. The subject property is included in the "Site B Project Area," and is the subject of a cost recovery action filed by the Emeryville Redevelopment Agency ("Agency").

The Agency submitted a draft Remedial Action Plan ("RAP") on September 27, 2007 for the remediation of the Site B Project Area. Despite the complexity of the Site B Project Area, and the significant costs associated with the RAP, this Agency has required that public comment on the draft RAP be submitted no later than November 14, 2007. This Agency has refused our request for an extension of the deadline for submitting public comment.

We therefore submit the following objections regarding the draft RAP:

1. Most of the reported chemical concentrations on the subject property are less than the regulatory limits for commercial/industrial use.

2. Even those few chemical concentrations that exceed regulatory limits for commercial/industrial use were beneath pavement or buildings at the subject property. They presented no risk of injury to persons or property.

3. The chemical concentrations reported for soil and groundwater at the subject property are largely the result of naturally-occurring geologic deposits, pre-existing fill material, or impact from historical uses.

4. Remaining chemical concentrations appear to originate off-site. Site B landowners should not be held responsible for remediating this contamination.

5. Continued commercial use of the subject property does not require remediation for metals, volatile organic compounds, hydrogen sulfide, and much of the petroleum hydrocarbons detected in soil and groundwater.

6. Tables in Appendix D of the RAP provide estimated costs associated with preparing Site B for redevelopment. The majority of the tasks listed in the tables would be required regardless of the need for soil and/or groundwater remediation.

7. The draft RAP should not be adopted until specific redevelopment uses have been designated for the subject property. It is impossible to properly evaluate the RAP without knowing the uses to which the subject property will be applied.

8. The Human Health Risk Assessment relies on inaccurate data, and does not accurately reflect human health hazards. Contamination levels do not exceed the regulatory threshold for what presents a human health hazard.

We understand that other person(s) will be submitting alternative remedial action plans. The RAP should not be adopted until these other plans have been fully evaluated. Furthermore, we reserve the right to join in the objections submitted by other persons in response to the RAP, and we reserve the right to supplement our objections listed above with further objections and analysis.

Very truly yours,

Andrew W. Noble

AWN:di

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November 14, 2007

South Bay Front Site B:
1525-1535 Powell St. & 5760-5770 Shellmound St.,
Emeryville, CA
DTSC Site Code 201634

VIA EMAIL

Michelle E. De Guzman
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Dear Ms. De Guzman, Ms. Cook and Ms. Villamater:

On behalf of Chevron U.S.A. Inc. ("Chevron") and Union Oil Company of California ("Unocal"), we are submitting the following comments to the July 2007 Draft Feasibility Study and Remedial Action Plan, Site B Project Area, Emeryville California prepared for the City of Emeryville, Redevelopment Agency (the "Agency") by Erler & Kalinowski, Inc. (the "RAP"). These comments also address the Revised Draft Remedial Investigation and Human Health Risk Assessment Report, Site B Project Area, Emeryville, CA, and Appendix R thereto (collectively, the "RI"), which presents the results and conclusions of Phase II investigations at South Bay Front Site B ("Site B") from 2005 and 2007 and is summarized by the RAP.[1]

[1] The Agency has filed three lawsuits for cost recovery under the Polanco Act, as well as various tort claims, against Chevron, Unocal and other potentially responsible parties ("PRPs") in Alameda Superior Court: *Emeryville Redevelopment Agency v.*

At the outset, we note that Chevron and Unocal only recently received the RAP and RI as part of a ***33,000 plus*** page document production by the Agency in connection with environmental litigation involving Site B. Chevron and Unocal have previously requested a 30-day extension of the public comment period to review and analyze these documents prior to submitting formal comments to the RAP and RI. The DTSC has provisionally denied the request for an extension and, thus, Chevron and Unocal herein submit their preliminary comments. Chevron and Unocal anticipate that they may have additional comments once they have had adequate time to review the Agency's documents and further investigate the Agency's proposed redevelopment plans for the site. Chevron, Unocal and the Agency have agreed to meet in late November or early December to discuss the proposed scope of the RAP and Chevron and Unocal's interest in conducting some of the site work. Chevron and Unocal have also noticed the Agency's deposition in order to discover the Agency's specific redevelopment plans for Site B. That deposition is currently noticed to take place in late November. Chevron and Unocal are also investigating submitting their own RAP to address issues associated with their former operations. As a result, Chevron and Unocal hereby renew their request to the DTSC for a 30-day extension of the public comment period and further request that the DTSC not approve the RAP or RI until these companies have been given a fair opportunity to submit their own remedial plans.

Please feel free to either call Andrew Mortl at 925-210-2805 or myself at 303-938-8115 if you have any questions regarding this submittal.

Sincerely

Andy Davis, Ph.D.
President
Geomega

cc: Derek Van Hoorn, Esq., DTSC (via email dvanhoor@dtsc.ca.gov)

Robinson, et al., Case No. RG-06-267594 (5760 Shellmound); *Emeryville Redevelopment Agency v. Security Pacific, et al.*, Case No. RG-06-267600 (5770 Shellmound); and *Emeryville Redevelopment Agency v. Chevron Corporation, et al.*, Case No. RG07332012 (1525 and 1535 Powell Street). In each of its lawsuits, the Agency is seeking to hold Chevron and Unocal jointly and severally responsible with other named defendants for various costs incurred by the Agency in its remediation of Site B, which the RAP estimates could be as much as $26 million.

Chevron and Unocal Comments on the Site B RAP and RI

Without waiving the above requests, Chevron and Unocal submit the following preliminary comments for consideration:

- ***Chevron and Union Oil have concerns regarding the methods that were used and the appropriateness of the clean-up goals established.*** It is unclear from the RAP and the RI whether the clean-up goals for Site B are appropriate for the pathways and receptors. It is also unclear whether the clean-up goals consider the likely receptors in light of the ultimate development plan of Site B. Neither the RAP nor the RI identifies the Agency's ultimate development plans for Site B. Nor has Chevron or Unocal located any documents within the 33,000 pages produced by the Agency that identify such plans. The absence of a specific plan of development for Site B prior to conducting the risk assessment has resulted in ambiguous delineation of potential risk scenarios and, ultimately, cleanup goals that may not be appropriate for the ultimate development plans for Site B.

- ***The data set appears to be inadequate to determine the extent of clean-up necessary.***

- ***There is no adequate explanation or exploration of acceptable alternatives.*** The RAP selects Alternative 6 based on the Agency's assessment that it has the "greater certainty" of achieving the Agency's objectives relative to the site remediation. However, as discussed in more detail below, it appears that the proposed Alternative 6 goes well beyond regulatory requirements relative to Site B.

- ***Chevron and Union Oil should have the opportunity to provide meaningful comments and input regarding the RAP, the RI and the proposed remediation of Site B.*** The Agency is seeking to hold Chevron and Unocal jointly and severally liable for a remediation project that it estimates could cost as much as $26 million. As discussed above, Chevron and Unocal have not had adequate time to review the Agency's documents or to further investigate the Agency's proposed remedial plans for Site B.

- ***The RAP appears to be premature.*** In the absence of specific development plans or health concerns, there does not appear to be any reason to rush approval of the RAP.

- ***There are efficiencies if remediation occurs at the same time as site development***: Since there is no current specific redevelopment plan regarding Site B, these efficiencies will be lost if remediation proceeds prior to redevelopment, resulting in higher project costs.

As detailed in the comments submitted below by Chevron and Unocal (as well as those submitted by other PRPs), there is a significant difference of opinion between the Agency and the respondents. At this juncture, it would be prudent to meet and determine if the proposed mitigation is appropriate for the level of risk at Site B and the redevelopment plans for Site B – which the Agency has yet to disclose to respondents or the public at large. ***Chevron and Union Oil hereby request a meeting with the DTSC, the Agency and all other identified PRPs to discuss the Agency's proposed development and remediation plans for Site B.*** Chevron and Unocal are currently pursuing discovery to determine the Agency's specific redevelopment plans for Site B which are essential to evaluate the appropriateness of the selected remedy. Unocal and Chevron have scheduled a meeting with the Agency to discuss the scope of the RAP and the potential for Unocal to conduct some of the work. In addition, Unocal is currently determining whether to submit its own RAP for the petroleum issues at its former site (located on the northern portions of 1525 Powell and 1535 Powell), which may include (1) the collection of additional data to better characterize site soil and groundwater in the northern tier of Site B; (2) a re-assessment of the risk analysis using these data; and (3) evaluation of alternative mitigation alternatives in a Decision Analysis framework.

Specific Comments – July 2007 Draft Feasibility Study and Remedial Action Plan

Comment 1 – Examples of contaminant delineation based on insufficient supporting data

As an example of the apparent failure of the RAP to delineate soil zones for remedial excavation, compare the proposed excavation at the 1535 Powell St. property (Figures 5-2 and C-2 of the RAP) with the actual data (Figure 3-1a from the May 2007 Revised Draft Remedial Investigation and Human Health Risk Assessment Report). It is noteworthy that bold, underlined, and/or shaded values in these figures are not necessarily in excess of PRGs, but rather simply exceed "background" (*see* Comment 4) or CHHSLs.[2]

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[2] *Use of California Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties* (California Environmental Protection Agency 2005) states that "The presence of a chemical at concentrations in excess of a CHHSL does not necessarily indicate that adverse impacts to human health are occurring."

The proposed excavation covers more than half of the property, yet only 2 of 37 soil samples exceeded the PRG range for arsenic (60-140 ppm) and none of the samples exceeded the PRG range for antimony (110-320 ppm) or lead (1,200-5,000 ppm).

Similar evaluation of the TPH-g soil concentrations indicates that only two samples from within the proposed excavation exceeded the PRG for TPH-g (both of which were from the top five feet of bore SBA-C), whereas an additional two samples exceeding the PRG were observed below the proposed zone of excavation.

TEPH is discussed in detail in the following comment. However, comparison of TEPH concentrations with the 26,000 ppm HBHC PRG used for the TPH above the gasoline range at South Bay Front illustrates that none of the soil samples from the 1535 Powell St. property exceed that remedial goal.

Thus, the proposed excavation of approximately 27,000 cubic feet of soil at the 1535 Powell St. property is based on 4 samples (from 3 locations), all of which have nearby soil samples with contaminant concentrations below appropriate PRGs.

"Excavation cells," defined in Figure C-2 and Table C-1, are generally on the order of approximately 5,000 cubic feet, and are almost exclusively defined by a single soil sample per excavation cell. No measures of relative standing, central tendency, dispersion, or association appear to have been calculated or reported. No statistical (*e.g.*, variograms or h-plots) or subjective evaluation of the spatial variability is presented. Simple subjective evaluation of tabulated results (*e.g.*, non-detects within several feet of high TPH concentrations) indicates that the spatial variability of the data is grossly disproportionate to "excavation cell" volumes to which individual samples have been applied. In spite of the unjustified assertion that "the density of sampling is sufficient" (pages ES-6 and 7-1), there appears to be no statistical evaluation of the adequacy of the data set for characterization. Nor does there appear to have been any numerical evaluation of the extent and spatial continuity of soil contamination (*e.g.*, contouring and associated statistical analyses recommended in appropriate guidance documents).[3]

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[3] EPA guidance (EPA. 1998. *Guidance for data quality assessment.* EPA/600/R-96/084) for evaluation of characterization data provides standard preliminary data review approaches, which "should be performed whenever data are used, regardless of whether they are used to support a decision, estimate a population parameter, or answer exploratory research questions." The minimum requirements of that review are not met by the RI and/or RAP.

Comment 2 – TEPH is an inappropriate constituent grouping

Evaluation of the heavier hydrocarbon concentrations for this property is confounded by the lumping of hydrocarbons into a single category, "TEPH." Furthermore, the reported TEPH values are presented and used inconsistently (and apparently inappropriately), with the RI stating (on page 6-3, footnote 5) that TEPH represents TPH-d and HBHC. However, this usage of TEPH values conflicts with data in Table 3-3b that indicate TEPH is inclusive of the "lighter than diesel range" as well. In fact, of the 22 samples (from the 1535 Powell St. property having reported TEPH product interpretations), only 7 are not comprised at least in part by TPH-g range hydrocarbons.

The ranges of potential remedial goals reported in Tables 3-2 and 3-3 of the RAP and Tables 6-2 and 6-3 of the RI clearly indicate that distinguishing between the various carbon fraction ranges is critical to the determination of adequate risk-based cleanup standards. However, quantification of the TPH-g, TPH-d and HBHC fractions has not been performed as part of these assessments. Therefore, the utility of TEPH concentrations for risk assessment and remedial action planning appears to be inadequate.

Comment 3 – TEPH risk-based PRGs are not applicable and inconsistent with the neighboring site

Deviation from the PRG (26,000 ppm) used at the adjacent South Bay Front Site (TPH is the ***only*** constituent for which PRGs deviated from those of South Bay Front) further confounds the evaluation of the heavier hydrocarbon concentrations. In addition to the problems with utilization of TEPH values for comparison with TPH-d and HBHC PRGs highlighted in Comment 2, the site-specific remedial goals developed for TPH are based on inappropriate assumptions, including:

- Section 6 - utilization of receptor pathways without corroborative data (although a potential pathway was identified, no effort was made to determine if off-site migration of TPH was occurring through the storm sewer and evaluation of metals provided no indication of transport from site groundwater to surface water). In Section 2.2, the RAP states: *"An evaluation of downgradient groundwater migration pathways indicates that surface water, San Francisco Bay via Temescal Creek via the Shellmound storm drain, is the receptor of concern for Site B groundwater."* The stormwater drain sampling performed by Erler & Kalinowski, Inc. ("EKI") does not validate this statement. Section 2.4 states that according to the RI: "TPHs in groundwater were the only identified CECs at Site B that may threaten surface water quality." EKI performed sampling of the storm water

line and did not analyze for TPH, reportedly because of the likelihood of non-point sources of TPH being present in the storm water. Unless more focused sampling in and around the storm water line can demonstrate that TPH from Site B groundwater is entering the storm water line, it cannot be considered a complete receptor pathway, and should not be the focus of remedial goals. Similarly, with respect to Section 3.2.1 (2), there is no evidence that TPH concentrations in soil on Site B pose a material threat to surface water quality in Temescal Creek or San Francisco Bay.

- Section 5.2.2.2 - ultimately, the RAP utilized TPH "nuisance odor" as the driver for the revised PRG. Utilization of odor thresholds for calculation of nuisance odor derived-PRGs was based on inappropriate parameter values (fresh gasoline and fresh fuel oil No. 1 vs. weathered unidentified petroleum compounds observed on the site). Adequate nuisance odor evaluation requires appropriate evaluation of the TPH-g, TPH-d, and HBHC fractions, as well as identification of the compounds comprising each fraction. Furthermore, soil types utilized for risk assessment were inconsistent with reasonably foreseeable development. The MADEP S-2 soil standards consider incidental ingestion of the soil and dermal contact with the soil, in which the potential receptor may come into frequent but passive contact with the contaminated soil.

- Section 6 - the RAP fails to acknowledge that even if the alleged receptor pathway (discharge of TPH contaminated groundwater to the storm sewer) was present, either active or passive institutional controls could preclude pathway completion, nullifying the need to modify the TPH PRGs based on any surface water receptors.

- Section 6.2.1 - calculation of eco-based soil remedial goals utilized generic literature values (for Koc) and the low-end of the observed range of organic carbon fractions in soil (Foc). These are inadequate surrogates for site-specific data from the TPH-contaminated zones. Evaluation of mobility should be based either on site-specific bench-scale testing of mobility from the zones of interest or on Koc values for the primary petroleum compounds present and Foc values measured within each contaminated zone.

Comment 4 – Background Concentrations

Metal and metalloid concentrations, particularly in artificial fill materials, should be compared to background concentrations as part of the risk assessment process. Naturally-occurring concentrations of such parameters as arsenic often exceed RI levels. If concentrations in fill material and soils are not due to artificial contamination and are within background levels, remediation for those parameters should not be necessary.

Published background datasets should be used to calculate upper bounds of the background distributions for comparison to site concentrations. Upper tolerance limits are recommended in EPA guidance to establish background-based action levels and should be calculated using available data for California soils.

The California Environmental Protection Agency (2005) states that "Background concentration of arsenic or other metals of potential concern at a site should be determined from analysis of site-specific samples in uncontaminated areas using guidance published by Cal/EPA and/or reference to published data for nearby sites (Cal/EPA 1997). However, background data for nearby sites may only be used as a surrogate for uncontaminated site data if those data are obtained from soil of the same lithology as that found on-site."

Similarly, Section 5.1.3, footnote 2 describes excavation of hydrogen sulfide-impacted soil to prevent migration of hydrogen sulfide into future structures. There is no discussion or analysis of whether the hydrogen sulfide described is naturally-occurring in bay mud or the result of environmental impacts related to Site B.

Please provide the background concentrations calculated for fill materials at Site B and the methodology and references utilized in those calculations.

Comment 5 – Exposure point concentrations

Table 5-3 (of the RI) provides site-specific exposure point concentrations ("EPCs") for antimony, arsenic, and lead below the proposed remedial goals ("PRGs"). Please explain why remedial action is still proposed for these constituents.

Comment 6 – Groundwater and soil remedial goals do not appear to be consistent with the foreseeable future development of the site.

Neither the RAP nor the RI specifically identifies the Agency's plan for redevelopment of Site B. The RI and RAP generically refer to proposed future use of Site B in their respective Executive Summaries as including "commercial land use, urban

residential land use, or a mixture of commercial and urban residential land use" "consistent with developed neighborhood properties." The remedial goals in the RAP, however, are based on assumptions that are inconsistent with such uses:

- Section 3.2.2 - the RAP states that groundwater remedial goals *"...were driven by protection of future on-site residents and office/retail workers."* However, it is unlikely that single family housing will be constructed on the site. Current plans suggest any development will be consistent with surrounding land use, which would suggest upper floor condominium style housing above ground-level retail or office units. This scenario will result in vastly different risks (versus single family slab on grade housing). For this reason, no cleanup goals should be developed based on an "onsite" resident living in a single family home situated directly on site soil.

Comment 7 – No support for claim that a deed restriction would preclude redevelopment of the site.

Under Remedial Alternative 2 in Section 5.1.2, it states that: *"Due to the extent of impacted soil and groundwater remaining in place, the deed restriction may be so restrictive as to preclude redevelopment of Site B."* While such a scenario may preclude certain developmental uses, the thought that engineering controls could not be designed to allow redevelopment of the site is unfounded.

Comment 8 – Alternative 6 does not appear to be the best alternative.

Alternative 6 includes extensive soil excavation on Site B and long-term groundwater extraction on site using groundwater extraction wells, and groundwater extraction trenches to prevent impacts from off-site contamination. (*See, e.g.,* Section 5.1.6 at p. 5-5). It appears that on-site groundwater extraction is not warranted if a groundwater to surface water pathway for TPH is not proven to exist. A barrier to prevent migration of CVOC-impacted groundwater from off-site sources would be a better alternative than long term groundwater extraction from trenches, especially since the magnitude and extent of the off-site contamination does not appear to be well understood, and groundwater extraction could draw higher concentrations of CVOCs towards the site.

Other listed alternatives or modified combinations would be more appropriate. Soil excavation into the saturated zone would remove the majority of any COC mass, and would likely make the need for any long-term vapor mitigation measures unnecessary. MNA is an appropriate method for remediation of any residual dissolved

concentrations of COCs in groundwater, provided a barrier to recontamination from off-site sources is utilized.

Comment 9 – Errata

On Page 1-2, under the heading Report Organization: "Section 6.0 – Public Participation" should read "Section 6.0 – Proposed Remedy"

In Section 2.3, the RAP states that: *"Separate risk-based and aesthetic-based unsaturated zone soil remedial goals for TPH were developed for Site B as TPH was not a primary COC at South Bayfront. These risk-based and aesthetic-based remedial goals will be discussed in further detail in Section 3.0."* The reference to Section 3.0 appears to be incorrect, as there is no additional explanation given for "aesthetic-based" criteria in Section 3.0.

Specific Comments –Revised Draft Remedial Investigation and Human Health Risk Assessment Report: Appendix R - Revised Draft Human Health Risk Assessment

The issues highlighted in the following comments on the Revised Draft Remedial Investigation and Human Health Risk Assessment highlight that the clean-up goals determined for Site B appear to be based on an inadequate risk assessment, which would be inconsistent with current guidance. Furthermore, the fact that there was no specific indication of the potential development plan for the site prior to conducting the risk assessment has resulted in ambiguous delineation of potential risk scenarios and, ultimately, cleanup goals that may not be appropriate for the ultimate development plans for Site B.

Comment 1 – Section 3.3.2 (Outdoor Air EPCS for Non-VOCs Based on Soil) at p. 20.

- The PEF of 1 x 10^6 m^3/kg. This value is appropriate for the construction worker exposure scenario but overly conservative for the maintenance worker exposure who is expected to be involved in less labor intensive earth moving (if any) activities (i.e., utility line and elevator maintenance, p. 17).

- The PEF of 2 x 10^7 m^3/kg. It is difficult to ascertain the appropriateness of this value. Additional information is required regarding the basis for the respirable dust concentration of 0.05 mg/m^3 including the percent of expected exposed soils that are expected at this time.

- PEF of 3.33 x 10^7 m^3/kg. Cal/EPA 1993 is cited as the basis for the RDC of 0.03 mg/m^3. However, the reference is missing. Please provide the complete reference.

In addition, the RI cites the 1996 U.S. EPA Soil Screening Guidance for the general approach. However, the U.S. EPA updated the PEF approach in the 2002 Supplemental Guidance for Developing Soil Screening Levels. In this document, the U.S. EPA calculates a PEF as an estimate of the relationship between the concentration of constituent in soil and concentration of the constituent in air as a consequence of predicted particle suspension due to fate and transport mechanisms at the site during the exposure scenario.

As such, the U.S. EPA recommends calculating a PEF based on the following components – a ratio between the air concentration and the source emission flux (of PM_{10}) and the predicted source emission flux (of PM_{10}), which is based on site activities (e.g., wind erosion, grading, tilling, truck traffic) and the exposure duration of the receptor. A dispersion correction factor is also required for PEFs used to estimate exposure to receptors with exposure durations less than one year.

The PEFs used in the RI are calculated solely based on estimates of particulate concentrations in air, without respect to the source of these particulates (*i.e.*, site soils as opposed to dust transported from other properties). As such, these concentrations are extremely conservative in that they assume all dust in outdoor/indoor air originates from the site.

Comment 2 – Section 3.3.4 (Outdoor air EPCs for VOCs Based on Groundwater), at p. 21, ¶1.

As noted in the RI, adding EPCs for VOCs detected in both soils and groundwater is likely to overestimate emissions. It is not unreasonable to assume that vapor emissions emanating from the soil reflect conditions in both soil and groundwater. Using the highest of the two emission estimates (not a sum of both) has been implemented for risk assessments at other sites.

Comment 3 – Section 3.3.1 (Soil and Groundwater EPCs) at pp. 18-19.

The exploratory data analysis and calculations of 95UCLs were conducted with ProUCL 3.0. In 2006, U.S. EPA updated their guidance for calculating 95UCLs with left-censored data (U.S. EPA 2006). In spring of 2007, U.S. EPA released Pro UCL 4.0, which is available online (http://www.epa.gov/esd//tsc/software.htm) with supporting documentation (U.S. EPA 2007a,b). Among the many upgrades, this software now applies many more UCL methods, including methods designed to provide robust estimates of the 95UCL for datasets with nondetects (i.e., left-censored data). This software facilitates the implementation of techniques that have been discussed in the statistics literature for more than 20 years (Gliet 1985; Hass, and Scheff 1990; Helsel 1990, 2005). There are other extensive updates in Pro UCL 4.0 that can significantly impact the EPC estimates. Some related detailed comments regarding the statistical analysis used in the RI are summarized below.

- *"The ability to calculate the 95UCL concentration is determined by statistical requirements that depend on the nature of the data set in question (Gilbert 1987). As a result of the statistical prerequisites..." (Section 3.3.1 at p. 18, ¶1.)*

  It is unclear what statistical properties were considered and what criteria were applied. For example, what minimum total sample size and number of detects was required to calculate a 95UCL? U.S. EPA (2006, 2007a) recommends a decision process that considers sample size, number of detects, multiple measures of skew, and goodness-of-fit testing. Please provide greater detail regarding the decision process for selecting a method to represent the 95UCL.

- *"For chemicals where a 95UCL could not be estimated: the approximate gamma UCL or 97.5% Chebysliev UCL (as determined using ProUCL) (U.S. EPA, 2004a) or the media11 were used as estimates of the mean as explained below." (Section 3.3.1 at p. 18, ¶1.)*

  This is inconsistent with U.S. EPA guidance (U.S. EPA 2006, 2007a). U.S. EPA's simulation experiments (U.S. EPA 2006) demonstrated that certain UCL methods perform well for up to 70 percent nondetects - and our own experiments have shown that reliable 95UCLs can be calculated for data with an even greater degree of censoring.

- *"In the case of these datasets, the calculation of a 95UCL is not statistically meaningful. Although the use of the maximum detected concentration is an acceptable method of representing these types of data sets." (Section 3.3.1 at p. 18, ¶2.)*

  This appears to be inconsistent with U.S. EPA guidance (U.S. EPA 2006, 2007a). U.S. EPA's simulation experiments (U.S. EPA 2006) demonstrated that certain UCL methods perform well for up to 70 percent nondetects - and Chevron and Unocal's consultant's experiments have shown that reliable 95UCLs can be calculated for data with an even greater degree of censoring.

- *"On the other hand, an attempt to summarize the data as some form of mathematical average is also not meaningful since the number of samples reported as "not detected" is a function of the analytical method." (Section 3.3.1 at p. 18, ¶3.)*

  While it is true that the sample mean is biased when it includes nondetects, there are techniques to adjust parameter estimates (e.g., mean, standard deviation) to account for censoring. U.S. EPA's ProUCL 4.0 (U.S. EPA 2007a,b) implements Kaplan Meier statistics for parameter estimation with left-censored data.

- *"A mathematically-derived average does not take into consideration the random aspects of exposure; it weighs each sampling location equally. While the U.S. EPA uses this assumption for their incorporation of a mathematical average. data sets with an extraordinarily large number of non-detects are examples illustrating that the mathematical average is not a good representative of the population." (Section 3.3.1 at p. 18, ¶3.)*

  It appears that two separate issues are being confused: 1) presence of non-detects; and 2) non-random sampling. The sample mean (and corresponding UCL) can be biased by both and the solution is different for each. Left-censored data can be evaluated with Kaplan Meier statistics. Bias associated with non-random sampling can be addressed with spatially-explicit methods such as Thiessen Polygons, inverse distance weighting, and kriging (U.S. EPA 2001).

- *"There is no prescribed EPA protocol for handling data sets with large numbers of non-detects." (Section 3.3.1 at p. 18, ¶3.)*

  This appears to be incorrect as discussed above. U.S. EPA has very specific recommendations for calculating 95UCLs for left censored data (U.S. EPA 2006; 2007a,b).

- *"For chemical data sets that contained less than 15 percent non-detects or 85 percent or greater positive detects. chemical-specific EPCs were represented by 95UCL concentrations: consistent with U.S. EPA guidance (U.S. EPA 1992a). The 95UCL EPCs were derived using the Bootstrap[2] statistical method and the U.S. EPA's ProUCL software (U.S. EPA 2004a). This approach was applied to arsenic, barium, copper, nickel, vanadium and zinc in soil: and arsenic, barium, chromium, nickel, vanadium, and zinc in groundwater. As recommended using ProUCL, alternate EPCs were also used such as the approximate gamma UCL (cobalt in soil; barium in*

groundwater) or 97.5% Chebyshev UCL (chromium, lead. and zinc in soil; molybdenum and nickel in groundwater)." (Section 3.3.1 at p. 19, ¶1.)

This approach is outdated. Please refer to the more recent U.S. EPA guidance (footnotes 1-2), specifically Table 16 of U.S. EPA (U.S. EPA 2007a,b).

- *"For chemical data sets for COPCs that contained 15 percent or greater non-detects or less than 85 percent positive detects, chemical-specific EPCs were represented by the median concentration of the data points reported as positive detections. This approach was applied to the remaining COPCs not listed above." (Section 3.3.1 at p. 19, ¶1.)*

  Use of the median is likely to underestimate the 95UCL. It's unclear if the authors are implying that they used an upper confidence limit on the median. The median would be a particularly poor choice for data sets with over 50 percent nondetects since they would be greatly influenced by the reporting limit of the nondetects. U.S. EPA's simulation experiments (footnote 1) demonstrated that certain UCL methods perform well for up to 70 percent nondetects - and our own experiments have shown that reliable 95UCLs can be calculated for data with an even greater degree of censoring.

- *"The bootstrap is a non-parametric method for calculating a sampling distribution for a statistic. The bootstrap calculates the statistic with N different subsamples using replacement. For chemical data sets where a 95% UCL could not he calculated alternate estimates of the population arithmetic mean were used (e.g. 97.5% Chebyshev UCL, gamma UCL) as EPCs." (Section 3.3.1 at p. 19, fn. 2.)*

Bootstrap refers to a family of UCL methods - its unclear which bootstrap UCL authors used (percentile, bootstrap-t, BCA ?). Current U.S. EPA guidance (U.S. EPA 2007a,b) recommends methods that combine bootstrap with Kaplan Meier estimates of the mean and the standard deviation.

Comment 4 – Section 3.1 (Exposure Setting), and Appendix C. Ingestion of Homegrown Produce.

Given the prevalence of high density housing in the state of California (as acknowledged in Cal/EPA 1992) exposures associated with the ingestion of homegrown produce is minimal. This pathway should not be quantified for any resident receptor. The exposure algorithms for ingestion of homegrown produce are not included in Table 11 or Appendix C either. The exposure assumptions used for the ingestion of homegrown produce may not be correct. The Exposure Factors Handbook (U.S. EPA 1997) is cited

as the source for ingestion rates; however, in Table C-2, ingestion rates for adult and child are expressed in units of mg/day when the U.S. EPA guidance uses g/kg-day. There is no description in the text as to how these values were derived or if as suggested by U.S. EPA they were converted to reflect dry weight basis. The U.S. EPA (1997) suggested values for this area are indicative of subsistence level harvesting and given the location of the site, it is highly unlikely that any resident will be subsisting on homegrown produce.

Comment 5 – Section 3.2.2 (Post-Demolition Scenario) at pp. 13-14 and Section 3.2.4 (Post Construction Scenario) at p. 16.

Inhalation of dust indoors by the on-site indoor/outdoor adult worker (security guard; post demolition); the off-site indoor/outdoor urban resident; and the off-site indoor office/retail worker (post demolition and during construction activities) is overly conservative. The potential risks related to this pathway are minimal and typically are not evaluated. However, there is no text in Section 3.3, tables or exhibits summarizing the approach and algorithm for converting soil EPCs to indoor air for non-VOCs and, thus, it is impossible to understand how meaningful the analysis is and to provide further detailed technical comments on the approach.

Intake exposure assumptions are for children between 0 and 6 years of age and this age group will never access this area as suggested by the exposure assumptions. This range – including values for children in their first couple of years of infancy may be inappropriate given that they are not likely to be anywhere outside especially playing alone on a fenced-in property. A more reasonable receptor for this scenario is a teenager. For example, the ingestion rate of 200 mg/day is used but this rate is based on 24-hour tracer studies when the exposure scenario is for 2 hours per day for 50 days per year. The ingestion rate should be 100 mg/day based on upper bound soil ingestion rate from Calabrese, 1990 as cited by U.S. EPA (1997) with a fraction ingested from the site of 0.5. The exposure frequency should be 10 days per year and the body weight 53 kg.

Both a trespasser child exposure scenario and a security guard exposure scenario fall under the post-demolition exposure scenario. If there are security guards present there is a small chance of trespassers visiting the site, especially when under this scenario all buildings have been demolished (hence nowhere for trespassers to hide). Conversely, the likelihood of trespassers increases with the absence of guards.

Comment 6 – Section 3.3.3 and 3.3.4 (Outdoor Air EPCs for VOCs based on Soil and Groundwater) at p. 21.

For soil, the text indicates that Jury *et al.* (1984) was used; however, caveats summarized in U.S. EPA (1996) were not made in the RI. Specifically, the Jury *et al.* model may not be appropriate for the parking lot attendant because one of the assumptions of the Jury *et al.* model is that there is no boundary layer and asphalt may be considered a boundary layer which prohibits vapors from diffusing to the surface. In addition, U.S. EPA (1996) indicates that time dependent contaminant flux must be solved for various times and then averaged. Please clarify how the Jury *et al.* model was used in the RI. For groundwater, ASTM (2004) includes an algorithm for modeling ground water volatilization to ambient (outdoor) air. The text on page 21 does not cite to an exhibit with an algorithm so it is not transparent how the volatilization factor was estimated. The first sentence in Section 3.3.4 reads, "outdoor air EPCs for VOCs that may be released from groundwater to ambient air were estimated by calculating chemical partitioning from groundwater, the vapor emission rate through the soil to the surface, and the vapor concentrations in outdoor air." In this sentence, it is unclear what "vapor concentration in outdoor air" refers to when in fact the algorithm should include a dispersion factor for ambient air as indicated by ASTM. Please clarify.

Comment 7 – Section 2.2.2 (Background Analysis of Metals), at p. 5.

Background metals values are not provided or referenced anywhere in this section. These data are critical in order to verify this step in the COPC selection process.

Comment 8 – Section 5.0 (Risk Characterization) at p. 26.

Ambient concentrations of some metals (e.g., arsenic) contribute significantly to the total risk estimates reported in the RI. For example, the upper bound background concentration for arsenic is 24 mg/kg (LBNL 2002) compared to the EPC of 44.9 mg/kg used in the RI. Section 5.0 should discuss the background contributions to the results. Furthermore, any potential cleanup goals should also take these background levels into consideration.

Comment 9 – Section 4.4 (Evaluation of Lead) p. 25, and Section 5.4 (Lead Evaluation Methodology) at p. 29.

The RI evaluates lead as a carcinogen. While U.S. EPA identifies lead as a "probable human carcinogen" based on sufficient animal evidence but inadequate human evidence (U.S. EPA, 2007), U.S. EPA and Cal/EPA do not recommend evaluating lead cancer risk using a CSF (U.S. EPA, 2007; Cal/EPA, 1992). Instead, lead non-

carcinogenic risks (identified as neurological effects) are evaluated by predicting blood lead concentrations using toxicokinetic modeling. The lead concentration of concern is 10 micrograms (mg) per deciliter (dl) of whole blood based on adverse effects in children (CDC, 1991).

Comment 10 – Section 6 (Risk-Based Remedial Goals) at p. 41.

The text in Section 6.1 does not match Table 15A. This section should include a discussion of background. For example, the remedial goals developed for a $1x10^{-5}$ to $1x10^{-6}$ risk for arsenic are below background. Provided the data set is "robust" enough, guidance developed by DTSC (2007) should be used to develop a background upper tolerance limit (UTL) for arsenic. Similarly, UTLs should be developed for all metals and those values included in Table 15A.

Comment 11 – Section 2.1 (Overview of RI Data Set), at p. 4.

Given the concerns over reliability (e.g., collection methodologies), please confirm that groundwater data did not consist of any grab samples. Also it is standard practice to exclude any ND values that exceed the maximum detected concentration for that chemical. Please confirm this approach was implemented.

References

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California Environmental Protection Agency (Cal/EPA). 1992. Supplemental Guidance for Human Health Multimedia Risk Assessments of Hazardous Waste Sites and Permitted Facilities. Office of Scientific Affairs. July.

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USEPA. 2007b. ProUCL Version 4.0 Technical Guide. Office of Research and Development. EPA/600/R-07/041. April.

USEPA. 2007c. Integrated Risk Information System (IRIS). http://www.epa.gov/iris/index.html.

APPENDIX G

Department of Toxic Substances Control

Linda S. Adams
Acting Secretary for
Environmental Protection

Deborah O. Raphael, Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

July 12, 2011

Mr. Michael G. Biddle
City of Emeryville Redevelopment Agency
1333 Park Avenue
Emeryville, California 94608

Dear Mr. Biddle:

The Department of Toxic Substances Control (DTSC) has reviewed the following final draft reports: 2010 Groundwater Monitoring Report, First Quarter 2011 Groundwater Monitoring Report, and the Post-Soil Remediation Groundwater Investigation Report for South Bay Front Site B (Site), in Emeryville, California. All are dated June 2011, and were submitted by Erler and Kalinowski, Inc (EKI).

DTSC hereby approves the reports with the following comment:

DTSC agrees that off-site sources of CVOCs affect groundwater at the site; however, DTSC feels that current data indicates that CVOCs in groundwater appear to also have come from historic on-site sources.

No additional revisions are needed to the reports. Please submit final copies in pdf format as well as one hard copy of each report by July 22, 2011.

If you have any questions, please feel free to contact me at jbacey@dtsc.ca.gov or (510) 540-2480.

Sincerely,

Nina Bacey, Project Manager
Brownfields and Environmental Restoration Program

cc: See next page

cc: Mr. Earl D. James, P.G.
via email at ejames@ekiconsult.com

Ms. Joy Su, P.E.
via email at jsu@ekiconsult.com

APPENDIX H

Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Deborah O. Raphael, Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

March 7, 2013

Mr. Michael G. Biddle
City of Emeryville Redevelopment Agency
1333 Park Avenue
Emeryville, California 94608

Dear Mr. Biddle:

The Department of Toxic Substances Control has reviewed the Draft Remedial Action Plan Amendment and Remedial Design and Implementation Plan for Shallow Groundwater (Draft RAP) dated February 2013. This Draft RAP is for the South Bay Front Site B Project in Emeryville, California, and was submitted by Erler and Kalinowski, Inc. on February 6, 2013. DTSC has provided minor edits and comments in red-line format on the MS Word document (attached via email).

In addition, it should be clearly stated in the Draft RAP that investigations conducted since the time that the Feasibility Study/Remedial Action Plan was approved have revealed the presence of CVOCs in deeper groundwater on the southeastern portion of Site B, and that these CVOCs are the result of releases from the Former Marchant Whitney (FMW) and/or potentially other upgradient sources. Remediation of deeper groundwater is not included in this RAP Amendment, since EKI has determined that Site B does not contribute to the deeper groundwater contamination in the southeastern portion of the Site. Cleanup of deeper groundwater under the southeastern portion of Site B will be addressed as part of the FMW site.

It should be clear that this in no way means that remediation of the deeper groundwater at Site B will not occur, but rather remediation at the Site by an upgradient responsible party may or may not be necessary at a later date.

Please revise the Draft RAP accordingly and submit by March 15, 2013 in PDF format and one hard copy. If you have any questions, please feel free to contact me at juanita.bacey@dtsc.ca.gov or (510) 540-2480.

Sincerely,

Nina Bacey, Project Manager
Brownfields and Environmental Restoration Program

cc: Mr. Earl D. James, P.G.
via email at ejames@ekiconsult.com

Ms. Joy Su, P.E.
via email at jsu@ekiconsult.com

APPENDIX I

CITY OF EMERYVILLE

CLAIM FORM

Please Type or Print and return to:

City Attorney's Office, City of Emeryville
1333 Park Avenue Emeryville, Ca 94608
Phone: 510. 596.4380 Fax: 510.596.3724

Claim against **EMERYVILLE REDEVELOPMENT AGENCY**

Claimant's name **CITY OF EMERYVILLE** ss# **n/a**

Claimant's date of birth **n/a** telephone # **510-596-4370**

Address: **1333 PARK AVE EMERYVILLE, CA 94608**

Address where notices about claim are to be sent, if different from above: **n/a**

Date of incident/accident: **ONGOING**
Date injuries, damages, or losses were discovered: **DECEMBER 13, 2011**

Location of incident/accident: **5679 HORTON STREET EMERYVILLE, CA**

What did entity or employee do to cause this loss, damage, or injury? **AGENCY TRANSFERRED PROPERTY TO CITY KNOWN TO BE CONTAMINATED WITH HAZARDOUS MATERIALS. AGENCY OBLIGATED TO DEFEND, INDEMNIFY, HOLD HARMLESS CITY AND HAS A DUTY TO RESOPOND TO CAL EPA DTSC PURSUANT TO JUNE 4, 2009 PURCHASE AND SALE AGREEMENT (COPY ATTACHED).**

What are the names of the entity's employees who caused this injury, damage, or loss (if known)? _____

What specific injuries, damages, or losses did claimant receive? **CLAIMANT DIRECTED TO COPMMENCE REMEDIAL EFFORTS BY CAL EPA DEPARTMENT OF TOXIC SUBSTANCE CONTROL.**

(Use back of this form or separate sheet if necessary to answer this question in detail.)

What amount of money is claimant seeking, or which is the appropriate court of jurisdiction [Government Code 910(f)]? **UNLIMITED JURISDICTIONS**

How was this amount calculated (please itemize)? _____

(Use back of this form or separate sheet if necessary to answer this question in detail.)

Date signed: 1/27/12 signature: _____

If signed by representative:

Representative's name _____ Telephone # _____
Address _____
Relationship to Claimant _____

ORIGINAL

Purchase Agreement between the
Emeryville Redevelopment Agency and City of Emeryville for the
Public Works Corporation Yard, 5679 Horton Street, Emeryville, California

THIS AGREEMENT is made and entered into this 4th day of ~~May~~ June, 2009, by and between the CITY OF EMERYVILLE, a municipal corporation, ("City") and the CITY OF EMERYVILLE REDEVELOPMENT AGENCY, a public body corporate and politic, ("Agency").

WITNESSETH

WHEREAS, Agency is the owner of certain real property more particularly described within the body of this Agreement; and

WHEREAS, City desires to purchase the property for use as the corporation/maintenance yard for the Public Works Department; and

WHEREAS, Agency wishes to sell and convey the Property to the City, and City wishes to purchase the Property upon the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED as follows:

1. **Purchase and Sale**. Agency agrees to sell to City, and City agrees to purchase from Agency, Agency's interest in the Property as defined below.

2. **Property.** Agency's real property is 5679 Horton Street, Emeryville, County of Alameda, State of California; commonly referred to as Assessor's Parcel Number 049-1552-01, and described in Exhibit A and depicted in Exhibit B to this Agreement, together with any easements, rights of way, or right of use which may be appurtenant or attributed to the real property ("Property").

3. **Purchase Price.** City shall purchase the Property from Agency for the sum of one dollar ($1.00). Payment to be made in cash.

4. **Escrow**. Promptly upon Agency's execution of this Agreement, an escrow shall be opened at a title company acceptable to City through which the purchase and sale of the Property shall be consummated. A fully executed copy of this Agreement shall be deposited with Escrow Holder to serve as escrow instructions to Escrow Holder; provided that the parties shall execute such additional supplementary or customary escrow instructions as Escrow Holder may reasonably require. This Agreement may be amended or supplemented by explicit additional escrow instructions signed by the parties, but the printed portion of such escrow instructions shall not supersede any inconsistent provisions contained herein. Escrow Holder is hereby appointed and instructed to deliver, pursuant to the terms of this Agreement,

the documents and monies to be deposited into the escrow as herein provided, with the following terms and conditions to apply to said escrow:

a. Close of escrow shall be no later than June 30, 2009. The parties may by written agreement, extend the time for closing. The term "Closing" as used herein shall be deemed to be the date when Escrow Holder causes the Grant Deed (as defined below) to be recorded in the office of the County Recorder of Alameda.

b. City and Agency shall, during the escrow period, execute any and all documents and perform any and all acts reasonably necessary or appropriate to consummate the purchase and sale pursuant to the terms of this Agreement.

c. Agency shall deposit into the escrow on or before the Closing an executed and recordable Grant Deed covering the Property conveying fee simple title to City.

d. City shall deposit into the escrow on or before the Closing:

(i) The required Certificate of Acceptance for the Grant Deed, duly executed by City and to be dated as of the Closing.

(ii) Agency's check payable to escrow Holder in the amount of $1.00.

e. Agency shall pay for the escrow fees, the CLTA Standard Policy of Title Insurance, all recording costs and fees, and all other costs or expenses not otherwise provided for in this Agreement. All current property taxes on the Real Property, if any, shall be handled in accordance with Section 5086 of the Revenue and Taxation Code of the State of California and updates thereof.

f. Agency shall cause title company to be prepared and committee to deliver to City a CLTA standard coverage Policy of Title Insurance, dated as of the Closing, showing title to the Property vested in fee simple in City, subject only to: such title exceptions as may be acceptable to City. In the event City disapproves of any title exceptions and Agency is unable to remove any City disapproved exceptions before the time set forth for the Closing, City shall have the right either: (i) to terminate the escrow provided for herein (after giving written notice to Agency of such disapproved exceptions and affording Agency at least twenty (20) days to remove such exceptions) and then Escrow Holder and Agency shall, upon City's direction, return to the parties depositing the same, all monies and documents theretofore delivered to Escrow Holding or; (ii) close the escrow and consummate the purchase of the Real Property.

g. Escrow Holder shall, when all required funds and instruments have been deposited into the escrow by the appropriate parties and when all other conditions to Closing have been fulfilled, cause the Grant Deed and attendant Certificate of Acceptance to

be recorded in the Office of the County Recorder of Alameda County. Upon the Closing, Escrow Holder shall cause to be delivered to City the original of the policy of title insurance if required herein, and to Agency, Escrow Holder's check for the full Purchase Price of the Property, and to Agency or City, as the case may be, all other documents or instruments which are to be delivered to them. In the event the escrow terminates as provided herein, Escrow Holder shall return all monies, documents or other things of value deposited in the escrow to the party depositing the same.

h. The City's performance of the terms and conditions of this Agreement, including but not limited to payment of the Purchase Price set forth in Section 3 of this Agreement, is subject to the termination and clearance, to the satisfaction of City, of all interests in Property.

i. Agency authorizes Escrow Holder to charge to Agency any amount necessary to satisfy any liens, bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent assessments, which may have become a lien at the close of escrow. Current taxes, if unpaid, shall be prorated as of the close of escrow and paid by Agency.

5. **Leases or Occupancy of Premises**. Agency warrants that as of the close of escrow there exist no oral or written leases or rental agreements affecting all or any portion of the Property. Agency further warrants and agrees to hold City free and harmless and to reimburse City for any and all costs, liability, loss, damage or expense, including costs for legal services, including, but not limited to claims for relocation benefits and/or payments pursuant to California Government Code Section 7260 et. seq., occasioned by the existence of any leases or rental agreements affecting the Property.

6. **Agency's Representations and Warranties**. For the purpose of consummating the sale and purchase of the Property, Agency represents and warrants to City that as of the date this Agreement is fully executed and as of the date of Closing:

a. Authority. Agency has the full right, power and authority to enter into this Agreement and to perform the transactions contemplated hereunder.

b. Valid and Binding Agreements. This Agreement and all other documents delivered by Agency to City now or at the Closing have been or will be duly authorized and executed and delivered by Agency and are legal, valid and binding obligations of Agency sufficient to convey to City the Property described therein, and are enforceable in accordance with their respective terms and do not violate any provisions of any agreement to which Agency is a party or by which Agency may be bound or any articles, bylaws or trust provisions of Agency.

c. Good Title. Agency has and at the Closing date shall have good, marketable and indefeasible fee simple title to the Property and the interest therein to be conveyed to City hereunder, free and clear of all liens and encumbrances of any type whatsoever and free and clear of any recorded or unrecorded option rights or purchases rights or any other right, title or interest held by any third party except for the title exceptions permitted under the express terms hereof, and Agency shall forever indemnify and defend City from and against any claims made by any third party which are based upon any inaccuracy in the foregoing representations.

7. **Integrity of Property**. Except as otherwise provided herein or by express written permission granted by City, Agency shall not, between the time of Agency's execution hereof and the close of escrow, cause or allow any physical changes on the Property nor enter into any lease or rental agreement affecting the Property.

8. **Permission to Enter for Testing**. At reasonable intervals and with 24 hours advance verbal notice to Agency, Agency gives the City permission to enter and City shall have the right at City's expense, to select licensed contractor(s) and other qualified professional(s), to make inspections (including tests, surveys, other studies, inspections, and investigations) of the Property. The term of this Permission to Enter shall extend from the date Agency executes this Agreement until the Closing Date.

9. **Pre-Closing Inspection**: Upon 24 hours advance verbal notice by City or its designee to Agency, Agency shall permit City to inspect the Property. This inspection shall be conducted just prior to the Closing for purposes of verifying that the condition and occupancy are unchanged from the date of the initial offer. Any significant change in the physical condition or occupancy of the Property may result in revocation of this Agreement by City at its discretion.

10. **Hazardous Materials**. City and Agency acknowledge that Hazardous Materials (as defined below) may exist on the Property. Agency agrees, from and after the close of escrow, to defend, indemnify, protect and hold harmless City and its officers, officials, employees, agents, representatives, legal successors and assigns from regarding and against all liabilities, obligations, orders, decrees, judgements, liens, demands, actions, Environmental Response Actions (as defined below), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined below), or costs of any kind or nature whatsoever, together with fees including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in the connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials at, on, in, beneath or from the Property. Agency's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Hazardous Contamination at Agency's sole cost.

For purposes of this Agreement, the term "Hazardous Materials" means any substance,

material or waste which is (a) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other term comparable to the foregoing terms under any provision of California law or federal law; (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive materials; or (f) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

Further, the term "Environmental Response Actions" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquires and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims. Further, the term "Environmental Response Costs" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

11. **Miscellaneous Provisions**

a. Choice of Law. The laws of the State of California, regardless of any choice of law principles, shall govern the validity of this Agreement, the construction of its terms and the interpretation of the right and duties of the parties.

b. Attorneys' Fees. If either party hereto incurs any expenses, including reasonable attorneys' fees, in connection with any action or proceeding instituted by reason of any default or allege default of the other party hereunder, the party prevailing in such action or proceeding shall be entitled to recover from the other party reasonable expenses and attorneys' fees in the amount determined by the Court, whether or not such action or proceeding goes to final judgment. In the event of a settlement or stipulated judgement in which neither party is awarded all of the relief prayer for, the parties may determine in such settlement or stipulation the handling of costs, expenses and attorneys' fees.

c. Amendment and Waiver. The parties hereto may be written agreement amend this Agreement in any respect. Any party hereto may: (i) extend the time for the performance of any of the obligations of the other party; (ii) waive any inaccuracies in representations and warranties made by the other party contained in this Agreement or in any documents delivered pursuant hereto; (iii) waive compliance by the other party with any of the covenants contained in this Agreement or the performance of any obligations of the other party; or (iv) waive the fulfillment of any condition that is precedent to the performance by such party of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing.

i. Survival of Covenants. All covenants of Agency or City which are expressly intended hereunder to be performance in whole or in part after the Closing, and all representations and warranties by either party to the other shall survive the Closing and be binding upon and inure to the benefit parties hereto and their respective heirs, successors and permitted assigns.

j. Assignment. Except as expressly permitted herein, neither party to this Agreement shall assign its rights or obligations under this agreement to any third party without the prior written approval of the other party.

k. Further Documents and Acts. Each of the parties hereto agrees to executed and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transaction described and contemplated under this Agreement.

l. Binding on Successors and Assigns. This Agreement and all of its terms, conditions and covenants are intended to be fully effective and binding to the extent permitted by law, on the successors and permitted assigns of the parties hereto.

m. Captions. Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the parties hereto.

n. Pronoun References. In this Agreement, where appropriate the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all other genders as appropriate.

12. **Possession.** Agency shall deliver exclusion possession of the Property to City on the Closing Date.

13. **Brokerage Commissions**. The Agency and the City each warrants and represents to the other that it has not incurred any liability for the payment of any brokerage commission in connection with the sale of the Property to the Agency. Each party shall indemnify the other party and hold the other party harmless from and against any damage, liability, loss, claim, or expense, including reasonable attorneys; fees, suffered by the other party as a result of any such liability for brokerage commission incurred by the indemnified party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers to be effective as of the date this Agreement is fully executed by the parties hereto.

Emeryville Redevelopment Agency

Patrick D. O'Keeffe, Executive Director

6/3/09

Date

City of Emeryville

Patrick D. O'Keeffe, City Manager

6/3/09

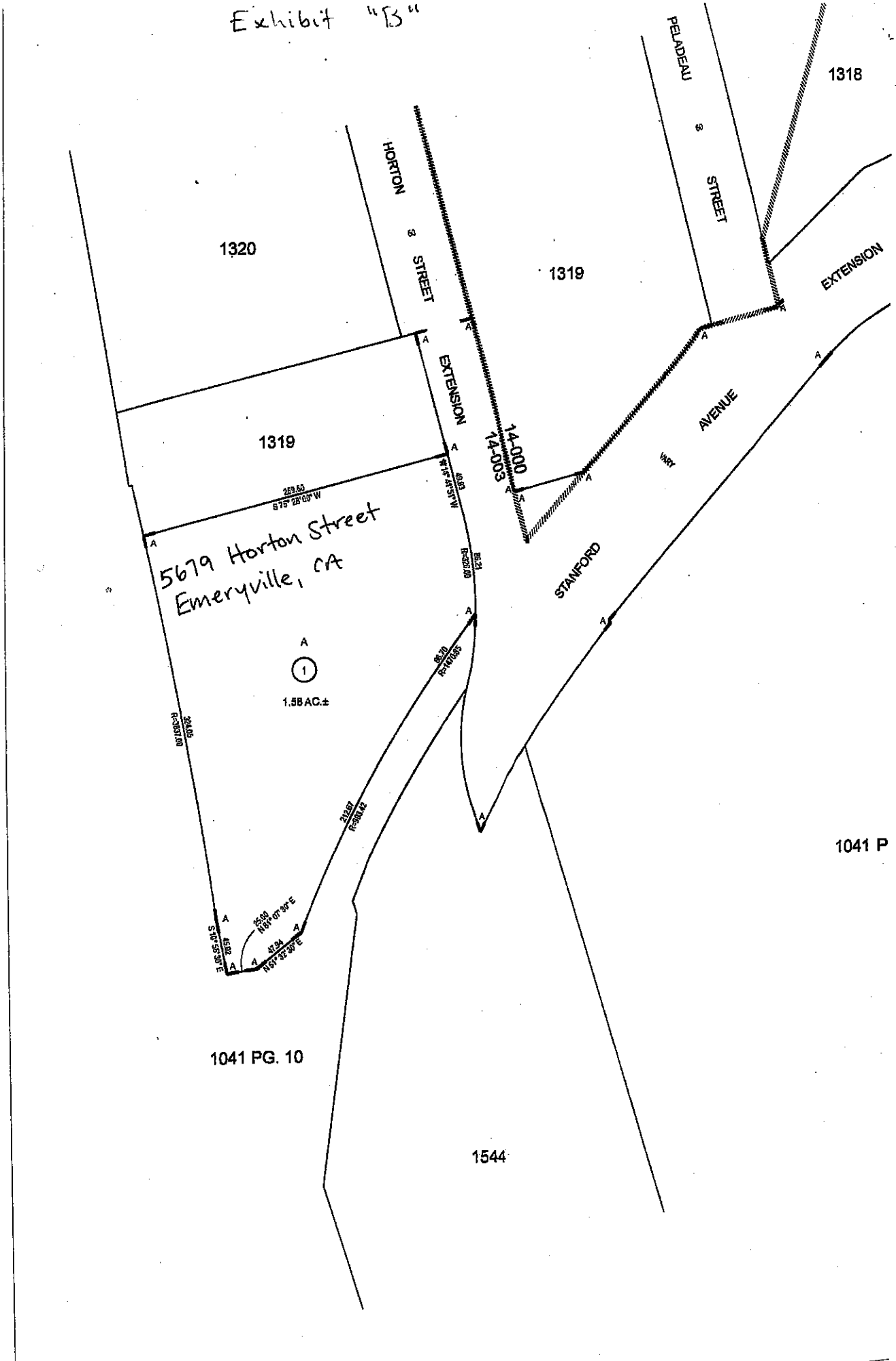
Date

Approved As To Form:

Michael G. Biddle, Agency General Counsel

Michael G. Biddle, City Attorney

Exhibit "B"



APPENDIX J

ORIGINAL

Purchase Agreement between the
Emeryville Redevelopment Agency and City of Emeryville for the
Public Works Corporation Yard, 5679 Horton Street, Emeryville, California

THIS AGREEMENT is made and entered into this 4th day of ~~May~~ June, 2009, by and between the CITY OF EMERYVILLE, a municipal corporation, ("City") and the CITY OF EMERYVILLE REDEVELOPMENT AGENCY, a public body corporate and politic, ("Agency").

WITNESSETH

WHEREAS, Agency is the owner of certain real property more particularly described within the body of this Agreement; and

WHEREAS, City desires to purchase the property for use as the corporation/maintenance yard for the Public Works Department; and

WHEREAS, Agency wishes to sell and convey the Property to the City, and City wishes to purchase the Property upon the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED as follows:

1. **Purchase and Sale**. Agency agrees to sell to City, and City agrees to purchase from Agency, Agency's interest in the Property as defined below.

2. **Property.** Agency's real property is 5679 Horton Street, Emeryville, County of Alameda, State of California; commonly referred to as Assessor's Parcel Number 049-1552-01, and described in Exhibit A and depicted in Exhibit B to this Agreement, together with any easements, rights of way, or right of use which may be appurtenant or attributed to the real property ("Property").

3. **Purchase Price.** City shall purchase the Property from Agency for the sum of one dollar ($1.00). Payment to be made in cash.

4. **Escrow**. Promptly upon Agency's execution of this Agreement, an escrow shall be opened at a title company acceptable to City through which the purchase and sale of the Property shall be consummated. A fully executed copy of this Agreement shall be deposited with Escrow Holder to serve as escrow instructions to Escrow Holder; provided that the parties shall execute such additional supplementary or customary escrow instructions as Escrow Holder may reasonably require. This Agreement may be amended or supplemented by explicit additional escrow instructions signed by the parties, but the printed portion of such escrow instructions shall not supersede any inconsistent provisions contained herein. Escrow Holder is hereby appointed and instructed to deliver, pursuant to the terms of this Agreement,

the documents and monies to be deposited into the escrow as herein provided, with the following terms and conditions to apply to said escrow:

a. Close of escrow shall be no later than June 30, 2009. The parties may by written agreement, extend the time for closing. The term "Closing" as used herein shall be deemed to be the date when Escrow Holder causes the Grant Deed (as defined below) to be recorded in the office of the County Recorder of Alameda.

b. City and Agency shall, during the escrow period, execute any and all documents and perform any and all acts reasonably necessary or appropriate to consummate the purchase and sale pursuant to the terms of this Agreement.

c. Agency shall deposit into the escrow on or before the Closing an executed and recordable Grant Deed covering the Property conveying fee simple title to City.

d. City shall deposit into the escrow on or before the Closing:

(i) The required Certificate of Acceptance for the Grant Deed, duly executed by City and to be dated as of the Closing.

(ii) Agency's check payable to escrow Holder in the amount of $1.00.

e. Agency shall pay for the escrow fees, the CLTA Standard Policy of Title Insurance, all recording costs and fees, and all other costs or expenses not otherwise provided for in this Agreement. All current property taxes on the Real Property, if any, shall be handled in accordance with Section 5086 of the Revenue and Taxation Code of the State of California and updates thereof.

f. Agency shall cause title company to be prepared and committee to deliver to City a CLTA standard coverage Policy of Title Insurance, dated as of the Closing, showing title to the Property vested in fee simple in City, subject only to: such title exceptions as may be acceptable to City. In the event City disapproves of any title exceptions and Agency is unable to remove any City disapproved exceptions before the time set forth for the Closing, City shall have the right either: (i) to terminate the escrow provided for herein (after giving written notice to Agency of such disapproved exceptions and affording Agency at least twenty (20) days to remove such exceptions) and then Escrow Holder and Agency shall, upon City's direction, return to the parties depositing the same, all monies and documents theretofore delivered to Escrow Holding or; (ii) close the escrow and consummate the purchase of the Real Property.

g. Escrow Holder shall, when all required funds and instruments have been deposited into the escrow by the appropriate parties and when all other conditions to Closing have been fulfilled, cause the Grant Deed and attendant Certificate of Acceptance to

be recorded in the Office of the County Recorder of Alameda County. Upon the Closing, Escrow Holder shall cause to be delivered to City the original of the policy of title insurance if required herein, and to Agency, Escrow Holder's check for the full Purchase Price of the Property, and to Agency or City, as the case may be, all other documents or instruments which are to be delivered to them. In the event the escrow terminates as provided herein, Escrow Holder shall return all monies, documents or other things of value deposited in the escrow to the party depositing the same.

h. The City's performance of the terms and conditions of this Agreement, including but not limited to payment of the Purchase Price set forth in Section 3 of this Agreement, is subject to the termination and clearance, to the satisfaction of City, of all interests in Property.

i. Agency authorizes Escrow Holder to charge to Agency any amount necessary to satisfy any liens, bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent assessments, which may have become a lien at the close of escrow. Current taxes, if unpaid, shall be prorated as of the close of escrow and paid by Agency.

5. **Leases or Occupancy of Premises**. Agency warrants that as of the close of escrow there exist no oral or written leases or rental agreements affecting all or any portion of the Property. Agency further warrants and agrees to hold City free and harmless and to reimburse City for any and all costs, liability, loss, damage or expense, including costs for legal services, including, but not limited to claims for relocation benefits and/or payments pursuant to California Government Code Section 7260 et. seq., occasioned by the existence of any leases or rental agreements affecting the Property.

6. **Agency's Representations and Warranties**. For the purpose of consummating the sale and purchase of the Property, Agency represents and warrants to City that as of the date this Agreement is fully executed and as of the date of Closing:

a. Authority. Agency has the full right, power and authority to enter into this Agreement and to perform the transactions contemplated hereunder.

b. Valid and Binding Agreements. This Agreement and all other documents delivered by Agency to City now or at the Closing have been or will be duly authorized and executed and delivered by Agency and are legal, valid and binding obligations of Agency sufficient to convey to City the Property described therein, and are enforceable in accordance with their respective terms and do not violate any provisions of any agreement to which Agency is a party or by which Agency may be bound or any articles, bylaws or trust provisions of Agency.

c. Good Title. Agency has and at the Closing date shall have good, marketable and indefeasible fee simple title to the Property and the interest therein to be conveyed to City hereunder, free and clear of all liens and encumbrances of any type whatsoever and free and clear of any recorded or unrecorded option rights or purchases rights or any other right, title or interest held by any third party except for the title exceptions permitted under the express terms hereof, and Agency shall forever indemnify and defend City from and against any claims made by any third party which are based upon any inaccuracy in the foregoing representations.

7. **Integrity of Property**. Except as otherwise provided herein or by express written permission granted by City, Agency shall not, between the time of Agency's execution hereof and the close of escrow, cause or allow any physical changes on the Property nor enter into any lease or rental agreement affecting the Property.

8. **Permission to Enter for Testing**. At reasonable intervals and with 24 hours advance verbal notice to Agency, Agency gives the City permission to enter and City shall have the right at City's expense, to select licensed contractor(s) and other qualified professional(s), to make inspections (including tests, surveys, other studies, inspections, and investigations) of the Property. The term of this Permission to Enter shall extend from the date Agency executes this Agreement until the Closing Date.

9. **Pre-Closing Inspection**: Upon 24 hours advance verbal notice by City or its designee to Agency, Agency shall permit City to inspect the Property. This inspection shall be conducted just prior to the Closing for purposes of verifying that the condition and occupancy are unchanged from the date of the initial offer. Any significant change in the physical condition or occupancy of the Property may result in revocation of this Agreement by City at its discretion.

10. **Hazardous Materials**. City and Agency acknowledge that Hazardous Materials (as defined below) may exist on the Property. Agency agrees, from and after the close of escrow, to defend, indemnify, protect and hold harmless City and its officers, officials, employees, agents, representatives, legal successors and assigns from regarding and against all liabilities, obligations, orders, decrees, judgements, liens, demands, actions, Environmental Response Actions (as defined below), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined below), or costs of any kind or nature whatsoever, together with fees including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in the connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials at, on, in, beneath or from the Property. Agency's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Hazardous Contamination at Agency's sole cost.

For purposes of this Agreement, the term "Hazardous Materials" means any substance,

material or waste which is (a) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other term comparable to the foregoing terms under any provision of California law or federal law; (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive materials; or (f) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

Further, the term "Environmental Response Actions" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquires and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims. Further, the term "Environmental Response Costs" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

11. **Miscellaneous Provisions**

a. Choice of Law. The laws of the State of California, regardless of any choice of law principles, shall govern the validity of this Agreement, the construction of its terms and the interpretation of the right and duties of the parties.

b. Attorneys' Fees. If either party hereto incurs any expenses, including reasonable attorneys' fees, in connection with any action or proceeding instituted by reason of any default or allege default of the other party hereunder, the party prevailing in such action or proceeding shall be entitled to recover from the other party reasonable expenses and attorneys' fees in the amount determined by the Court, whether or not such action or proceeding goes to final judgment. In the event of a settlement or stipulated judgement in which neither party is awarded all of the relief prayer for, the parties may determine in such settlement or stipulation the handling of costs, expenses and attorneys' fees.

c. Amendment and Waiver. The parties hereto may be written agreement amend this Agreement in any respect. Any party hereto may: (i) extend the time for the performance of any of the obligations of the other party; (ii) waive any inaccuracies in representations and warranties made by the other party contained in this Agreement or in any documents delivered pursuant hereto; (iii) waive compliance by the other party with any of the covenants contained in this Agreement or the performance of any obligations of the other party; or (iv) waive the fulfillment of any condition that is precedent to the performance by such party of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing.

i. Survival of Covenants. All covenants of Agency or City which are expressly intended hereunder to be performance in whole or in part after the Closing, and all representations and warranties by either party to the other shall survive the Closing and be binding upon and inure to the benefit parties hereto and their respective heirs, successors and permitted assigns.

j. Assignment. Except as expressly permitted herein, neither party to this Agreement shall assign its rights or obligations under this agreement to any third party without the prior written approval of the other party.

k. Further Documents and Acts. Each of the parties hereto agrees to executed and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transaction described and contemplated under this Agreement.

l. Binding on Successors and Assigns. This Agreement and all of its terms, conditions and covenants are intended to be fully effective and binding to the extent permitted by law, on the successors and permitted assigns of the parties hereto.

m. Captions. Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the parties hereto.

n. Pronoun References. In this Agreement, where appropriate the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all other genders as appropriate.

12. **Possession.** Agency shall deliver exclusion possession of the Property to City on the Closing Date.

13. **Brokerage Commissions**. The Agency and the City each warrants and represents to the other that it has not incurred any liability for the payment of any brokerage commission in connection with the sale of the Property to the Agency. Each party shall indemnify the other party and hold the other party harmless from and against any damage, liability, loss, claim, or expense, including reasonable attorneys; fees, suffered by the other party as a result of any such liability for brokerage commission incurred by the indemnified party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers to be effective as of the date this Agreement is fully executed by the parties hereto.

Emeryville Redevelopment Agency

Patrick D. O'Keeffe, Executive Director

6/3/09
Date

City of Emeryville

Patrick D. O'Keeffe, City Manager

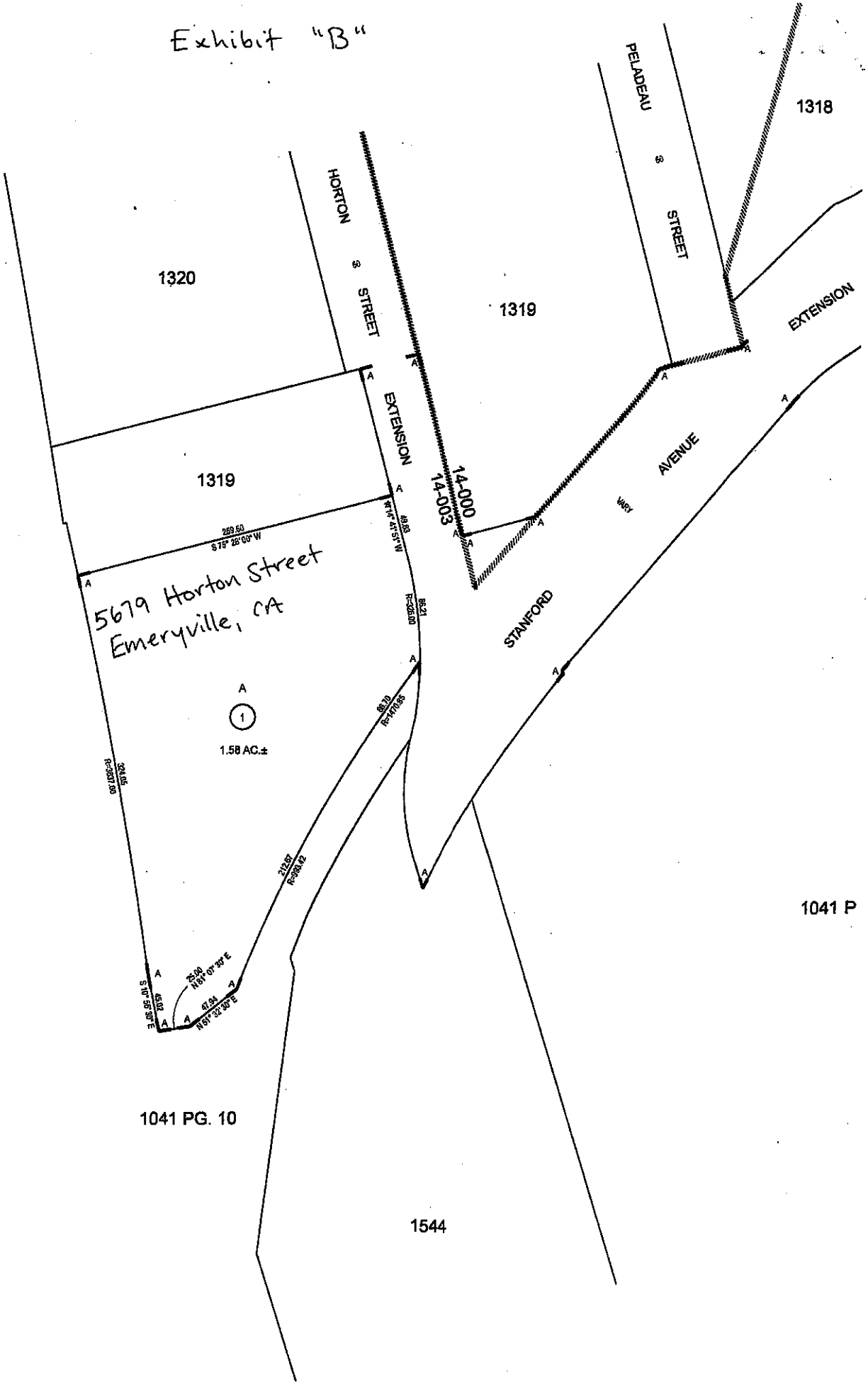
6/3/09
Date

Approved As To Form:

Michael G. Biddle, Agency General Counsel

Michael G. Biddle, City Attorney

Exhibit "B"



CITY OF EMERYVILLE
INCORPORATED 1896

1333 PARK AVENUE
EMERYVILLE, CALIFORNIA 94608-3517

TEL: (510) 596-4370 FAX: (510) 596-3724

February 25, 2011

VIA OVERNIGHT COURIER & ELECTRONIC MAIL

Ms. Laurie Edwards
Chicago Title Company
One Kaiser Plaza, Suite 745
Oakland, CA 94612

Re: Public Works Corporation Yard
5976 Horton Street, Emeryville, CA
Escrow No. 09-58202829-LE

Dear Laurie:

In accordance with the Purchase Agreement between the Emeryville Redevelopment Agency ("Agency") and the City of Emeryville ("City") dated June 4, 2009, please be advised that the parties thereto do hereby amend Section 4.a to provide that the close of escrow shall be no latter than March 4, 2011. Further, the City has received and reviewed the Preliminary Title Report effective as of January 11, 2011, Title No. 09-58202829-A-MG, and has no objections to any of the exceptions.

Enclosed please find a Grant Deed fully executed by the Emeryville Redevelopment Agency and a Certificate of Acceptance by the City of Emeryville.

Please provide the City with a demand for the purchase price of $1.00 and the Agency with a demand for all escrow fees, recording fees and costs and the premium for a CLTA Standard Policy of Title Insurance in favor of the City of Emeryville. Upon receipt of such demand the City and Agency will promptly provide you a deposit for such amount and you may then cause the Grant Deed and Certificate of Acceptance to be recorded in the office of the Alameda County Recorder.

Should you have any questions, please contact Dominique B. Burton at 510.596.4380 or dburton@emeryville.org.

Sincerely,

Patrick O'Keefe, Executive Director
Emeryville Redevelopment Agency

Patrick O'Keefe, City Manager
City of Emeryville

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated February 25, 2011 from the EMERYVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic, of the State of California to the CITY OF EMERYVILLE, a municipal corporation ("CITY"), as grantee, is hereby accepted by the CITY MANAGER of the CITY, and the CITY, as grantee, consents to recordation of said Grant Deed.

February 25, 2011

CITY OF EMERYVILLE, a municipal corporation

By: _____
Patrick O'Keefe, City Manager

"GRANTEE"

APPROVED AS TO FORM:

_____
Michael Biddle, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Alameda }

On **February 25, 2011** before me, **Dominique B. Burton, Notary Public**, personally appeared **Patrick O'Keeffe**,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

DOMINIQUE B. BURTON
Commission # 1866071
Notary Public - California
Alameda County
My Comm. Expires Sep 24, 2013

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Seal and/or Stamp Above

Signature: _____

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Emeryville
1333 Park Avenue
Emeryville, CA 94608-3517
Attention: City Attorney

The document is exempt from the payment of a recording fee pursuant to Government Code § 27383.

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged:

The EMERYVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic, of the State of California ("**Agency**" or "**Grantor**") hereby grants to the CITY OF EMERYVILLE, a municipal corporation ("**Grantee**"), the real property located in the City of Emeryville, California, described in Exhibit A attached hereto.

1. Grantee covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

All deeds, leases or contracts made relative to the Site, the improvements thereon or any part thereof shall contain or be subject to substantially the following nondiscrimination clauses:

a. **In deeds:** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the

Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

b. **In leases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

c. **In contracts:** "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises."

The provisions of this paragraph 1 shall run with the land and shall be contained in each subsequent grant deed conveying title to the Site to any subsequent owner.

2. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument, provided, however, that any successor of Grantee to the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

3. The covenants contained in paragraph 1 of this Grant Deed shall remain in perpetuity.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized this 25th day of February, 2011.

EMERYVILLE REDEVELOMENT AGENCY, a public body, corporate and politic

By: _____
Patrick O'Keefe, Executive Director
[Signature must be notarized]

"GRANTOR"

APPROVED AS TO FORM:

_____
Michael Biddle, Agency Counsel

The provisions of this Grant Deed are hereby approved and accepted.

February 25, 2011

CITY OF EMERYVILLE, a municipal corporation

By: _____
Patrick O'Keefe, City Manager
[Signature must be notarized]

"GRANTEE"

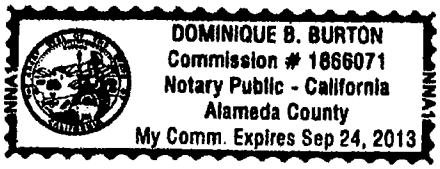
APPROVED AS TO FORM:

_____
Michael Biddle, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Alameda }

On **February 25, 2011** before me, **Dominique B. Burton, Notary Public**, personally appeared **Patrick O'Keeffe**,



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

Notary Seal and/or Stamp Above

WITNESS my hand and official seal.

Signature: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: PARCEL "A" AS SHOWN ON PARCEL MAP 7868, FILED IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY ON FEBRUARY 14, 2005 IN MAP BOOK 280 AT PAGES 41 AND 42.

PARCEL 2: A NON-EXCLUSIVE EASEMENT TO CROSS AND RE-CROSS WITH AND FOR THE MANEUVERING OF MOTOR VEHICLES, APPURTENANT TO PARCEL 1, HEREINABOVE DESCRIBED, OVER THE FOLLOWING DESCRIBED LAND: COMMENCING AT THE INTERSECTION OF THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF LOT 8 IN BLOCK 37 WITH THE EASTERN LINE OF LANDREGAN, FORMERLY 4TH STREET, AS SAID LOT, BLOCK AND STREET ARE SHOWN ON THE "MAP OF THE PROPER1Y OF L. M. BEAUDRY & G. PELADEAU", FILED NOVEMBER 6, 1876, IN BOOK 6 OF MAPS, PAGE 14, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY; RUNNING THENCE ALONG SAID EXTENDED LINE AND ALONG THE NORTHERN LINE OF SAID LOT 8, SOUTH 75°28' WEST, 208.44 FEET; THENCE SOUTH 14°32' EAST, 72 FEET TO THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; RUNNING THENCE FROM SAID ACTUAL POINT OF BEGINNING, SOUTH 14°32' EAST, 33 FEET; THENCE SOUTH 75°28' WEST, 98.87 FEET TO THE EASTERN LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC COMPANY; THENCE ALONG THE LAST NAMED LINE, NORTHERLY 33.01 FEET TO A LINE DRAWN SOUTH 75°28' WEST FROM THE ACTUAL POINT OF BEGINNING; AND THENCE NORTH 75°28' EAST, 98.06 FEET TO THE ACTUAL POINT OF BEGINNING.

PARCEL 3: A NON-EXCLUSIVE EASEMENT FOR SEWER LINES, PUBLIC UTILITIES AND INGRESS AND EGRESS OF MOTOR VEHICLES AND PEDESTRIANS, APPURTENANT TO PARCEL 1, HEREINABOVE DESCRIBED, OVER THE FOLLOWING DESCRIBED LAND: COMMENCING AT THE INTERSECTION OF THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF LOT 8 IN BLOCK 37 WITH THE EASTERN LINE OF LANDREGAN, FORMERLY 4TH STREET, AS SAID LOT, BLOCK AND STREET ARE SHOWN ON THE "MAP OF THE PROPER1Y OF L. M. BEAUDRY & G. PELADEAU", FILED NOVEMBER 6, 1876, IN BOOK 6 OF MAPS, PAGE 14, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY; RUNNING THENCE ALONG SAID EXTENDED LINE AND ALONG THE NORTHERN LINE OF SAID LOT 8, SOUTH 75°28' WEST, 208.44 FEET; THENCE SOUTH 14°32' EAST, 55 FEET TO THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; RUNNING THENCE FROM SAID ACTUAL POINT OF BEGINNING, SOUTH 14°32' EAST, 50 FEET; THENCE NORTH 75°28' EAST, 208.75 FEET TO THE DIRECT EXTENSION SOUTHERLY OF THE EASTERN LINE OF LANDREGAN STREET; THENCE ALONG LAST SAID EXTENDED LINE, NORTH 14°42' WEST, 105 FEET TO THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF SAID LOT 8; THENCE ALONG LAST SAID EXTENDED LINE, SOUTH 75°28' WEST, 48 FEET; THENCE SOUTH 14°42' EAST, 55 FEET TO A LINE DRAWN NORTH 75°28' EAST FROM THE ACTUAL POINT OF BEGINNING; AND THENCE SOUTH 75°28' WEST, 160.60 FEET TO THE ACTUAL POINT OF BEGINNING.

APN: 049-1552-001

APPENDIX K

COMMUNITY DEVELOPMENT COMMISSION:

Jennifer West	Chair
Kurt Brinkman	Vice Chair
Jac Asher	Board Member
Ruth Atkin	Board Member
Nora Davis	Board Member

AGENDA
COMMUNITY DEVELOPMENT COMMISSION OF EMERYVILLE
CLOSED SESSION

1333 Park Avenue. Emeryville, CA 94608
(510) 596-4300

TUESDAY, JANUARY 31, 2012 – 6:00 P.M.

Any person who desires to speak on any item listed on the Closed Session Agenda may do so during that portion of the Agenda called Public Comment. The speaker's time is limited to 3 minutes and can only be extended upon approval of the Presiding Officer.

In compliance with the Americans with Disabilities Act, a person requiring an accommodation, auxiliary aid, or service to participate in this meeting should contact the City Clerk's Office at (510) 450-7800, or ADA Coordinator, as far in advance as possible but no later than 72 hours before the scheduled event. The best effort to fulfill the request will be made. Assistive listening devices are available for anyone with hearing difficulty from the City Clerk prior to the meeting, and must be returned to the City Clerk at the end of the meeting.

No dogs, cats, birds or any other animal or fowl shall be allowed at or brought in to a public meeting by any person except (i) as to members of the public or City staff utilizing the assistance of a service animal, which is defined as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability, or (ii) as to police officers utilizing the assistance of a dog(s) in law enforcement duties.

CLOSED SESSION: The Mayor may convene the City Council into Closed Session at the close of the meeting to consider matters of pending or threatened litigation, personnel matters, real property negotiations, or labor negotiations, pursuant to Government Code Sections 54956.9, 54957, 54956.8, or 54957.6.

The **AGENDA** for this meeting is as follows:

1. CALL TO ORDER, ROLL CALL

2. PUBLIC COMMENTS (on Closed Session Items)

3. CLOSED SESSION

3.1 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: PENDING CLAIMS - Government Code Section 54956.9(b)(3)(C):

3.1.1 Claim of City of Emeryville.

4. REPORTING OUT OF CLOSED SESSION

5. ADJOURNMENT

DATED: January 27, 2012

BY ORDER OF CHAIR
JENNIFER WEST

Post on: January 27, 2012
Post until: February 1, 2012

SECRETARY
KAREN HEMPHILL

APPENDIX L

AGENDA

COMMUNITY DEVELOPMENT COMMISSION OF EMERYVILLE
REGULAR MEETING

1333 Park Avenue
Emeryville, CA 94608
(510) 596-4300

TUESDAY, JANUARY 31, 2012 - 06:30 P.M.

A COMPLETE COPY OF THE AGENDA PACKET IS AVAILABLE FOR PUBLIC VIEWING IN THE CITY CLERK'S OFFICE AT 1333 PARK AVENUE, AND THE GOLDEN GATE BRANCH OF THE OAKLAND PUBLIC LIBRARY, 5433 SAN PABLO AVENUE. ADDITIONAL PUBLIC VIEWING & REPRODUCTION AT: (1) PERMA COPY, 2000 POWELL STREET, SUITE 120, AND (2) ACCESS PRINT, 1306-65th STREET, FROM THE FRIDAY BEFORE THE COUNCIL MEETING. ALL WRITINGS THAT ARE PUBLIC RECORDS AND RELATE TO AN AGENDA ITEM BELOW WHICH ARE DISTRIBUTED TO A MAJORITY OF THE LEGISLATIVE BODY LESS THAN 72 HOURS PRIOR TO THE MEETING NOTICED ABOVE WILL BE MADE AVAILABLE AT THE INFORMATION COUNTER AT CITY HALL, 1333 PARK AVENUE, EMERYVILLE, CALIFORNIA DURING NORMAL BUSINESS HOURS (9AM TO 5PM., MONDAY THROUGH FRIDAY, EXCLUDING LEGAL HOLIDAYS). THE MEETING IS SHOWN LIVE ON THE CITY OF EMERYVILLE TELEVISION CHANNEL (ETV), CABLE CHANNEL 27, AND WILL BE REBROADCAST AS PART OF THE REGULAR CITY COUNCIL/COMMUNITY DEVELOPMENT COMMISSION MEETINGS ACCORDING TO THE PUBLISHED ETV SCHEDULE OF PROGRAMS. THESE MEETINGS WILL ALSO BE AVAILABLE THROUGH LIVE MEDIA STREAMING ACCESSIBLE FROM THE CITY OF EMERYVILLE WEBSITE AT HTTP://WWW.EMERYVILLE.ORG.

You can request to receive free copies of the Emeryville City Council and Community Development Commission Agendas in digital format for the current calendar year by going to our website at http://www.emeryville.org and clicking on "Notify Me". Simply fill out your information, check "City Council Agendas", and click the "Subscribe" button. By doing so, you will automatically receive our Council agendas for the year via email.

All matters listed under CONSENT CALENDAR are considered to be routine and will all be enacted by one motion in the form listed below. There will be no separate discussion of these items unless good cause is shown prior to the time the Commission votes on the motion to adopt. Persons who wish to speak on matters set for PUBLIC HEARINGS will be heard when the Presiding Officer calls for comments from those persons who are in support of or in opposition thereto. After persons have spoken, the Hearing is closed and brought back to Commission level for discussion and action. There is no further comment permitted from the audience unless requested by the Commission.

The speaker's time is limited to 3 minutes and can only be extended upon approval of the Presiding Officer. Any person who desires to address the Community Development Commission on any item listed on the Agenda under the Consent Calendar, or on a matter not on the Agenda which item is within the subject matter jurisdiction of the Commission, may do so during that portion of the Agenda called Public Comment.

In compliance with the Americans with Disabilities Act, a person requiring an accommodation, auxiliary aid, or service to participate in this meeting should contact the City Clerk's Office at (510) 450-7800, or ADA Coordinator, as far in advance as possible but no later than 72 hours before the scheduled event. The best effort to fulfill the request will be made. Assistive listening devices are available for anyone with hearing difficulty from the City Clerk prior to the meeting, and must be returned to the City Clerk at the end of the meeting.

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CLOSED SESSION: The Mayor may convene the Community Development Commission of Emeryville in Closed Session at the close of the meeting to consider matters of pending or threatened litigation, personnel matters, real property negotiations, or labor negotiations, pursuant to Government Code Sections 54956.9, 54957, 54956.8, or 54957.6.

1. CALL TO ORDER, ROLL CALL

2. PUBLIC COMMENTS

3. CONSENT CALENDAR

4. ADMINISTRATIVE ITEM

4.1 Environmental Remediation of Corporation Yard, 5679 Horton Street, Emeryville, California: (Michael Biddle)

Click here for Item 4.1 staff report.

4.1.1 Resolution of the Community Development Commission of Emeryville Approving and Authorizing the Executive Director of the Emeryville Redevelopment Agency to Submit an Application for Oversight and Enter Into and Execute a Voluntary Cleanup Agreement With the State of California Environmental Protection Agency in an Estimated Amount of $250,000 to Provide Oversight for the Assessment, Remediation and Monitoring of Hazardous Materials Located at the Corporation Yard, 5679 Horton Street, Emeryville, California.

4.1.2 Resolution of the Community Development Commission of Emeryville Approving and Authorizing the Executive Director of the Emeryville Redevelopment Agency to Enter Into and Execute a Professional Services Agreement With the Firm of Erler & Kalinowski Inc., in an Amount of $5,850,000 to Provide Environmental Engineering Services for the Assessment, Remediation and Monitoring of Hazardous Materials Located at the Corporation Yard, 5679 Horton Street, Emeryville, California.

4.2 Resolution of the Community Development Commission of Emeryville Adopting A Revised Enforceable Obligations Payment Schedule Pursuant to Health and Safety Code Section 34169. (Helen Bean/Amber Evans)

Click here for Item 4.2 staff report.

5. ADJOURNMENT

APPENDIX M

RESOLUTION NO. CD09-11

RESOLUTION OF THE COMMUNITY DEVELOPMENT COMMISSION OF EMERYVILLE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR OF THE EMERYVILLE REDEVELOPMENT AGENCY TO SUBMIT AN APPLICATION FOR OVERSIGHT AND ENTER INTO AND EXECUTE A VOLUNTARY CLEANUP AGREEMENT WITH THE STATE OF CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY IN AN ESTIMATED AMOUNT OF $250,000 TO PROVIDE OVERSIGHT FOR THE ASSESSMENT, REMEDIATION AND MONITORING OF HAZARDOUS MATERIALS LOCATED AT THE CORPORATION YARD, 5679 HORTON STREET, EMERYVILLE, CALIFORNIA

WHEREAS, the City of Emeryville ("City") established the Emeryville Redevelopment Project Area in 1976 ("1976 Project Area") and the Shellmound Park Redevelopment Project Area in 1987 ("Shellmound Project Area") pursuant to California Redevelopment Law (Health & Safety Code Section 33000 et. seq.); and

WHEREAS, pursuant to the Community Redevelopment Law, the Emeryville Redevelopment Agency ("Agency") is carrying out the 1976 Emeryville Redevelopment Plan for the 1976 Project Area and the Shellmound Park Redevelopment Plan for the Shellmound Project Area; and

WHEREAS, the lack of adequate public facilities in the 1976 Project Area and Shellmound Project Area contributes to blight; and

WHEREAS, the Agency adopted the 2005-2009 Implementation Plan for the 1976 Project Area and the Shellmound Project Area and identified the improvement of the Public Works Corporation Yard as just one action that the Agency intended to carry out to eliminate blight, and the City of Emeryville Capital Improvement Program, FY 2006/7-2010/12 also identified renovation of this facility as a needed capital expenditure (Corporation Yard Upgrade, CIP Project No. 00448104); and

WHEREAS, on June 4, 2009 the City and Agency entered into a Purchase And Sale Agreement whereby the City acquired from the Agency the property and existing building located at 5679 Horton Street, Emeryville, California ("Property"), and renovated the building for use by the Public Works Department as a corporation yard; the Agency acquired the Property in July 1999 for the sum of $2,758,000 utilizing tax increment funds primarily in order to facilitate the connection of Horton Street with former Landregan Street; and

WHEREAS, when the City acquired the Property from the Agency in June 2009, the Purchase and Sale Agreement (Section 10) provided that the Agency is obligated to defend, indemnify, protect and hold harmless the City, including the duty to respond to any governmental injury, investigation, claim or demand regarding hazardous materials at the Agency's sole cost.; and

WHEREAS, the Agency completed the remediation of the hazardous materials in soil on South Bayfront Site B in late 2010 and thereafter the Agency has been pursuing the remediation of groundwater on Site B and has undertaken the investigation of potential off-site sources of impacts to groundwater; and

WHEREAS, the Agency has undertaken sampling activities upgradient and east of 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 Standford Avenue, and within the parking area and inside the building of the Corporate Yard; and

WHEREAS, these investigations uncovered groundwater impacts within all of these areas and on December 13, 2011 this information was shared with representatives of the State of California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") who advised 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; and

WHEREAS, the City has filed a claim against the Agency seeking to enforce the terms of the indemnification provision set forth in Section 10 of the Purchase and Sale Agreement and the Agency has agreed to comply with the obligation set forth in the Purchase and Sale Agreement and accordingly intends to authorize the submittal of an application for oversight and enter into a Voluntary Cleanup Agreement with DTSC for oversight of the assessment and remediation of the Property as well as a Professional Services Agreement with EKI for environmental engineering services for assessment, remediation and monitoring; and

WHEREAS, an application requesting DTSC to provide oversight for the necessary assessment; remediation and monitoring of hazardous materials at the former Marchant/Whitney site at 5679 Horton Street in Emeryville is attached as Exhibit A to this Resolution and a form of the Voluntary Cleanup Agreement with DTSC is attached to the Resolution as Exhibit B; now, therefore, be

RESOLVED, that the Community Development Commission of Emeryville hereby finds and determines that (i) the Purchase and Sale Agreement dated June 4, 2009 between the City and Agency was appropriately authorized in accordance with the Community Redevelopment Law and is thus an enforceable obligation of the Agency, (ii) that the City has filed a claim against the Agency to enforce the terms of the Purchase and Sale Agreement specifically including the duty of the Agency to respond to any governmental injury, investigation, claim or demand regarding hazardous materials at the Property at the Agency's sole cost, and (iii) the Agency has agreed to comply with its obligation set forth in said Purchase and Sale Agreement to respond to any governmental injury, investigation, claim or demand regarding hazardous materials at the Property at the Agency's sole cost; and, be it

FURTHER RESOLVED, that the Community Development Commission of Emeryville hereby authorizes the Executive Director of the Emeryville Redevelopment Agency to execute and submit an application for oversight to DTSC in the form attached hereto as Exhibit A; and, be it

FURTHER RESOLVED, that the Community Development Commission of Emeryville hereby authorizes the Executive Director of the Emeryville Redevelopment Agency to enter into and execute a Voluntary Cleanup Agreement with the State of California Environmental Protection Agency in an estimated amount of $250,000 in the form attached hereto as Exhibit B and subject to such modifications as agreed to and authorized by the Agency General Counsel.

PASSED AND ADOPTED at a special meeting of the Community Development Commission of Emeryville held on Tuesday, January 31, 2012, by the following votes:

AYES: (5) Chair West, Vice Chair Brinkman and Commissioners Asher, Atkin and Davis

NOES: (0) None **ABSENT:** None

EXCUSED: (0) None **ABSTAINED:** None

CHAIR

ATTEST:

SECRETARY

APPROVED AS TO FORM:

AGENCY GENERAL COUNSEL

State of California – California Environmental Protection Agency

Water Boards

Request for Agency Oversight of a Brownfield Site

The purpose of this application is to provide the Department of Toxic Substances Control and the Regional Water Quality Control Board sufficient information to determine which agency will be the appropriate lead agency to provide oversight for the assessment and/or remediation of this Brownfield site. The detailed site information requested in this application will also help the appropriate lead agency to expedite the development of a cost recovery agreement for the site, so that the site applicant can begin site work in a timely and efficient manner. Please use additional pages, as necessary, to complete your responses.

SECTION 1
APPLICANT/PRIMARY CONTACT INFORMATION

The person/organization requesting oversight must possess all necessary rights and access to the site so that they can carry out any and all activities that the oversight agency may require in making its regulatory decisions.

Applicant Name: City of Emeryville Redevelopment Agency

Applicant Point of Contact Name: Michael G. Biddle

E-mail Address: mbiddle@ci.emeryville.ca.us

Phone: (510)596-4381

Address, City, County & Zip Code: 1333 Park Avenue, Emerville, Alameda County, 94608

Applicant's relationship to site: Current Owner ☐ or Operator ☐
Local Agency ☒ Prospective Purchaser ☐ Developer ☐
Other (please describe):

Consulting Firm Name: Erler & Kalinowski, Inc.

Consultant Point of Contact Name: Earl James, P.G.

E-mail Address: ejames@ekiconsult.com

Phone: (415)385-2326

Address, City, County & Zip Code: 1870 Ogden Drive, Burlingame, San Mateo, 94010

Agency's Primary Point of Contact for this Site: Applicant Contact ☒ or Consultant Contact ☐

Water Boards

Request for Agency Oversight of a Brownfield Site

SECTION 2
SITE INFORMATION

If applicable, the applicant may supplement the responses to this section with information from a Phase 1 Environmental Assessment or other site investigation reports available for the site.

1. Is this site listed on Envirostor? Yes ☐ No ☒ and/or Geotracker? Yes ☐ No ☐

2. Name of Site: Marchant/Whitney Site

3. Address City County ZIP: 5679 Horton Street, Emeryville, Alameda, 94608

4. APN(s): 49-1552-1 and 49-1319-1-20

5. Provide a Site Location Map and a Site Diagram showing significant features

6. Describe the site property (include approximate size & description of features):
The Site consists of approximately 1.75 acres of land. The Site is occupied by the Client's Public Works Department for use as a corporation yard. The Site contains one large warehouse building with interior offices in the northeast corner, plus exterior paved parking lots.

7. Describe the surrounding land use (including proximity to residential housing, schools, churches, etc):
The immediate surrounding land use is industrial/commericial. Urban residential housing (condominiums and apartments) is located approximately 500 to 1000 feet to the southwest and north. A primary school is located approximately 1200 feet to the east.

8. Current Owner
Name: City of Emeryville

Address, City, County & Zip Code: 1333 Park Avenue, Emerville, Alameda County, 94608

Phone (510)596-4381 E-mail Address: mbiddle@ci.emeryville.ca.us

9. Background: Current & Previous Business Operations
Name: City of Emeryville Public Works

Type: Use of offices and warehouse space.

Years of Operation:10

10. If known, list all previous businesses operating on this property:
1. Whitney Tool Company - metal valve manufacturing - 1960's to 1990's.
2. Marchant Calculating Machine Company - calculating machine manufacturing - 1913 to the 1960's

3.
4.
5.

11. What hazardous substances, pollutants, or contaminants have been associated with the site?

Chlorinated volatile organic compounds (trichloroethylene and it's degradation products) and petroleum hydrocarbons

Water Boards

Request for Agency Oversight of a Brownfield Site

12. Describe any information on the known or suspected discharge of hazardous substances, pollutants, or contaminants at the Site.
Elevated concentration of chlorinated volatile organic compounds and petroleum hydrocarbon compounds in soil and groundwater indicate that releases occurred as part of the previous manufacturing activities.

13. What environmental media is/was/may be contaminated (check all that apply)?
Soil ☒ Air ☐ Groundwater ☒ Surface water ☐

14. Has sampling or other investigation been conducted? Yes ☒ No ☐
Specify:
Cone penetrometer surveys, soil borings, soil gas sampling, and grab groundwater sampling have been conducted as part of Phase II investigations.

15. If Yes, what hazardous substances, pollutants, or contaminants have been detected and what were their maximum concentrations exceeding screening levels, e.g., Preliminary Remediation Goals or California Human Health Screening Levels?

Trichloroethene (Max 838,000 ug/L)
Cis-1,2-dichloroethene (Max 1,360 ug/L)
Trans-1,2-dichloroethene (Max 190 ug/L)
Vinyl chloride (Max 13.5 ug/L)
1,1-dichloroethene (Max 86.6 ug/L)
1,2-dichloroethane (Max 9.14 ug/L)

16. Is there currently a potential of exposure of the community or workers to hazardous substances, pollutants, or contaminants at the site?
Yes ☒ No ☐ If Yes, explain
Indoor air for workers in the office area of the warehouse building.

17. Provide a description of known or possible water quality impacts at the property. Also, provide information about the type(s) of water supply for the property and, if known, any information on municipal, domestic, agricultural or industrial water supply wells that are either on the property or within a 1-mile radius of the project area:
Elevated concentrations of chlorinated volatile organic compounds and petroleum hydrocarbons have been detected in groundwater. There is public water supply for the property and for surrounding properties from East Bay Municipal Utility District. It is possible that groundwater at downgradient sites has been impacted.

18. Are any Federal, State or Local regulatory agencies currently involved with the site?
Yes ☐ No ☒

19. If Yes, state the involvement, and give contact names and telephone numbers

Agency Involvement Contact Name Phone

Agency	Involvement	Contact Name	Phone Number

			( ) -
			( ) -
			( ) -

20. What is the future proposed use of the site? Continued use as City of Emeryville Corporation Yard and future use as the City of Emeryville Emergency Operations Center.

21. If the Site is not cleaned-up to unrestricted standards, will the property owner accept land use restrictions? Yes

22. What oversight service is being requested of the Lead Agency (check all that apply)?
Initial Investigation/Preliminary Endangerment Assessment ☐
Remedial Investigation/Feasibility Study ☒
Removal Action/Remedial Action ☒
Case Closure ☒
Document Review ☒
Other (describe the proposed project):

23. Provide a general description of the nature of the project, including a general timeline for development, redevelopment or transfer of the site, and the expectations of the Agreement:
Agency is moving expeditiously to define extent of impacts to soils and groundwater and to develop a remedial plan to reduce the mass of contaminants. Agency is working to define and mitigate potential indoor air issues at the warehouse building.

24. Provide information about the potential benefits of the project, if available:

Anticipated number of jobs created/retained:
Anticipated number of proposed residential units:
Anticipated square footage of planned commercial space:
Anticipated square footage of planned open space:
Anticipated acres made ready for re-use by proposed Site cleanup:

25. Provide information on the environmental documents produced for the Site to date. Note that copies may be requested by the designated Lead Agency.

- ☐ Preliminary Endangerment Assessment, dated
- ☐ Phase 1 Environmental Assessment, dated
- ☐ Phase 2 Environmental Assessment, dated
- ☐ Health Risk Assessment, dated
- ☐ Other, describe and provide date
- ☐ Other, describe and provide date
- ☐ Other, describe and provide date
- ☐ Other, describe and provide date

26. Provide any other pertinent Site information not covered in this Application:

Request for Agency Oversight of a Brownfield Site

SECTION 3
COMMUNITY PROFILE INFORMATION

1. What are the demographics of the community (e.g., socioeconomic level, ethnic composition, specific language considerations, etc.)?
Emeryville has a resident population of approximately 10,000 and a working population of about 20,000. It is racially and economically diverse.

2. Local Interest
Has there been any media coverage?
No

3. Past Public Involvement
Has there been any past public interest in the site as reflected by community meetings, ad hoc committees, workshops, fact sheets, newsletters, etc.?
No

4. Key Issues and Concerns
Have any specific concerns/issues been raised by the community regarding past operations or present activities at the site?
No

5. Are there any concerns/issues anticipated regarding site activities?
No
6. Are there any general environmental concerns/issues in the community relative to neighboring sites?
No

7. Describe the visibility of activities and any known interest the site:
None

Request for Agency Oversight of a Brownfield Site

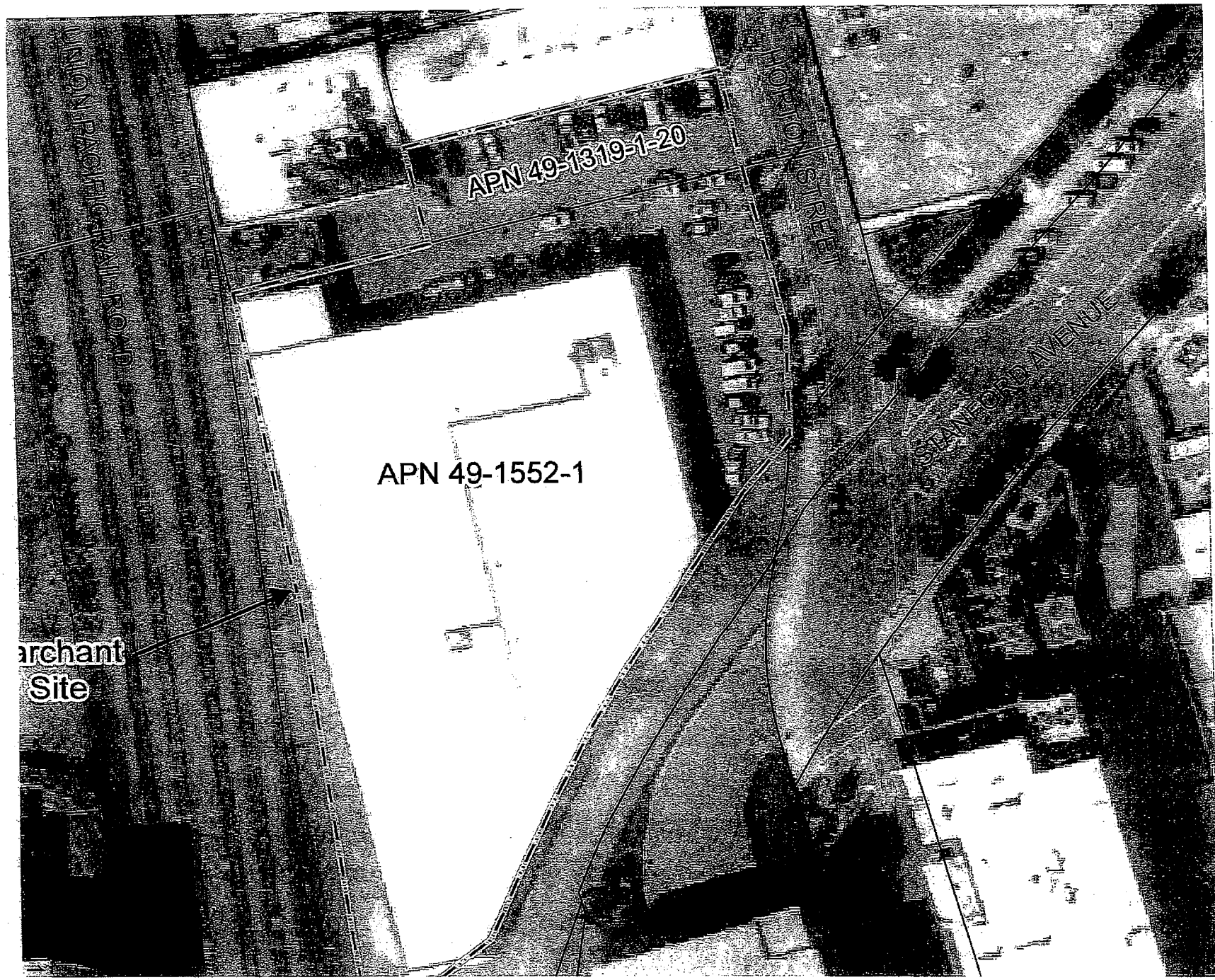
SECTION 4
CERTIFICATION

The signatories below are authorized representatives of the Project Applicant and certify that the preceding information is true to the best of their knowledge.

Applicant Representative	Date	Title

FOR OFFICE USE ONLY

1. Received by:
2. Date Received:
3. Date Other Agency Notif:
4. Lead Determination:
5. Lead Determination Date:
6. Lead Determination Database Updated by on
7. Other Notes:



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APN = Asse

Notes
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STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of: Marchant/Whitney Site 5679 Horton Street Emeryville, CA 94608 Proponent: City of Emeryville, as Successor Agency to the Emeryville Redevelopment Agency 1333 Park Avenue Emeryville, CA 94608	Docket No. HSA-VCA 11/12-077 Voluntary Cleanup Agreement Health and Safety Code Section 25355.5(a)(1)(C)

The California Department of Toxic Substances Control (DTSC) and the City of Emeryville, as Successor Agency to the Emeryville Redevelopment Agency (Proponent) enter into this Voluntary Cleanup Agreement (Agreement) and agree as follows:

1. Site. This Agreement applies to the property located at 5679 Horton Street, Emeryville in Alameda County, California 94608 (Site), identified by Alameda Assessor's Parcel Numbers 49-1552-1 and 49-1319-1-20, and any off-site area to which hazardous substances have or may have migrated from the Site. The Site is approximately 1.75 acres in size and is bordered by Emeryville Greenway to the south, Southern Pacific Railroad to the west, Horton Street to the east, and commercial and industrial uses to the north. A Site location and diagram map is attached as Exhibit A.

2. Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code (H&SC) section 25355.5(a)(1)(C) which authorizes DTSC to enter into an enforceable agreement to oversee the investigation and/or remediation of a release or threatened release of any hazardous substance at or from the Site.

3. Purpose. The purpose of this Agreement is for Proponent to investigate and/or remediate a release or threatened release of any hazardous substance at or from the Site under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from Proponent for DTSC's oversight costs incurred pursuant to this Agreement.

4. Ownership. The Site, consisting of two parcels, is owned by the City of Emeryville.

5. Substances Found at the Site. Based on the information available to DTSC and Proponent, the Site is or may be contaminated with hazardous substances in the groundwater and soil gas including:

Trichloroethene (Max. 838,000 ug/l)
Cis-1,2-dichloroethene (Max 1,360 ug/l)
Trans-1,2-dichloroethene (Max 190 ug/l)
Vinyl Chloride (Max 13.5 ug/l)
1,1-dichloroethene (Max 86 ug/l)
1,2-dichloroethane (Max 9.14 ug/l)

6. Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all of Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate. Proponent agrees to perform all the work required by this Agreement. Proponent shall perform the work in accordance with applicable local, state and federal statutes, regulations, ordinances, rules and guidance documents, in particular, Health and Safety Code section 25300 et seq., as amended.

7. Additional Activities. DTSC and Proponent may amend this Agreement to include additional activities in accordance with Paragraph 17 of this Agreement. If DTSC expects to incur additional oversight costs for these additional activities, it will provide an estimate of the additional oversight costs to Proponent.

8. Endangerment During Implementation.

8.1. Proponent shall notify DTSC's Project Manager immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Within seven days of the onset of such a condition, Proponent shall furnish a report to DTSC, signed by Proponent's Project Manager, setting forth the conditions and events that occurred and the measures taken in response thereto.

8.2. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Proponent to conduct additional activities in accordance with Paragraph 7 of this Agreement or to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. DTSC may request that Proponent implement interim measures to address any immediate threat or imminent or substantial endangerment.

9. Access. Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that

DTSC or any other agency may otherwise have by operation of law.

10. Sampling, Data and Document Availability. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file Adobe Acrobat or Microsoft Word formatted file.

11. Record Preservation. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports, and other documents that relate to the performance of this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

12. Notification of Field Activities. Proponent shall inform DTSC at least seven days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Proponent pursuant to this Agreement.

13. Project Managers. DTSC hereby designates Nina Bacey as the Project Manager. City hereby designates Michael G. Biddle, City Attorney, as its Project Manager. Each Project Manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

14. Proponent's Consultant and Contractor. All work performed pursuant to this Agreement shall be under the direction and supervision of a professional engineer or professional geologist, licensed in California, with expertise in hazardous substance site cleanup. Proponent's Project Manager, contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. , City hereby designates Earl James, P.G., Erler & Kalinowski, Inc., as its professional geologist, licensed in the State of California, with expertise in hazardous substance site cleanup to be used in carrying out the work under this Agreement in conformance with applicable state law including but not limited to, Business and Professions Code sections 6735 and 7835.

15. DTSC Review and Approval. All work performed pursuant to this Agreement is subject to DTSC's review and approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to

comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) return comments to Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Branch Chief or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve Proponent of the obligation to obtain such written approvals.

16. Payment.

16.1. Proponent agrees to pay 1) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement, and (2) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents described in Exhibit C and associated documents, and oversight of field activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice. An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC may provide an updated or revised cost estimate as the work progresses. DTSC will bill Proponent quarterly. Proponent agrees to make payment within 60 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by Proponent.

16.2. In anticipation of oversight activities to be conducted, Proponent shall make an advance payment of $50,000 to DTSC within 10 days of the effective date of this Agreement. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. If the advance payment exceeds DTSC's final costs, DTSC will refund the difference within 120 days after the performance of this Agreement is completed or after this Agreement is terminated pursuant to Paragraph 18 of this Agreement.

16.3. All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the Site # 201929 and the docket number of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards. Payments by check shall be sent to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st Floor
P.O. Box 806

Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

16.4. DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

17. Amendments. This Agreement may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

18. Termination for Convenience.

18.1. Except as otherwise provided in this paragraph, each party to this Agreement reserves the right to unilaterally terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under Paragraph 18.1, Proponent shall be responsible for DTSC costs through the effective date of termination.

18.2. If operation and maintenance activities are required for the final remedy, Proponent may not terminate the Agreement under Paragraph 18.1 upon DTSC's approval of an Operation and Maintenance Plan as proposed by Proponent, unless an Operation and Maintenance Agreement is entered into between DTSC and Proponent or between DTSC and a party responsible for the required operation and maintenance activities.

19. Incorporation of Exhibits, Plans and Reports. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

20. Reservation of Rights. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefor. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to Proponent under applicable laws.

21. Non-Admission of Liability. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

22. Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

23. Government Liabilities. The State of California or DTSC shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California or DTSC be held as a party to any contract entered into by Proponent or its agents in carrying out the activities pursuant to this Agreement.

24. Third Party Actions. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 10 days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

25. California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

26. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

27. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon Proponent and its agents, receivers, trustees, successors and assignees, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Proponent shall ensure that its contractors, subcontractors and agents receive a copy of this Agreement and comply with this Agreement.

28. Effective Date. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

29. Representative Authority. Each undersigned representative of the party to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party to this Agreement.

30. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Date: 5/14/12

Juanita Bacey, Project Manager
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control

Date: 5/10/12

Patrick O'Keeffe, City Manager
Representing City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency

APPROVED AS TO FORM:

Michael G, Biddle, City Attorney
Representing City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency

EXHIBITS

A - SITE LOCATION MAP

C - SCOPE OF WORK

D - COST ESTIMATE

EXHIBIT A
Site Location Map

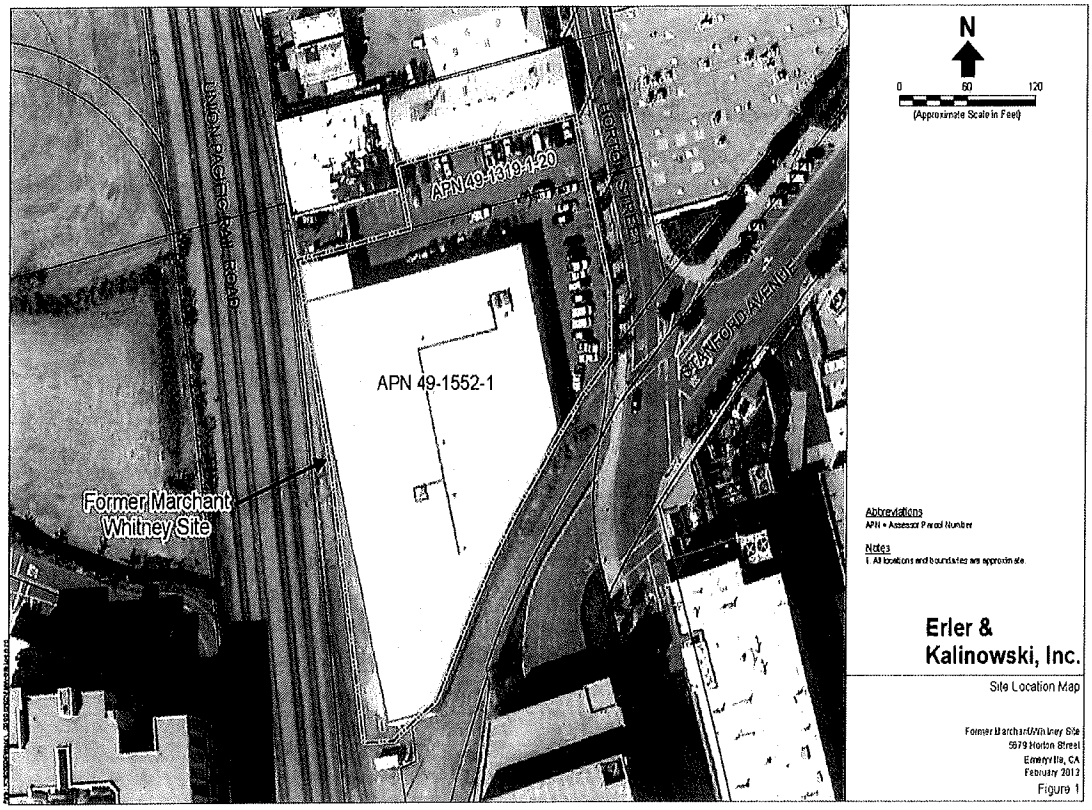

EXHIBIT B
SCOPE OF WORK

The following Tasks will be completed as part of this Agreement:

TASK 1. Submittal of Existing Data

The Proponent will submit to DTSC all background information, sample analysis results, environmental assessment reports, and any other information pertinent to the hazardous substance management and/or release, characterization and cleanup of the Site. DTSC will review the information to identify areas and media of concern, and to determine the additional work, if any, required to complete the investigation/remediation of the Site. Following DTSC's initial review, if necessary, a scoping meeting will be held to discuss whether further site characterization is necessary, and, if so, how the characterization will be conducted for the Site and how they will be implemented.

TASK 2 Interim Measures-Time Critical Removal Action

2.1 Removal Action Workplan (RAW) The Proponent will prepare a RAW in accordance with Health and Safety Code sections 25323.1 and 25356.1. The Removal Action Workplan will include:

(a) A description of the onsite contamination;
(b) The goals to be achieved by the removal action;
(c) An analysis of the alternative options considered and rejected and the basis for that rejection. This should include a discussion for each alternative which covers its effectiveness, implementability and cost;
(d) A description of the recommended alternative (including any required land use covenants, financial assurance, and operation and maintenance plan and agreement requirements).
(e) Administrative record list;
(f) Sampling and Analysis Plan with corresponding Quality Assurance Plan to confirm the effectiveness of the RAW, if applicable; and
(g) A brief overall description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action. A detailed community air monitoring plan shall be included if requested by DTSC.

2.2 California Environmental Quality Act (CEQA) DTSC will prepare the necessary CEQA documents for the Interim Measures RAW. If required, the Proponent shall submit the information necessary for DTSC to prepare these documents including Community profile information.

2.3 Implementation of Final Removal Action Workplan. Upon DTSC approval of the final Removal Action Workplan (RAW), the Proponent shall implement the removal action, as approved.

2.4 Implementation Report. Within thirty (30) days of completion of field activities, the Proponent shall submit an Implementation Report documenting the implementation of the final RAW and noting any deviations from the approved plan.

Task 3 Additional Site Characterization.

3.1 Sampling and Analysis Workplan. The Proponent will submit a workplan that describes the activities proposed to further characterize soil, soil gas, surface water and/or groundwater. The workplan should also include a Site health and safety plan, quality assurance/quality control plan, sampling plan, and implementation schedule.

3.2 The Proponent will begin implementation of the approved workplan in accordance with the approved implementation schedule. DTSC may provide oversight of workplan implementation.

3.3 Site Characterization Report.

The Proponent will submit a Site Characterization Report that, at a minimum, presents the data, summarizes the findings of the investigation, validates the data, and includes recommendations and conclusions.

TASK 4. Baseline Health and Ecological Risk Assessment.

4.1 Risk Assessment Workplan The Proponent will submit a workplan that describes the activities proposed to assess the human health and ecological risk at the Site. The workplan should meet the requirements of Health and Safety Code §25356.1.5(b).

4.2 Risk Assessment Report The report shall be prepared consistent with U.S. EPA and California Environmental Protection Agency guidance and regulations, including as a minimum: Risk Assessment Guidance for Superfund, Volume 1; Human Health Evaluation Manual, December 1989; Superfund Exposure Assessment Manual, April 1988; Risk Assessment Guidance for Superfund, Volume 2, Environmental Evaluation Manual, March 1989; Supplemental Guidance for Human Health Multimedia Risk Assessments of Hazardous Waste Sites and Permitted Facilities (DTSC, September 1993); and all other related or relevant policies, practices and guidelines of the California Environmental Protection Agency and policies, practices and guidelines developed by U.S.EPA pursuant to 40 CFR 300.400 et seq. The Baseline Health and Ecological Risk Assessment Report shall include the following components:

(a) Contaminant Identification. Characterization data shall identify contaminants of concern for the risk assessment process.

(b) Environmental Evaluation. An ecological assessment consisting of:

(1) Identification of sensitive environments and rare, threatened, or endangered species and their habitats; and

(2) As appropriate, ecological investigations to assess the actual or potential effects on the environment and/or develop remediation criteria.

(c) Exposure Assessment. The objectives of an exposure assessment are to identify actual or potential exposure pathways, to characterize the potentially exposed populations, and to determine the extent of the exposure. Exposed populations may include industrial workers, residents, and subgroups that

comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations, that are identifiable as being at greater risk of adverse health effects due to exposure to hazardous substances than the general population.

(d) Toxicity Assessment. Respondent(s) shall evaluate the types of adverse health or environmental effects associated with individual and multiple chemical exposures; the relationship between magnitude of exposures and adverse effects; and related uncertainties such as the weight of evidence for a chemical's potential carcinogenicity in humans.

(e) Risk Characterization. Risk characterization shall include the potential risks of adverse health or environmental effects for each of the exposure scenarios derived in the exposure assessment.

TASK 5. Feasibility Study.

The objective of this task is to evaluate feasible remediation and response alternatives. Reasonable potential alternatives for the remediation of the Site should be evaluated, including the "no action" alternative. Such an evaluation may be incorporated in the Remedy Selection Document, or may, if the analysis is complex, be addressed in a separate study or report. The evaluation should (a) identify the goals for the cleanup based upon current and projected future land uses; (b) evaluate feasible alternatives to meet these goals, including their effectiveness, implementability and cost; and (c) recommend a preferred alternative.

TASK 6. Remedy Selection Document.

6.1 Remedial Action Plan. (RAP) If DTSC determines the final remedy cannot be implemented under a Removal Action Workplan, Proponent will prepare a Remedial Action Plan (RAP) in accordance with the standards and requirements set forth in Health and Safety Code section 25356.1. The RAP summarizes the results of the site characterization, risk evaluation and feasibility study and sets forth in detail appropriate steps to remedy soil, surface water and groundwater contamination at the Site and adjacent areas. In addition, the RAP shall contain a schedule for implementation of all proposed removal and remedial actions.

Task 7. California Environmental Quality Act (CEQA).

In order to meet its CEQA obligation, DTSC will prepare the necessary CEQA documents. If required, the Proponent shall submit the information necessary for DTSC to prepare these documents.

TASK 8 Remedial Design and Implementation Plan.

Proponent will prepare and submit a Remedial Design and Implementation Plan (RDIP) in accordance with the agreed upon schedule contained in the approved Remedy Selection Document; or depending on the complexity of the proposed removal or RAP, incorporate the factors typically addressed in a RDIP into the Remedy

Selection Document. The factors typically addressed in a RDIP are:

(a) technical and operational plans and engineering designs for implementation of the approved remedial or removal action alternative(s);
(b) a schedule for implementing the construction phase;
(c) a description of the construction equipment to be employed;
(d) a site specific hazardous waste transportation plan (if necessary);
(e) any required registration requirements for contractors, transporters and other persons conducting the removal and remedial activities for the Site;
(f) post-remedial sampling and monitoring procedures for air, soil, surface water and groundwater;
(g) operation and maintenance procedures and schedules;
(h) a health and safety plan; and
(i) a community air monitoring plan, if required by DTSC.

TASK 9. Implementation of Final RAP.

Upon DTSC approval of the RDIP and schedule, the Proponent shall implement the final RAP as approved in accordance with the approved RDIP and schedule.

TASK 10. Implementation Report.

Within thirty (30) days of completion of field activities, the Proponent shall submit an Implementation Report documenting the implementation of the final RAP and RDIP and noting any deviations from the approved plan.

TASK 11. Changes During Implementation of the Final RAP/RAW.

During implementation of the final RAW or RAP and RDIP, DTSC may specify such additions, modifications and revisions to the RAW or RDIP as deemed necessary to protect human health and safety or the environment or to implement the RAW or RAP.

TASK 12. Public Participation.

12.1 The Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest. The Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7 and 25356.1(e) the DTSC Public Participation Policy and Procedures Manual, and with DTSC's review and approval.

12.2 A scoping meeting may be held to determine the appropriate activities that will be conducted to address public participation.

12.3 DTSC shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; and involvement of community groups and elected officials. The community profile also includes a mailing list for the Site.

12.4 The Proponent shall develop and submit fact sheets to DTSC for review

and approval when specifically requested by DTSC. The Proponent shall be responsible for printing and distribution of fact sheets upon DTSC approval using the approved community mailing list.

12.5 The Proponent shall publish, in a major local newspaper(s), a public notice announcing the availability of the RAW and the RAP for public review and comment. The public comment period shall last a minimum of thirty (30) days.

12.6 DTSC may require that the Proponent hold at least one public meeting to inform the public of the proposed activities and to receive public comments on the RAW/RAP.

12.7 Within four (4) weeks of the close of the public comment period, DTSC will prepare a response to the public comments received. If required, the Proponent shall submit the information necessary for DTSC to prepare this document.

12.8 If appropriate, the Proponent will revise the RAW and/or the RAP on the basis of comments received from the public, and submit the revised RAW and/or the RAP to DTSC for review and approval. If significant or fundamental changes are required, additional public participation activities, including an additional review and comment period, may be required. The Proponent will also notify the public of any significant changes from the action proposed in the RAW and/or RAP.

TASK 13. Land Use Covenant.

The parties agree that a land use covenant (LUC) pursuant to California Code of Regulations, title 22, section 67391.1 may be necessary to ensure full protection of the environment and human health. DTSC may require such LUC in the Final RAW/RAP. The Proponent agrees to sign and record the LUC approved by DTSC within ten (10) days of receipt of a fully executed original.

TASK 14. Operation and Maintenance (O&M).

The Proponent shall comply with any and all operation and maintenance requirements in accordance with the final RAW, final RAP, or a DTSC-approved RDIP or O&M Plan. If deemed necessary, DTSC may require Proponent to enter into an O&M Agreement with DTSC.

TASK 15. Discontinuation of Remedial Technology.

Any remedial technology employed in implementation of the final RAP/RAW shall be left in place and operated by the Proponent until and except to the extent that DTSC authorized the Proponent in writing to discontinue, move or modify some or all of the remedial technology because the Proponent has met the criteria specified in the final RAW/RAP for its discontinuance, or because the modifications would better achieve the goals of the final RAW/RAP.

TASK 16.

Quality Assurance/Quality Control (QA/QC) Plan. All sampling and analysis conducted by the Proponent under this Agreement shall be performed in accordance with a QA/QC Plan submitted by the Proponent and approved by DTSC. The QA/QC Plan will describe:

(a) the procedures for the collection, identification, preservation and transport of

samples;
(b) the calibration and maintenance of instruments;
(c) the processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to Health and Safety Code section 25198; and
(d) how the data obtained pursuant to this Agreement will be managed and preserved in accordance with the Preservation of Documentation section of this Agreement.

TASK 17.

Health and Safety Plan. All fieldwork conducted by the Proponent under this Agreement shall be performed in accordance with a Health and Safety Plan submitted by the Proponent and approved by DTSC. The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192. This plan should include, at a minimum the following elements:

(a) Site Background/History/Workplan;
(b) Key Personnel and Responsibilities
(c) Job Hazard Analysis/Summary;
(d) Employee Training;
(e) Personal Protection;
(f) Medical Surveillance;
(g) Air Surveillance;
(h) Site Control;
(i) Decontamination;
(j) Contingency Planning;
(k) Confined Space Operations;
(l) Spill Containment;
(m) Sanitation;
(n) Illumination; and
(o) Other applicable requirements based on the work to be performed.

DTSC's *Interim Draft Site Specific Health and Safety Plan Guidance Document for Site Assessment/Investigation, Site Mitigation Projects, Hazardous Waste Site Work Closure, Post Closure, and Operation and Maintenance Activities* (DTSC, December 2000) can be used as a reference tool, The Health and Safety Plan should cover all measures, including contingency plans, which will be taken during field activities to protect the health and safety of the workers at the Site and the general public from exposure to hazardous waste, substances or materials. The Health and Safety Plan should describe the specific personnel, procedures and equipment to be utilized.

All contractors and all subcontractors shall be given a copy of the Health and Safety Plan prior to entering the Site. Any supplemental health and safety plans prepared by any subcontractor shall also be prepared in accordance with the regulations and

guidance identified above. The prime contractor responsible for this subcontractor will be responsible for ensuring that all subcontractor supplemental health and safety plans follow these regulations and guidelines.

EXHIBIT C Cost Estimate

Marchant Whitney VCA			HOURS					
ACTIVITY TITLE	Project Mgr	Supervisor	Eng. Geologist	Toxicologist	Indust. Hyg.	PPS	Legal	CEQA
	HSS	Sup HSS Eng1	Eng Geo	Staff Tox.	Assoc. IH	PPS	Staff counsel	Assoc EP
Prepare/Finalize VCA	24	2						
Review Existing Data	24	2						
Draft/Review Community Profile	8	1				40		
Review/comment Interim Measures (IM) RAW	40	2	40					
CEQA for IM RAW		1						16
Public Participation for IM RAW	16	8				16		
Oversee IM RAW Implemetation	20	4			8			
Review/Comment RAW Implemetation Report	40	2	40					
Review/Comment Site Characterization Workplan	24	2	24		8			
Oversee Site Characterization	8	1						
Review/Comment Site Characterization Report	24	2	24					
Review/Comment Risk Assessment Workplan	8	1		24				
Review/Comment Risk Assessment Report	8	1		24				
Review/CommentFeasibility Study/Remedial Action Plan (RAP)	40	2	40					
CEQA for RAP	100	8						40
Public Participation for RAP	24	4				24		
Oversee RAP Implementation	40	4			8			
Review/Comment RAP Implementation Report	40	2	40					
Review/comment O&M Plan	24	2	24					
Draft O&M Agreement	16	2						
Draft Land Use Covenant	20	2					16	
Certification	8	2						
Project Management	80	8						
	636	65	232	48	24	80	16	56
	$132	$207	$176	$178	$152	$123	$180	$129
	$83,952	$13,455	$40,832	$8,544	$3,648	$9,840	$2,880	$7,224
								$170,375

APPENDIX N

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is effective as of this 31st day of January, 2012, by and between the **EMERYVILLE REDEVELOPMENT AGENCY,** a public body, corporate and politic, ("Agency") and **ERLER & KALINOWSKI, INC.**, ("Consultant"), collectively referred to as the "Parties".

WITNESSETH THAT:

WHEREAS, the Agency desires to implement the field investigations, implementation of remedial measures, monitoring activities and assistance with design and construction of mitigation measures in connection with the Emergency Operations Center, all as described in the proposal from Consultant dated January 27, 2012 regarding the former Marchant/Whitney Site located at 56709 Horton Street, Emeryville, California ("Proposal"); and

WHEREAS, the Agency finds that specialized knowledge, skills, and training are necessary to render the services necessary to perform the tasks set forth in the Proposal contemplated under this Agreement; and

WHEREAS, the Agency has determined that the Consultant is qualified by training and experience to render such services; and

WHEREAS, the Consultant desires to provide such services contained in the Proposal attached hereto and incorporated into this Agreement as Exhibit A; and

WHEREAS, the public interest will be served by this Agreement; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Project Description

The Consultant will assist the Agency with implementation of field investigations, implementation of remedial measures, monitoring activities and assistance with design and construction of mitigation measures in connection with the Emergency Operations Center, all as described in the Proposal from Consultant dated January 27, 2012 regarding the former Marchant/Whitney Site located at 5679 Horton Street, Emeryville, California ("Proposal") attached hereto and incorporated into this Agreement as Exhibit A.

Consultant and Agency understand and agree that Consultant shall be responsible only for the services expressly specified by this Agreement. Consultant and Agency understand and agree that it is Consultant's responsibility to provide services solely to the Agency and that Consultant's accountability under this Agreement shall likewise be solely to the Agency and not to any applicants or any other third party.

Consultant and Agency understand and agree that Consultant has assumed responsibility only for making the investigations, and report, to the Agency included within the Scope of Work attached as Exhibit A. The responsibility for making any disclosures or reports to any third party and for the taking of corrective, remedial or mitigative action shall be solely that of the Agency or the property owner.

B. Services

The services to be completed under this Agreement ("services") are specifically set forth in Exhibit A.

Any statements of estimated constructions costs or future operations and maintenance costs furnished by Consultant are predicted costs and are based on professional opinions and judgment. Consultant cannot be held responsible for fluctuations in constructions costs due to bidding conditions and other factors which could not be anticipated at the time of preparation of the particular estimate.

Agency shall provide access to the site of work; obtain all permits as identified by Consultant, with the exception of a Business License and any other permits or licenses that Consultant needs to conduct its business; and provide environmental impact reports or any other reports or filings required, unless specifically included in Consultant's scope of work.

Consultant shall have no responsibility as a generator, operator, treater, storer, transporter or disposer of hazardous or toxic substances found or identified at the site. Ultimate responsibility regarding treatment and/or disposal of hazardous materials shall be the Agency's, with Consultant's responsibility limited to providing recommendations and assistance to the Agency with appropriate arrangements.

Any construction phase services or testing provided by CONSULTANT, during construction of facilities designed by the CONSULTANT or others, is for the purpose of reviewing the independent construction contractor's general compliance with the functional provisions of project specifications only. CONSULTANT in no way guarantees or insures contractor's work nor assumes responsibility for methods or appliances used by contractor, for jobsite safety, or for contractor's compliance with laws and regulations. CLIENT agrees that in accordance with generally accepted construction practices, the independent construction contractor(s) selected by CLIENT will be required to assume sole and complete responsibility for jobsite conditions during the course of construction of the project, including safety of all persons and property, and that this responsibility shall be continuous and not be limited to normal working hours. CONSULTANT's services during construction shall not be construed in anyway to waive or otherwise relieve any contractor or subcontractor of their contractual obligations.

C. **Schedule and Completion Date**

The services to be provided under this Proposal will be completed by July 31, 2019.

II WORK CHANGES

A. The Agency reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders/ work authorizations executed by the Consultant and the Agency. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time.

B. Any work added to the scope of this Agreement by a change order/ work authorization shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order/work authorization duly executed on behalf of the Agency and the Consultant.

C. The Executive Director has authority to execute without further action of the Redevelopment Agency Board, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section 3.B below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement must be approved by resolution of the Redevelopment Agency Board.

III COMPENSATION AND METHOD OF PAYMENT

A. Agency agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the Agency that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the Agency of invoices setting forth in detail the services performed and costs incurred. The Agency shall pay the Consultant within forty-five (45) days after approval of the invoice by Agency staff. Failure of the Agency to make payment on an undisputed invoice within forty-five (45) days of receipt may subject the Agency to an interest rate of one and a half percent (1.5%) per month, compounded monthly. Consultant shall notify Agency in writing before the imposition of such interest. Failure of Agency to submit full payment of an invoice within forty-five (45) days of receipt also subjects this Agreement and the work herein contemplated to suspension or termination at Consultant's discretion and after providing thirty (30) days notice to Agency in writing.

B. The total amount paid under this Agreement as compensation for services performed and reimbursement for costs incurred shall not, in any case, exceed **FIVE MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($5,850,000.00)** except as outlined in Section 2.C above. The compensation for services performed shall be computed based upon the hourly rates found in Exhibit "A." These rates may be increased no more than once in a year in accordance with a published and generally applicable schedule of rates for the Consultant, but in no event more than 5% each year.

Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, in-house photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

IV COVENANTS OF CONSULTANT

A. Standard of Care

Consultant agrees that, in connection with its services performed under this Agreement, such services are to be performed with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or a similar locality. Agency recognizes that the state of the practice, particularly with respect to hazardous waste conditions, is changing and evolving. While Consultant will perform in accordance with standards in effect at the time its services are performed, it is recognized that such standards may subsequently change because of improvement sin the state of practice. When the findings and recommendations of Consultant are based on information supplied by the Agency, Consultant shall have the right to rely on the accuracy and completeness of such information unless otherwise informed.

B. Assignment of Agreement

The Consultant and Agency covenant and agree not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the other party. Notwithstanding the foregoing, Consultant hereby consents to the assignment and transfer of the duties of this Agreement from the Agency to the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency in accordance with the provisions of Assembly Bill 1X 26 passed and approved by the Governor in the 2011 California Legislative Session and Resolution No. 12-12 adopted by the City Council of the City of Emeryville on January 17, 2012.

As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and the Agency shall have no direct obligation to them.

C. **Responsibility of Consultant and Indemnification of Agency**

1. Indemnification for Professional Liability

As to Consultant's professional services in the performance of this Agreement, Consultant shall assume the defense (including reasonable attorneys' fees and costs) and indemnify and save harmless the City of Emeryville, Emeryville Redevelopment Agency and their members, officers, agents, employees and volunteers from all claims, loss, damage, injury, proceedings and liability of every kind, nature and description, whether actual, alleged or threatened, arising from the negligent act or omission of Consultant, its subcontractors, employees or agents, except when caused by the active negligence or willful misconduct of the Agency. This obligation to indemnify and defend the Agency, its members, officers, agents, employees and volunteers shall survive termination of this Agreement. Consultant shall have no obligation to pay for any defense-related cost prior to a final determination of liability nor to pay an amount that exceeds the finally determined indemnification percentage of liability based upon the comparative fault of Consultant.

2. Indemnification for all Other Liabilities and Exposures

For all other liabilities and exposures except professional services in the performance of this Agreement, Consultant shall assume the defense (including reasonable attorneys' fees and costs) and indemnify and save harmless the City of Emeryville, Emeryville Redevelopment Agency and their members, officers, agents, employees and volunteers from all claims, loss, damage, injury, proceedings and liability of every kind, nature and description, whether actual, alleged or threatened, arising in whole or in part from the performance of this Agreement by Consultant, its subcontractors, employees or agents, except the sole active negligence or willful misconduct of the Agency. This obligation to indemnify and defend the Agency, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

3. Limitation

Notwithstanding any other provisions of this Agreement, as between the Agency and Consultant, Consultant's liability for negligence, breach of this Agreement (but not for fraud or willful

misconduct) or other cause of action shall not exceed i) the insurance proceeds received from coverage maintained by Consultant; or ii) in the event of an uninsured loss a maximum of $50,000.

D. Independent Contractor

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the Agency. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

E. Insurance

1. Requirements: The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the Agency General Counsel to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Executive Director.

2. Minimum Limits of Insurance: Consultant shall maintain limits no less than:

   a. Comprehensive General Liability of $2,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

   b. Comprehensive Automobile Liability (owned, non-owned, hired) of $2,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

   c. Professional Liability of $2,000,000 limit per claim and annual aggregate for claims arising out of professional

services caused by the Consultant's errors, omissions, or negligent acts.

d. Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident.

3. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions exceeding $25,000 must be declared to and approved by the Agency.

4. Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverage.

i The Emeryville Redevelopment Agency, City of Emeryville and their members, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased, or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, City and their members, officials, employees, or volunteers.

ii. The Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Agency, City, or their members, officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the Agency, City or their members, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, City, or their members, officials, employees, agents or volunteers.

iv. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

v. Coverage shall be provided on a "pay on behalf" basis. There shall be no cross liability exclusion.

vi. The insurer agrees to waive all rights of subrogation against the Agency, City, and their members, officials, employees, agents and volunteer for losses arising from work performed by the Consultant for the Agency.

vii. All endorsements to policies shall be executed by an authorized representative of the insurer.

b. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the Agency, City and their members, officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the Agency.

c. All Coverages

i. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by mail has been given to the Agency.

ii Each policy shall have sequential starting and ending dates; i.e., there shall be no gaps in coverage when a policy terminates and it is either renewed or replaced.

5. Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Bests' rating of no less than A:VII.

6. Verification of Coverage: Consultant shall furnish the Agency with certificates of insurance evidencing coverage required by this clause prior to the start of work. The certificates of insurance for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificate of Insurance shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the Agency prior to execution of this Agreement by the Agency. The Agency reserves the right to require complete, certified copies of all required insurance policies, at any time. If requested by City, the Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

7. Subcontractors: Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming the parties as additional insureds.

8. Agency Contractors: If Agency retains any contractor or subcontractor whose scope of work relates in any way to the services provided by Consultant, CLIENT shall require each contractor and subcontractor to: 1) defend, indemnify, and hold harmless Agency and Consultant from any and all claims, losses, damages, attorney's fees, and costs arising from such contractor or subcontractor's services on the project; and 2) obtain insurance of types and amounts appropriate for the goods and services provided by such contractor or subcontractor and naming Consultant as an additional insured under all such policies.

F. Records, Reports and Audits

1. Records

   a. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the Agency with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.

   b. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

2. Reports and Information: Upon request, the Consultant shall furnish to the Agency any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the Agency.

3. Audits and Inspections: At any time during normal business hours and as often as the Agency may deem necessary, there shall be made available to the Agency for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the Agency to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

G. Conflicts of Interest

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the City of Emeryville, nor business holdings or agreements with any official, employee or other representative of the Agency. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the Agency in the future, the Consultant will immediately notify the Agency of such holding, interest or agreement in writing.

H. Confidentiality

Consultant shall hold confidential all information obtained from the Agency or its attorneys or generated in the performance of this Agreement. Consultant shall not disclose such information without the Agency's written consent except to the extent required for: 1) performance of services under this Agreement; 2) compliance with professional standards of conduct for preservation of the public safety, health and welfare; 3) compliance with any court order or other governmental directive; or 4) protection of Consultant against claims or liabilities arising from performance of services under this Agreement. In the event that Consultant is requested to disclose any information under the above conditions, Consultant shall contact Agency as soon as possible to provide an opportunity for its defense of any confidentiality claim at its expense, including the cost of any required Consultant services at Consultant's then current Schedule of Charges. Consultant's obligation under this provision shall not apply to information in the public domain or lawfully acquired on a nonconfidential basis from others. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of Agency information whether deemed confidential or not.

I. Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate

against any person on the basis of race, color, religion, sex, sexual orientation, national origin or ancestry, age or disability.

J. Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement, except where such must be obtained only by the Agency. All work performed by Consultant under this Agreement shall consistent with the standard of care as stipulated in Section IV.A. including compliance with applicable legal requirements.

K. Key Personnel

There shall be no change in Consultant's Project Manager, Earl James, without written approval of the Agency. Consultant recognizes that the identification of the Project Manager was instrumental in the Agency's decision to award the work to Consultant and that compelling reasons for substituting this individual must be demonstrated for the Agency's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

L. Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

M. Ownership of Work

Upon full payment for Consultant's services, all reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("materials") shall be and are the property of the Agency and the Agency shall be entitled to full access and copies of all such materials. Any such materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the Agency. The Consultant assumes all risk of loss, damage or destruction of or to such materials. If any materials are lost, damaged or destroyed before final delivery to the Agency, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the Agency and the Consultant agrees to execute any additional documents

that may be necessary to evidence such assignment. Any subsequent reuse or modification of Consultant's work product by Agency shall be at the sole risk of Agency.

N. Force Majeure

Any delay or default in the performance of any obligation of Consultant under this Agreement resulting from any causes beyond Consultant's reasonable control shall not be deemed a breach of this Agreement. The occurrence of any such event shall suspend that obligation of Consultant which is delayed as long as performance is delayed or prevented.

V. TERMINATION

A. The Agency shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date. Consultant shall have the right to terminate this Agreement by providing written notice thereof at least ninety (90) calendar days in advance of the termination date, except as provided in Section III.A.

B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.

C. Upon termination, Agency shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.

D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the Agency all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the Agency.

E. The rights and remedies of the Agency and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VI. NO PERSONAL LIABILITY

No member, official or employee of the Agency shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the Agency or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement.

VII. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

VIII. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

IX. APPLICABLE LAW AND ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled.

X SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

XI. BUSINESS LICENSE

Prior to commencement of the services to be provided hereunder, Consultant shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

XII NOTICES

A. Communications Relating to Daily Activities

All communications relating to the day to day activities of the work shall be exchanged between Michael Biddle for the Agency and Earl James for the Consultant.

B. **Official Notices**

All other notices, writings or correspondence as required by this Agreement shall be directed to the Agency and the Consultant, respectively, as follows:

AGENCY	**CONSULTANT**
Patrick O'Keeffe Emeryville Redevelopment Agency 1333 Park Avenue Emeryville, California 94608	Earl James, P.G. Erler & Kalinowski, Inc. 1870 Ogden Drive Burlingame, CA 94010-5306

XIII. **WAIVER OF AGREEMENT**

The Agency's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

IN WITNESS WHEREOF the Agency and the Consultant have executed this Agreement effective as of January 31, 2012.

APPROVED AS TO FORM:

Agency General Counsel

EMERYVILLE REDEVELOPMENT AGENCY

Dated: 1/31, 2012

Patrick O'Keeffe, Executive Director

CONSULTANT

Dated: 27 January, 2012

By:

Its: Vice President

Erler & Kalinowski, Inc.
Consulting Engineers and Scientists
1870 Ogden Drive
Burlingame, CA 94010
(650) 292-9100
Fax: (650) 552-9012

27 January 2012

Michael G. Biddle, Esq.
City Attorney/Agency Counsel
City of Emeryville/Emeryville Redevelopment Agency
Office of the City Attorney
1333 Park Avenue
Emeryville, California 94608-3517

Subject: Field Investigations, Assistance with EOC Construction, Initial Implementation of Remedial Measures, and Initial Monitoring Activities
Former Marchant/Whitney Site
5679 Horton Street, Emeryville, California

Dear Mr. Biddle:

Erler & Kalinowski, Inc. ("EKI") is pleased to submit this proposal for environmental engineering tasks related to the implementation of investigation and remediation activities for the Former Marchant/Whitney ("FMW") Site, located at 5679 Horton Street (APN 49-1552-1 and 49-1319-1-20) in Emeryville, California (the "Site"). The Site, currently owned by the City of Emeryville ("City"), is occupied by the City's Public Works Department for use as a corporation yard. The Site contains one large warehouse building with interior offices in the northeast corner, plus exterior paved parking lots. It is EKI's understanding that an Emergency Operations Center ("EOC") will be constructed in the northeast corner of the existing building.

EKI services are proposed to be provided on behalf of the Emeryville Redevelopment Agency ("Client") in accordance with an agreement to be issued by the Client ("Agreement"). This Agreement is intended to cover services related to the development, approval, and implementation of a Remedial Action Plan ("RAP") to be conducted in the period January 2012 through July 2014, and a period of subsequent monitoring that is currently anticipated to occur between approximately July 2014 and July 2019. Longer term groundwater monitoring is also anticipated beyond the term of this Agreement. The project will have oversight from the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC"). It is intended that the project will be conducted consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (US-EPA, 1993).

Services by EKI related to the Site have been conducted in accordance with the scope of work regarding investigations of upgradient impacts to groundwater quality at Site B. As part of EKI's proposed scope of work, additional investigations are planned to characterize the extents of chemical impacts to soil, soil gas, and groundwater at the Site. The results of these further on-Site investigations will be utilized as the basis of design of a remedial system to reduce the mass of chemicals known to be present in and impacting groundwater and soil vapor at the Site.

The budget in this proposal includes consulting services in connection with the initial start up and operation of a contaminant mass removal system and reporting on the initial operation of that system. Additional or alternate approaches to the remediation may be developed as the project progresses in consultation with Client and DTSC.

EKI will assist Client in the solicitation of proposals for selected phases of construction and for the purchase of capital equipment. This assistance may include the development of contract documents with technical plans and specifications, assistance with bidding, and assistance with evaluation of contractor and vendor proposals. The budget presented in this work authorization includes allowances for anticipated cost items such as off-site soil disposal, purchase of equipment and supplies, and contracting services, which may be appropriately conducted with direct contracts between the Client and the contractor/supplier. EKI will work with the Client to amend the budget and task-specific budget allocations, as necessary, to accomplish the project objectives.

In addition, this proposal includes general technical assistance by EKI to the Client with scoping mitigation measures to be implemented in the office area of the warehouse building to reduce the potential for indoor air exposures of workers to chemicals of concern. Budget is also included in this proposal for EKI's technical assistance to the Client and to the Client's design architect for developing technical plans and specifications for environmental vapor mitigation systems to be constructed as part of planned future remodeling of the office area for the Client's new EOC.

This proposal is intended to cover anticipated services to be performed by EKI and its Client-approved contractors and consultants, on an as-needed basis, primarily in the period between January 2012 and July 2014. The proposal also includes an estimated budget for 5 years of monitoring and reporting to DTSC on groundwater quality. This monitoring activity is expected to cover the period of approximately July 2014 through July 2019, assuming that the active remediation phase of work at the Site is concluded by July 2014.

The overall objective of these professional services provided by EKI under this proposal is to implement selected tasks related to the environmental remediation of currently identified chlorinated volatile organic compounds ("CVOCs") in soil, soil gas, and groundwater at the Site. It should be noted that the "remediation" of CVOCs in Site soil and groundwater at the Site is expected to be a long-term process that will not be completed during the term of the scope of work covered in this proposal. At a minimum, on-going groundwater monitoring and reporting will be necessary after the completion of the tasks generally described herein. It should also be noted that the historic site activities of the Former Marchant manufacturing facility are believed to have extended farther north and east of the Site, such that releases of chemicals related to the Former Marchant facility that may potentially impact the environment may not be limited to the current Site property boundaries.

The overall budget identified herein for EKI's services is based on prior preliminary engineering opinion of costs that were prepared as part of the series of environmental investigations conducted since July 2011. On-going budget status updates will be provided to

the Agency when requested. The Agency's current process of review and approval of scope and budget for major phases of work is anticipated to continue. The services performed by EKI will likely also be modified by the requirements of the DTSC.

BACKGROUND AND PROJECT STATUS

The following activities have been performed by EKI since the summer of 2011 as part of the investigation of upgradient impacts to groundwater quality at Site B:

- Conducted research on historical land use at the Site and neighboring properties.
- Conducted the following groundwater investigations that extended to depths of approximately 50 feet below ground surface ("bgs"):
    - An initial on-site groundwater investigation at the Site (9 cone penetrometer testing ("CPT") locations, 9 membrane interface probe testing ("MIP") locations, 10 hydraulic profiling tool ("HPT") testing locations, and 59 grab groundwater samples).
    - An off-site cross-gradient groundwater investigation to the north of the Site along Horton Street (6 CPT locations and 19 grab groundwater samples).
    - An off-site downgradient groundwater investigation on the southern portion of Site B (9 CPT locations, 4 MIP locations, and 36 grab groundwater samples).
- Installed 12 sub-soil soil vapor probes in the Site warehouse building and collected sub-slab soil vapor samples.
- Evaluated investigation data and prepared tables and figures summarizing investigation results for the Agency.
- Subcontracted with a Certified Industrial Hygienist to evaluate potential health risks to current employees at the Site.
- Attended a meeting with DTSC to discuss the Site and provide an overview of investigation results.

EKI's proposed scope of work for on-going environmental consulting services for this project including continued investigations and initial implementation of recommended remediation activities at the Site is described below.

PROPOSED SCOPE OF WORK

The proposed scope of work for EKI under this proposal consists of the following tasks:

Task 1 – Provide Environmental Project Management for January 2012 through July 2014

EKI will perform general environmental consulting and engineering services associated with implementation of the investigation and remediation tasks on an as-needed basis.

Task 1a – Provide On-going Technical Support and Consultation

EKI will provide continued technical support and environmental engineering consultation services, when requested by the Agency, regarding the environmental issues related to the Site. EKI representatives will attend meetings and participate in conference calls with Client, its staff, other consultants, regulatory agencies, and legal counsel, when requested and as necessary to facilitate completion of the scope of work identified herein or to assist in the planning process for future response actions.

Task 1b – Prepare Monthly Progress Reports and Budget Updates / Amended Scopes of Work

EKI will prepare monthly progress reports for the Agency that will accompany EKI invoices. The progress reports will summarize tasks completed in the previous month and planned for the coming month. This task will also include preparation of specific workplans or amended scopes of work prepared for review and approval by Client for major phases of remediation-related services. Certain specialized work will be completed by EKI's subcontractors or subconsultants.

Task 2 – Perform Additional Site Characterization and Pump Test

Additional investigations are required to characterize the extent of contamination at the Site and to obtain hydraulic data for design of initial implementation of on-site groundwater remedial actions. Based on available information, the scope of work for additional characterization and pump testing is anticipated to include the following activities. Investigation approaches and scopes of work may be modified to reflect observed field conditions and additional investigation results.

- Conduct a soil vapor investigation at approximately 3 to 5 feet bgs, beneath the second, lower historic slab that extends across the majority of the Site, in an effort to locate potential shallow source areas in soil. Install up to 27 soil vapor probes and collect and analyze one round of soil gas samples for CVOCs.
- Conduct a targeted unsaturated zone soil investigation. Collect and analyze soil samples from the unsaturated zone based on results of the soil vapor investigation to locate potential shallow source areas in soil. Collect and analyze soil samples within the footprint of the future EOC to pre-characterize soil anticipated to be excavated during EOC construction activities.
- Conduct an additional groundwater profiling investigation in the northern parking lot of the Site in an effort to better define the northern lateral extent of contaminated groundwater. Drill up to 9 locations using CPT and MIP.
- Conduct an off-site downgradient groundwater investigation on the northern portion of Site A at 5700 and 5701 Bay Street (up to 12 CPT locations, 4 MIP locations, and 48 grab groundwater samples).
- Drill, install, and develop approximately 9 wells. Selected well locations may be located inside or outside the building. Evaluate and implement appropriate procedures for

worker and public health and safety during well installation. Well installation may be conducted during weekends if appropriate for protection of public health and safety.

- Conduct a pump test at a selected well or several wells to obtain hydraulic data for design of an initial stage of on-site groundwater remediation. Pump test is anticipated to be a minimum of 24 continuous hours in duration, potentially extending up to 72 continuous hours depending on observed field conditions. It is assumed that the volume of water generated during the pump test will be a manageable and cost effective quantity for containerizing and off-site disposal and that an on-site temporary treatment system and discharge permit will not be required.
- Collect and analyze characterization samples for investigation derived wastes ("IDWs") and assist in coordination of off-site disposal. It is EKI's understanding that IDWs will be disposed off-Site by the Agency in accordance with applicable state and federal laws with the Agency listed as generator.

Investigation activities will also include pre- and post-field activities such as permitting, subcontracting, utility clearance, surveying, and coordination of site access. The Client will be requested to provide available information regarding existing utilities and planned construction.

EKI will prepare a Remedial Investigation ("RI") report that presents results and evaluation of the added investigation data. The information contained in the report will be based on information obtained by, or made available to, EKI to represent existing conditions at the time the investigations were performed. The report will describe the known Site historical uses (including chemical use and handling by prior occupants), provide the results of subsurface investigations, and present a site conceptual model identifying key geologic and hydraulic conditions and the known extent of chemicals of concern in soil, soil vapor, and groundwater. The draft report will be provided to the Client for review. Once finalized, the final report will be submitted to the DTSC. It is EKI's understanding and assumption that DTSC will not be involved with overseeing the Site until this investigation report is submitted for DTSC review and Client enters into oversight agreements with the DTSC.

Task 3 – Assist with Initial Implementation of On-Site Soil, Soil Gas, and Groundwater Remediation

The objective of this task is to initiate remediation to reduce the mass of currently identified CVOCs in groundwater and soil source areas at the Site. This task will initially consist of evaluation of potential remedial technologies and approaches such as would be conducted as part of a Feasibility Study. Based on the current understanding of the Site and the contamination by CVOCs, as previously discussed, the preliminarily recommended approach to the mass reduction activity is dual phase extraction ("DPE"). This approach to groundwater and soil remediation involves extracting groundwater and soil gas using a vacuum applied to wells installed in identified sources areas. Treatment systems will be required for extracted water and soil vapor. It is anticipated that the scope of work for this task will evolve based on evaluations of the pumping test results to be conducted as part of Task 2 and other early-stage remedial investigation activities. Services by EKI under this task may include activities such as:

- Assisting the Client with coordination of site access arrangements, as needed;
- Coordinating utility clearance activities and obtaining drilling permits;
- Drilling, installing, and developing DPE extraction wells;
- Assisting the Agency in obtaining permits from the appropriate regulatory agencies, such as the San Francisco Bay Regional Water Quality Control Board ("SFRWQCB") and the Bay Area Air Quality Management District ("BAAQMD"), for DPE system discharge of treated groundwater and soil vapor;
- Subcontracting arrangements or assisting Client in obtaining a contractor for the installation of a DPE system with a groundwater extraction and treatment system and a soil vapor extraction and treatment system;
- Overseeing DPE system startup activities by contractor;
- Conducting routine operating and monitoring ("O&M") activities;
- Performing data management and data quality control and review; and
- Preparing necessary workplans, reports and data summaries as required by Agency and DTSC for their review and approval.

As investigation activities described in Task 2 have not yet been completed, assumed DPE design parameters for the purposes of providing a preliminary opinion of probable costs are based on available hydraulic data from neighboring properties and experience with previous DPE projects in the Bay Area. It is EKI's understanding that a National Pollutant Discharge Elimination System ("NPDES") permit will likely be required for discharge of treated groundwater.

A workplan for implementing a DPE system will be submitted to the Agency for review and approval. After response to the Agency's comments, the workplan will be submitted to the DTSC for review and approval. EKI assumes that DTSC comments will not be extensive and that only one round of response to comments will be required before approval and submittal of the final workplan.

The budget for this task also includes potential development and implementation of additional remedial measures after the operation of the DPE system, if appropriate. These additional remedial measures are currently assumed to be in-situ enhanced reductive dechlorination ("ERD") of CVOCs. The need for, and potential effect of, such added measures will be evaluated after the DPE system has been operated for a period of time. Additional remedial work would be conducted with the oversight and approval of the DTSC.

The proposed budget for this task, based on the current preliminary opinion of probable costs for installation of a dual phase extraction system and assumed operation for 2 years and for potential additional remedial measures (such as ERD) after implementation of the dual phase system, reflects EKI's current understanding of the site conditions and the nature of the chemicals of concern and site conditions, as well as the assumptions stated above.

Task 4 – Assist with Evaluation of Potential Vapor Intrusion Issues

EKI will subcontract with a certified industrial hygienist ("CIH") to assist Client with the evaluation of health and safety of workers at the Site as it relates to potential vapor intrusion of soil and groundwater contamination by CVOCs that may potentially impact indoor air quality, as well as health and safety of EKI personnel during implementation of planned investigation activities. CIH tasks may include review of available investigation data, health and safety plans and procedures, pertinent research, consultation, planning, and air sampling as needed, in consultation with Client.

Task 5 – Provide Environmental Technical Support for EOC Construction Process

Because the existing slabs will be removed during demolition, construction workers during the building of the new EOC foundation by the City's selected contractor, as well as the public, could be exposed to CVOCs. Based on experience with previous projects, DTSC will likely request that the Agency submit a workplan or equivalent document that evaluates construction approaches and proposes specific programs for vapor mitigation, e.g., sub-slab depressurization [SSD]), and soil management at the Site. The workplan is anticipated to include an SSD Design and Implementation component ("SSD Plan") for the recommended SSD system and a soil management component ("Soil Management Plan") for the proposed approach for addressing Site soil to be encountered during EOC Project construction. The workplan will take into account information furnished by the Client regarding foundation design, layout, and occupancy of the building.

The SSD Plan will describe the objectives and proposed scope of the SSD system, general layout and configuration of SSD system components, BAAQMD emission control and permitting requirements including the potential need for vapor-phase treatment, startup testing and monitoring protocols, and routine operating and monitoring protocols. The Soil Management Plan will describe the objectives and proposed scope of the soil management approach, a general approach to the construction contractor's implementation of site health and safety; and site-specific plans addressing traffic control, waste classification and transportation for off-site disposal, decontamination, dust and vapor control, perimeter air monitoring, and storm water pollution prevention that will likely be required by DTSC. Soil management could materially affect EOC construction costs; therefore, the construction and soil management approach will be discussed with the Client prior to preparation of the Soil Management Plan. EKI will assist the Client with incorporation of the soil management protocols and related environmental plans and specifications into EOC project documents.

EKI will provide an initial draft of the workplan to the Client for review. After receipt of all comments from the Agency, EKI will revise the report into a draft final document for the Client's submittal to DTSC. EKI assumes that DTSC comments are not extensive and that only one round of response to comments will be required before approval and submittal of the final document.

This task also includes EKI engineering services during subsurface EOC construction activities and implementation of the approved workplan by the Client's selected Contractor. EKI will perform on-Site construction observation services, perimeter air monitoring and sample analysis, and startup testing, monitoring, and reporting for the SSD system in accordance with the workplan approved by DTSC. This task does not include routine operating, monitoring, and reporting for the SSD system once the initial startup is completed. It is EKI's understanding that IDWs will be disposed off-Site in accordance with applicable state and federal laws with the Agency listed as the generator.

The proposed budget for this task is based on the preliminary opinion of probable costs (Table "Preliminary Opinion of Potential Costs Years 1 & 2" dated January 2012) for EOC construction and SSD system installation, which assumed that EOC subsurface construction activities will extend to a maximum depth of 5 feet bgs within the unsaturated zone and that excavated soil will be disposed of as a California hazardous waste. The proposed budget reflects EKI's current understanding of the EOC design provided by the Client, the nature of the contamination, and the assumptions stated above.

Task 6 – Monitoring and Reporting for 5 Years

EKI will conduct groundwater monitoring and reporting for up to 5 years after the completion of the active phase of groundwater remediation is completed as assumed above. This will likely include quarterly groundwater monitoring and reporting and an initial 5-year evaluation report to DTSC regarding the status of the project. The budget is intended to include groundwater sampling, laboratory analyses and reporting, and evaluation and reporting of data in the 5-year report. The budget is based upon the assumption that there is a network of ten (10) or fewer monitoring wells that will need sampling and reporting, that the laboratory analyses will only include chlorinated volatile organic compounds, and that the sampling and reporting will be quarterly for the first two years and will become annual after that point.

PROJECT SCHEDULE

The overall period of performance of the tasks described in this proposal is assumed to be February 2012 through July 2019. Elements of the environmental remediation project at the Site will likely continue beyond that time. At a minimum, groundwater monitoring and reporting and operation and maintenance of soil vapor intrusion mitigation systems at the warehouse building and EOC will need to be conducted. Additional remediation may also be appropriate, depending on the progress of the remediation and additional investigation activities contemplated as part of the work to be accomplished as described in this Work Authorization.

PROPOSED BUDGET

Inasmuch as the exact level of effort to complete the proposed Scope of Work in this proposal cannot be identified at this time, we propose that compensation for consulting services by Erler & Kalinowski, Inc. be on a time and expense reimbursement basis in accordance with the attached EKI Schedule of Charges, dated 1 January 2012, as modified, which can be amended

annually, typically in January, and in accordance with the terms and conditions of our Agreement. On the basis of the Scope of Work described above, the proposed budget for the performance of Tasks 1 through 6 is $5,850,000.

This budget will be generally allocated among the tasks as follows:

Task 1 – Project Management April 2011 through July 2014	$ 250,000
Task 2 – Investigation and Pump Test	$1,120,000
Task 3 – Initial Implementation of Soil, Soil Gas, and Groundwater Remediation	$3,400,000
Task 4 – Evaluation of Current Vapor Intrusion Concerns	$ 50,000
Task 5 – Assistance with EOC Construction	$ 680,000
Task 6 – Groundwater Monitoring and Reporting	$ 350,000
Total Proposed Budget	$5,850,000

The budget may be reallocated among tasks as necessary to achieve the project goals. EKI will inform the Client in writing if work beyond the scope identified in this proposal will be required to achieve the objectives described herein or to comply with requirements of the designated regulatory agency. EKI will perform such additional services upon written authorization from the Client.

We assume that the Client will provide a written Agreement providing specific work authorization for this project. We assume that the terms of this Agreement will be consistent with the previous agreements between EKI and the Client, with modifications appropriate to this specific scope of work.

We are pleased to have the opportunity to work with you on this project. Please call if you have any questions or wish to discuss these matters in greater detail.

Very truly yours,

ERLER & KALINOWSKI, INC.

Earl James, P.G.
Vice President

Attachment: EKI Schedule of Charges, dated 1 January 2012, Modified

APPENDIX O

Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Barbara A. Lee, Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

Sent via Certified Mail, Return Receipt Requested
CERTIFIED MAIL NO. 7011 3500 0003 0303 9272

The City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency

Michael A. Guina
City Attorney
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

In the Matter of:

Marchant/Whitney
5679 Horton Street
Emeryville, CA 94608

Assessor's Parcel Numbers (APNs):
49-1552-1, 49-1319-1-20
Site Code: 202142

REQUEST FOR INFORMATION AND DOCUMENTS
[Health & Safety Code § 25358.1]

TO THE REPRESENTATIVE OF The City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency:

The Department of Toxic Substances Control (DTSC) has determined that there is a reasonable basis to believe that there may be a release or threatened release of a hazardous substance at or around the former Marchant/Whitney site, 5679 Horton Street, Emeryville, CA 94608, Assessor's Parcel Numbers (APNs): 49-1552-1, 49-1319-1-20 (hereinafter "the Site"). DTSC has identified The City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("The City") as having information and/or documents relevant to the identification, nature, and quantity of materials generated, treated, stored, disposed, or transported at or to the Site and/or the nature and extent of a release or threatened release of hazardous substances at or from the Site. (Health & Safety Code § 25358.1(b).)

Pursuant to Health and Safety Code section 25358.1, DTSC hereby issues this Request for Information and Documents related to the matters set forth in Attachment C. The City's

response must be in writing and signed a duly authorized official of The City or its legal successor. The City's written responses and the requested information and documents shall be sent to the following person and address:

Elena Joy Pelen, PE
Project Manager
Department of Toxic Substances Control
Brownfields & Environmental Restoration Program
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721
ElenaJoy.Pelen@dtsc.ca.gov

The deadline for complying with this Request for Information and Documents is 30 days after the date of this letter.

Failure to comply with this Request for Information and Documents may subject The City to legal action.

Pursuant to Health and Safety Code section 25367, The City shall be liable for a civil penalty of up to twenty-five thousand dollars ($25,000) for: (1) intentionally making any false statement or representation in any report or information furnished in response to this Request for Information and Documents; or (2) intentionally failing to provide any information or documents requested through this Request for Information and Documents. DTSC is authorized to impose civil penalties for each separate violation and, for continuing violations, each day during which the violation continues.

Based on this notice, DTSC may consider any failure to respond to this Request for Information and Documents to be an intentional failure by The City in violation of Health and Safety Code section 25367.

If The City needs additional time or has any requests regarding this Request for Information and Documents, please contact Stephanie Lai, Esq. at (510) 540-3884 or Stephanie.Lai@dtsc.ca.gov.

AUTHORIZED BY:

OCTOBER 9, 2017.

Elena Joy Pelen, PE
Project Manager
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

cc: Next Page

cc: Stephanie Lai, Esq.
Department of Toxic Substances Control
Office of Legal Counsel
Stephanie.Lai@dtsc.ca.gov

Michael G. Biddle
Partner
Burke, Williams & Sorensen, LLP
MBiddle@bwslaw.com

Robert P. Doty
Attorney
Cox, Castle & Nicholson LLP
rdoty@coxcastle.com

Attachment A
Instructions

1. Respond to the requests for information and documents contained in Attachment C as fully as possible. Your response to these requests should include a statement declaring under penalty of perjury under the laws of the State of California that your answers are true and correct.

2. You must provide a separate response to each of the requests for information and documents contained in Attachment C.

3. Precede each answer with the number and subsection of the request to which it corresponds. For each document produced in response to this Request for Information and Documents, indicate on the documents, or in some other reasonable manner, the number of the request to which the document corresponds.

4. Where specific information has not been memorialized in any document, but is nonetheless responsive to a request, you must respond to the request with a written response.

5. Identify and provide a copy of each document upon which your responses are based, whether or not specifically requested by the request. You must identify, at the time of submission, any information that you believe is a "trade secret," as defined in Health and Safety Code section 25358.2, subdivision (a). Any information or document not identified as a trade secret will be available to the public, unless exempted from disclosure by other provisions of law.

6. To the extent that there are any documents that are responsive to these requests that you are withholding for any reason, you should identify the document and state your basis for withholding the document.

7. If the answer to a request is no or none, you must expressly indicate this in your response. To the extent that you do not respond to a request, describe the reason for your lack of response.

8. If information is not known or is not available to you when you submit your response to this Request for Information and Documents, but later becomes known or available to you, you must supplement your response to this Request for Information and Documents. Moreover, should you find at any time after you submit your response that any portion of the submitted information is false or misrepresents the truth, you must notify DTSC as soon as possible.

9. For each and every request, if information responsive to the request is not in your possession, custody, or control, then identify the persons from whom such information may be obtained. For each person, provide the following: name, current or last known address, telephone number, and affiliation with your company or the Site.

Attachment B
Definitions

These definitions apply to the following words and terms and their singular, plural and possessive forms as they appear in this Request for Information and Documents.

1. "Site" means the former Marchant/Whitney site, 5679 Horton Street, Emeryville, CA 94608, Assessor's Parcel Numbers (APNs): 49-1552-1, 49-1319-1-20 site located at 5679 Horton Street, Emeryville, CA 94608, Assessor's Parcel Numbers (APNs): 49-1552-1, 49-1319-1-20, where The City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("The City") owned, or operated real property or conducted business in, on, at, or near the Site.

2. "Hazardous material" means the following: "hazardous substance" as defined in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 101(14) (42 U.S.C. § 9601(14)) and Health and Safety Code section 25316, including any mixture containing a hazardous substance; "hazardous waste" as defined in Resource Conservation and Recovery Act (RCRA) section 1004(5) (42 U.S.C. § 6903(5)) and California Code of Regulations, title 22, section 66260.10, including any mixture containing a hazardous waste; "volatile organic compound" as defined in Health and Safety Code section 25123.6, including any mixture containing a volatile organic compound; and "pollutant or contaminant" as defined in CERCLA section 101(33) (42 U.S.C. § 9601(33)), including any mixture containing a pollutant or contaminant.

3. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or abandoning into the environment as defined in CERCLA section 101(22) (42 U.S.C. § 9601(22)).

4. "Facility" means "facility" as defined in CERCLA section 101(9) (42 U.S.C. § 9601(9)).

5. "You" or "your" means The City, and any other persons acting or purporting to act on your behalf including, but not limited to, your past or present agents, officers, partners, employees, representatives, accountants, consultants, contractors, attorneys, subsidiaries, predecessors, successors, assigns, and agents.

6. "Document" means, without limitation, "writing" (as defined in Evidence Code § 250) and includes "originals" (as defined in Evidence Code § 255) and duplicates (as defined in Evidence Code § 260) of or copies of the writings, and non-identical copies bearing or having any attachments, notes, or marks that distinguish them from the originals.[1] "Document" includes, but is not necessarily limited to, any

[1] Evidence Code section 250 defines "writing" as "handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."

Evidence Code section 255 defines "original" as "the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. An 'original' of a photograph includes the negative or any

written, printed, electronically generated/retained or recorded material or electronic data of writings of every kind and description that are fixed on any tangible thing, including, but not limited to, typed or handwritten papers, books, drafts, reports, letters, envelopes, post-its, electronic mail or email, telephone messages, voice mail, appointment calendars, address lists, drawings, photographs, correspondence, marketing materials, business cards, sales pitch books, newspaper clippings, memoranda, notes, meeting agendas, summaries, outlines, calendars, diaries, transcripts or notes of telephone conversations, meetings or interviews, tape recordings, drafts of agreements and contracts, agreements, contracts, supplements, contract amendments and modifications, files, results of investigations, court papers, bank records, minutes, accounting work papers and reports, ledgers, business records, financial reports, facsimile transmissions, invoices, charts, graphs, directories, file folders, file tabs and labels appended to or containing any documents, logs, and transcriptions. A tangible thing on which documents may be fixed includes, but is not necessarily limited to, paper, audio tapes or cassettes, phonographic media, photographic media (including, but not necessarily limited to, prints, films, slides, videos, microfilm, and digitally recorded photographs), computer media (including, but not limited to, hard disks, floppy disks, compact disks, magnetic tapes, and flash drives); and optical media.

7. "Identify" means:

   a. With respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, present or last known job title, position, or business, and duties performed for each job, position, or business set forth.

   b. With respect to a corporation, partnership, business, trust, or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation or partnership), organization, if any, and a brief description of its business.

   c. With respect to a document, to provide its customary business description, its date, its number, if any (e.g., invoice or purchase order number), the identity of the author, addresser, addressee and/or recipient, and the substance or subject matter.

8. "Person" includes any natural person, firm, unincorporated association, partnership, corporation, trust, or other entity included in Health and Safety Code section 25319.

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print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original.'"

Evidence Code section 260 defines "duplicate" as "a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original."

Attachment C
Information and Document Requests

1. Identify the current owner and/or operator of the Site. State the dates during which the current owner and/or operator owned, operated or leased any portion of the Site and provide copies of all documents evidencing or relating to such ownership, operation or lease, including but not limited to purchase and sale agreements, deeds, leases, titles, etc. Please describe all known activities during your ownership/operation of the Site including any usage of trichloroethene (TCE), petroleum hydrocarbons, and metals at the Site.

2. If you are the current owner and/or current operator, did you acquire or operate the Site or any portion of the Site after the disposal or placement of hazardous substances on, or at the Site? Describe all of the facts on which you base the answer to the preceding question.

3. Identify all prior owners of the Site. For each prior owner, further identify:
   a. The dates of ownership;
   b. All evidence showing that they controlled access to the Site; and
   c. All evidence that a hazardous substance, hazardous waste, pollutant, or contaminant, was released or threatened to be released at the Site during the period that they owned the Site.

4. Identify all prior operators of the Site, including lessors, of the Site. For each such operator, further identify:
   a. The dates of operation;
   b. The nature of prior operations at the Site;
   c. All evidence that they controlled access to the Site; and
   d. All evidence that a hazardous substance, pollutant, or contaminant was released or threatened to be released at or from the Site and/or its solid waste units during the period that they were operating the Site.

5. Identify all federal, state and local authorities that regulated the Site Operator and/or that interacted with the Site Operator. Your response is to address all interactions and in particular all contacts from agencies/departments that dealt with health and safety issues and environmental concerns.

6. Identify all leaks, spills, or releases into the environment of any hazardous substances, hazardous waste, pollutants, or contaminants that have occurred at or from the Site. In addition, identify:
   a. When such releases occurred;
   b. How the releases occurred (e.g. when the substances were being stored, delivered by a vendor, transported or transferred (to or from any tanks, drums, barrels, or recovery units), and treated).
   c. The amount of each hazardous substances, pollutants, or contaminants so released;
   d. Where such releases occurred;

e. Any and all activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release.
f. Any and all investigations of the circumstances, nature, extent or location of each release or threatened release including, the results of any soil, water (ground and surface), or air testing undertaken; and
g. All persons with information relating to these releases.

7. Was there ever a spill, leak, release or discharge of hazardous substances, hazardous waste, pollutants, or contaminants into any subsurface disposal system or floor drain inside or under the former Marchant/Whitney building? If the answer to the preceding question is anything but an unqualified "no", identify:
   a. When the spill, leak, release or discharge of hazardous substances, hazardous waste, pollutants or contaminants occurred;
   b. Where the disposal system or floor drains were located;
   c. When the disposal system or floor drains were installed;
   d. Whether the disposal system or floor drains were connected to pipes;
   e. Where such pipes were located and emptied;
   f. When such pipes were installed;
   g. How and when such pipes were replaced, or repaired; and
   h. Whether such pipes ever leaked or in any way released hazardous substances pollutants, or contaminants into the environment.

APPENDIX P

City of Emeryville
INCORPORATED 1896
OFFICE OF THE CITY ATTORNEY
1333 Park Avenue
Emeryville, California 94608-3517
Tel: (510) 596-4380 | Fax: (510) 596-3724

November 30, 2017

VIA E-MAIL AND U.S. MAIL

Elena Joy Pelen, PE
Project Manager
Department of Toxic Substances Control
Brownfields & Environmental Restoration Program
700 Heinz Avenue, Suite 300
Berkeley, CA 94710-2721
ElenaJoy.Pelen@dtsc.ca.gov

Re: Request for Information and Documents Pursuant to Cal. Health & Safety Code § 25358.1 re 5679 Horton Street, Emeryville, CA 94608, APNs 49-1552-1 and 49-1319-1-20

Dear Ms. Pelen:

This letter responds to the Department's October 9, 2017 Request for Information pursuant to Cal. Health & Safety Code § 25358.1 regarding 5679 Horton Street, Emeryville, CA 94608, APNs 49-1552-1 and 49-1319-1-20 (the "Site").

Prefatory Statement

This response is made solely on behalf of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency (the "Successor Agency"). Although their names both contain "Emeryville," the Successor Agency and the City of Emeryville are not the same. E.g., Cal. Health and Safety Code § 33125.

These responses to the seven enumerated items in Attachment C to the Request for Information (as well as the numerous subparts thereto) are based upon information in the possession of the Successor Agency at the time of this response, the majority of which has already been provided to the Department in technical reports prepared by EKI Environment & Water, Inc. ("EKI"). The responses do not, however, provide literally "all" of the requested information because to do so would require, for example, recitation of literally thousands of data points from the extensive testing that has been done at the Site (all of it performed under DTSC supervision and reported to DTSC in various technical reports prepared by EKI). Instead, the Successor Agency is providing here narrative summaries of the extensive discussions in those reports as well as other information.

As the Department has been advised, the Successor Agency is party to litigation now pending in the federal district court for the Northern District of California (*Successor Agency, et al. v. Swagelok, et al.* – Case No. 3:17-cv-00308WHO – the "Pending Litigation"). The Pending Litigation is in a very early stage; neither initial disclosures nor any discovery has occurred.

Either or both may result in the Successor Agency coming into possession of substantial amounts of information bearing on the responses below. As a result, the Successor Agency reserves the right to supplement this response with additional evidence, information, or documentation which may hereafter be obtained through the Pending Litigation or other means.

To the extent that any or all of the requests in the Request for Information call for information constituting attorney work-product, or which constitutes information that is privileged by virtue of the attorney-client or other legal privilege, the Successor Agency will not supply such information absent appropriate protection, but it will work with Department in good faith on a method to protect such information. The provisions for protection of trade secrets in Health and Safety Code Section 25358.2 may provide an appropriate model from which to work.

None of the responses provided herein should be construed as an admission that the Department, or any other entity or person, may assert a claim or claims against the Successor Agency for the recovery of, or contribution toward, remediation-related costs concerning the Site, whether in the Pending Litigation or any other action or forum.

Unless otherwise indicated, the Successor Agency's response to the Request for Information utilizes the definitions set forth in the Request for Information. However, the Successor Agency objects to DTSC's definitions of the terms "you" or "your" and "identify," as these definitions are overly broad and seek information outside of the Successor Agency's control or possession, as well as information subject to the attorney-client and/or attorney-work product privilege. The Successor Agency will provide all information within its possession at the time of this response and subject to preserving its claims of work product and attorney-client privilege.

The Successor Agency notes that the terms "owner" and "operator" are not defined in Attachment B to the Request for Information. For purposes of this response, the Successor Agency has used the definition of "owner or operator" set forth in the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). The Successor Agency notes further that under CERCLA, local government entities are excluded from the realm of "owner/operators" by 42 U.S.C. § 9601(20)(D) and by the combined operation of 42 U.S.C. § 9607(b)(3) and § 9601(35)(A)(ii); see *City of Emeryville v. Elementis Pigments, Inc.*, 2001 WL 964230 (N.D. Cal.) (confirming no liability for public agencies that acquire contaminated property through the use of eminent domain authority); see also U.S. Environmental Protection Agency, *Municipal Immunity from CERCLA Liability for Property Acquired through Involuntary State Action* (Oct. 1995) (42 U.S.C. § 9601(35) exception applies to government entities that acquire property through eminent domain).

Specific Responses

Response to Request No. 1: Identify the current owner and/or operator of the Site. State the dates during which the current owner and/or operator owned, operated or leased any portion of the Site and provide copies of all documents evidencing or relating to such ownership, operation or lease, including but not limited to purchase and sale agreements, deeds, leases, titles, etc. Please describe all known activities during your ownership/operation of the Site including any usage of trichloroethene (TCE), petroleum hydrocarbons, and metals at the Site.

The Successor Agency incorporates the Prefatory Statement above, and all objections and reservation of rights set forth therein, into its Response to Request No. 1 as if set forth here in full. Subject to and without waiving any of the Prefatory Statement, the Successor Agency responds as follows:

The Successor Agency currently owns the Site, and its predecessor, the Emeryville Redevelopment Agency, acquired the site in April 1999.[1] True and correct copies of the Purchase Agreement and First Amendment to Purchase Agreement transferring title in the Site to the Emeryville Redevelopment Agency are attached hereto as Attachment A. When the Emeryville Redevelopment Agency was dissolved by statute, effective February 1, 2012, its assets, including the Site, transferred to the Successor Agency.[2] Documents evidencing the Successor Agency's ownership of the Property, as discussed in footnote 2, are attached hereto as Attachment B.

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[1] The Successor Agency holds title to APN 49-1552-1. Separately, the City of Emeryville, an entity distinct from the Successor Agency, acquired a fractional interest (11%) in APN 49-1319-1-20 through the use of eminent domain for street realignment purposes. Because the City of Emeryville acquired its interest in the Site through eminent domain, it is not considered to be an "owner or operator" for purposes of this response, as discussed in the Prefatory Statement. An entity known as Four Studios Limited Partnership also owns a fractional interest (9%) in APN 49-1319-1-20. The remainder of the interest in that APN (80%) is held by the Successor Agency. It is the Successor Agency's understanding that Four Studios Limited Partnership does not engage in any current operations on or uses of the Site other than for ingress/egress to access nearby properties and for parking.

[2] A transfer of APN 49-1552-1 to the City of Emeryville prior to the dissolution of the Emeryville Redevelopment Agency has been deemed void *nunc pro tunc*. That putative transfer of APN 49-1552-1 would have occurred pursuant to a Purchase Agreement entered into on June 4, 2009 and amended on February 25, 2011, with the grant deed recorded on March 4, 2011. However, on April 20, 2012, the State Controller issued an order to the City of Emeryville requiring it to return all assets transferred by the Emeryville Redevelopment Agency after January 1, 2011. Subsequent to issuance of that order, a quitclaim deed dated June 30, 2017 was recorded to clarify that title was held by the Successor Agency.

There are no current operations at the Site and there have not been any operations there since late 2012 when the City of Emeryville's Public Works Department vacated the building at the Site due to concerns over vapor intrusion arising from the contamination in the subsurface. The only current use of the Site is for ingress/egress to adjacent properties and parking.

From approximately mid-1999 until it vacated the Site in 2012, the Public Works Department used a portion of the building on the Site for corporate yard purposes, e.g., storage of vehicles, tools, equipment, and small quantities of materials used for facilities maintenance work. In addition, a secured area within the warehouse was utilized for evidence storage by the Emeryville Police Department. An office area, restrooms, locker rooms, break rooms, and additional storage rooms were used intermittently by Public Works personnel; however, those individuals spent the majority of their work days away from the Site. The former office area and its associated facilities were demolished in October 2013. To the east of the building, an outdoor fenced area was primarily used for storage of landscaping materials.

While small quantities of petroleum hydrocarbons, paints, and cleaners may have been associated with the Public Works Department's activities, the Successor Agency is not aware of any specific usage of such substances; nor is it aware of any storage or use of trichloroethene ("TCE") at the Site from 1999 to 2012. To the best of the Successor Agency's knowledge, any chemicals present on the Site during its period of ownership were properly contained and stored. The Successor Agency is not aware of any release(s) of any hazardous materials, including but not limited to TCE, during the ownership of the Site by public agencies.

Response to Request #2: If you are the current owner and/or current operator, did you acquire or operate the Site or any portion of the Site after the disposal or placement of hazardous substances on, or at the Site? Describe all facts on which you base the answer to the preceding question.

The Successor Agency incorporates the Prefatory Statement above, and all objections and reservation of rights set forth therein, into its Response to Request No. 2 as if set forth here in full. Subject to and without waiving any of the Prefatory Statement, the Successor Agency responds as follows:

Yes, the Successor Agency and its predecessor the Emeryville Redevelopment Agency both acquired the Site after the disposal or placement of hazardous materials occurred there. Their dates of acquisition are as noted above, February 2012 (by operation of law) and April 1999, respectively. As also noted above, the Successor Agency is not aware of any disposal or placement of hazardous substances at the Site during the period when the Emeryville Redevelopment Agency owned the Site and the City of Emeryville's Public Works Department operated at and from the Site (i.e., 1999-2012). The Successor Agency's understanding of facts concerning operations prior to 1999 is set out below and in response to Request No. 4.

The Emeryville Redevelopment Agency purchased the Site in 1999 from the Catherine Lennon Lozick Trust. The purchase agreement acknowledges that hazardous materials were present on the Site prior to sale. It also acknowledges that business operations on the Site could have been responsible for releases of those hazardous materials on the Site:

> During the period of Seller's ownership of the Real Property from approximately 1963 to the present the following chemicals have been utilized in business operations on the Real Property: ***cutting oil, electrical chemical deburring, solvents, paint thinners, nitirc [sic] acid, sodium hydroxide, vapor degreasing – trichloroethylene, and freon ("Known Chemicals")***. During the period of Seller's ownership of the Real Property, Seller represents and warrants that to the best of Seller's knowledge, there has been no release of hazardous materials at the Real Property, ***other than the possible release of the Known Chemicals.*** (Emphasis added.)

The May 28, 1999 First Amendment to Purchase Agreement states as follows:

> WHEREAS, during testing of the Real Property pursuant to the provision of Section 7 of that certain Purchase Agreement between Seller and Agency dated April 22, 1999 (the "Purchase Agreement"), Agency discovered the presence of hazardous materials in the groundwater beneath the real property...

Consistent with that recital, the First Amendment to Purchase Agreement amended the language first quoted above so that it reads as follows:

> During the Agency's testing of the Real Property pursuant to Section 7 above, the Agency discovered the presence of hazardous materials, including some of the Known Chemicals, in the groundwater beneath the real property.

During the approximately 36-year period reflected in the purchase agreement (i.e., 1963 to 1999), an entity affiliated with the Lozick Trust, Swagelok Company ("Swagelok"), controlled and operated the Site through an entity known as Whitney (f/k/a Whitey) Research and Tool Co. ("Whitney"). We refer to them here collectively as "Swagelok/Whitney." Historical documentation also shows that, as discussed below, the Marchant Calculating Machine Company ("Marchant"), which merged with Smith-Corona to become Smith-Corona-Marchant, operated on the Site prior to Swagelok/Whitney. The Swagelok/Whitney and Marchant operations and their contributions to contamination at the Site are discussed in greater detail below in response to Request No. 4. The impacts to soil, soil vapor, and groundwater EKI encountered at the Site are consistent with the historical uses of the property by Marchant and Swagelok/Whitney.

Response to Request #3: Identify all prior owners of the Site. For each prior owner, further identify: (a) The dates of ownership; (b) All evidence showing that they controlled access to the Site; and (c) All evidence that a hazardous substance, hazardous waste, pollutant, or contaminant was released or threatened to be released at or from the Site and/or its solid waste units during the period that they were operating the Site.

The Successor Agency incorporates the Prefatory Statement above, and all objections and reservation of rights set forth therein, into its Response to Request No. 3 as if set forth here in full. Subject to and without waiving any of the Prefatory Statement, the Successor Agency responds as follows:

The Successor Agency is aware of the following prior owners of the Site:

- **Lawrence Peladeau, for an unspecified amount of time prior to 1939.** As part of a January 2015 Phase I Environmental Assessment, EKI obtained a chain of title search for the Site.[3] That title search indicates that a Lawrence Peladeau owned the entire Site prior to 1939, and retained ownership of the portion of the Site now associated with APN 49-1319-1-20 until 1945. A true and correct copy of relevant excerpts of the EKI Phase I is attached hereto as Attachment C. Based on the period of Mr. Peladeau's ownership and the Successor Agency's understanding of Marchant's operations, it would appear that Marchant leased the Site during this time period. For further discussion of Marchant's operations, see responses to Request Nos. 2 and 4.

- **Maxwell Cutler, from 1939 until 1950 (APN 49-1552-1).** Based on the period of Mr. Cutler's ownership and the Successor Agency's understanding of Marchant's prior operations, it appears likely that the Site was leased to Marchant for its operations during this time period. For further discussion of Marchant's operations, see responses to Request Nos. 2 and 4.

- **Van Bokkelen Cole Co., from 1945 until 1963 (APN 49-1319-1-20):** A small portion of the Site was held by separate ownership and transferred separately, resulting in present-day ownership of a small portion of the Site by Four Studios Limited Partnership. Sanborn maps from 1929 to 1952 show assembly room operations associated with Marchant's operations on this portion of the Site. Based upon the Successor Agency's understanding of Marchant's operations, it appears Marchant leased this portion of the Site as well.

- **Henry Calbit, from 1950 until 1963, and Calbit Co., from 1963 until 1988 (APN 49-1552-1).** Title search documents show Mr. Calbit as the owner of the Site until 1963, at

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[3]Ownership information referenced herein was obtained from the title search report and associated title documents gathered by EKI in connection with its Phase I Environmental Site Assessment. Those portions of the Phase I are included in Attachment C.

which point he transferred ownership of the Site to a corporation, Calbit Co., which he ran. Calbit Co. no longer exists, but was registered in November 1963 as a California corporation with its headquarters at 29500 Solon Road, Solon, Ohio 44139. Calbit Co. was dissolved in April 1990. Swagelok now operates out of the same address in Solon, Ohio. Corporate records filed with the California Secretary of State and Ohio Secretary of State demonstrate that the two entities were controlled by the same officers. The CEO and Secretary of Calbit Co., as listed in a 1987 filing with the California Secretary of State, were F.J. Callahan and J.F. Fant, respectively. Swagelok was itself first registered in Ohio in July 1947 as Crawford Fitting Company. A 1986 amendment to the Articles of Incorporation of Crawford Fitting Company lists F.J. Callahan and J.F. Fant as the President and Secretary, respectively. A 1997 filing with the Ohio Secretary of State confirms Crawford Fitting Company's change of name to Swagelok Company; at the time of the name change, F.J. Callahan still served as President and CEO of the company. Based on the period of Calbit's ownership and the Successor Agency's understanding of Marchant's and Swagelok/Whitney's operations, it appears likely that the Site was first leased to Marchant, and that Calbit's related entity, Swagelok/Whitney, commenced operations at the Site around the time that Calbit Co. was incorporated in California in 1963. The 1963 start of operations is consistent with other historical information about the Site. True and correct copies of the relevant California and Ohio Secretary of State filings are attached hereto as Attachment D.

- **Endicott Co., from 1963 until 1966 (APN 49-1319-1-20).** A search of California Secretary of State records revealed that in 1973, Endicott Co., a now-dissolved corporation, had its registered business address at 29500 Solon Road, Solon, Ohio 44139, the same address as Calbit Co. and Swagelok, and that its Vice President was F.J. Callahan, Jr., indicating that Endicott Co. was part of the same Swagelok family of companies. A true and correct copy of the 1973 Endicott Co. filing with the California Secretary of State is attached hereto as Attachment E.

- **Catherine Lennon Lozick Trust, until 1999 (APN 49-1552-1).** Title to the Site transferred from Calbit Co. to the Catherine Lennon Lozick Trust by means of a corporation grant deed recorded in 1988. Information about the Site indicates that Swagelok/Whitney was operating on the Site prior to that time, as discussed above. The exact commencement date of Swagelok/Whitney's operations at the Site is unclear; a Community Profile prepared by DTSC in August 2012 notes Swagelok/Whitney's presence at the Site from around 1960 to 1999, while other documentation indicates Swagelok/Whitney was present at the Site since at least 1963. The Community Profile also acknowledges Swagelok/Whitney's operations as a source of contamination at the Site. A true and correct copy of the Community Profile is attached hereto as Attachment F.

- **Reginald Jackson, from 1966 until 1986 (APN 49-1319-1-20).** A portion of this APN was transferred to Mr. Jackson in 1966. Based on Sanborn and aerial maps, it appears

likely that this portion of the Site was used for ingress/egress and parking during this time period.

- **Josephine Natoli, from 1986 to 1998 (APN 49-1319-1-20).** Mr. Jackson transferred his interest in the APN to Josephine Natoli, who transferred ownership of portions of this APN to Barbara Witt and Steven Jenner and separately to Barbara Witt at different times (1987 and 1994, respectively), and retained ownership of a portion of this APN until it was transferred to Four Studios Limited Partnership in 1998.

- **Barbara Witt and Steven Jenner, from 1987 to 1998 (APN 49-1319-1-20).** As discussed above, a portion of this APN was first transferred to Barbara Witt and Steven Jenner in 1987. In 1994, Barbara Witt separately took title to another portion of the APN. Both portions were subsequently transferred to Four Studios Limited Partnership, the current owner of the fractional interest in this APN.

- **Four Studios Limited Partnership, from 1998 to present (APN 49-1319-1-20).** As discussed above, an entity known as Four Studios Limited Partnership currently owns fractional (9%) interest in APN 49-1319-1-20. This portion of the Site is currently being used for parking and ingress/egress.

Response to Request #4: Identify all prior operators of the Site, including lessors, of the Site. For each such operator, fully identify: (a) The dates of operation; (b) The nature of prior operations at the Site; (c) All evidence that they controlled access to the Site; and (d) All evidence that a hazardous substance, pollutant, or contaminant was released or threatened to be released at or from the Site and/or its solid waste units during the period that they were operating the Site.

The Successor Agency incorporates the Prefatory Statement above, and all objections and reservation of rights set forth therein, into its Response to Request No. 4 as if set forth here in full. Subject to and without waiving any of the Prefatory Statement, the Successor Agency responds as follows:

The Successor Agency is aware of the following prior operators of the Site:

- **Marchant, from the early 1920s until the early 1960s.** As discussed above, exact dates of Marchant's operations at the Site are unknown to the Successor Agency at this time, although information in the Community Profile suggests that Marchant operated at the site from 1913 until approximately 1960. Information related to Marchant's prior operation of the Site can also be found in a May 1999 Stellar Environmental Solutions ("SES") Phase II Site Acquisition Investigation and Documentation Report, which was submitted to DTSC ("SES Phase II"); an August 2012 EKI Final Subsurface Environmental Investigations Report to DTSC ("EKI Investigation Report"), and its

attachments; and the EKI Phase I. A true and correct copy of portions of the SES Phase II is attached hereto as Attachment G[4], and a true and correct copy of the EKI Investigation Report is attached hereto as Attachment H.

SES concluded, on the basis of historical documentation it reviewed, that prior to 1963 the Site hosted a warehouse building operated by a manufacturer of Smith-Corona typewriters. Marchant, which later merged with Smith-Corona to become Smith-Corona-Marchant, operated on the Site prior to Swagelok/Whitney. Historical documentation reviewed by SES suggested that the Marchant building at the Site was constructed in two phases, with the final phase completed in 1935. Historical information reviewed by EKI and memorialized in the EKI Investigation Report confirms Marchant's occupancy between the early 1920s and the early 1960s, just prior to the commencement of the Swagelok/Whitney operations. Sanborn maps showed that during Marchant's occupation of the Site, a machine shop, an experimental machine shop, a storage and service department, a tool room, a press room and grinding department, a warehouse, a dressing room, a die vault, a store room, a supply room, a hardening and plating room, a machine inspection room, assembling rooms, an enameling and spraying room, and a photo department were present at the Site.

Those operations required the use of various oils, chlorinated solvents, and other chemicals, and generated a variety of wastes that have contributed to VOC and other contamination at the Site. The DTSC Community Profile acknowledges that:

> The primary contaminants of concern [at the Site] are Trichloroethylene (TCE), cis-1,2-dichloroethene (cDCE), trans-1,2-dichloroethene (tDCE), Vinyl Chloride (VC), and total extractable petroleum hydrocarbons (TEPH) ***that were contained in solvents used as degreasers during the operations of the Marchant Calculator Company (1913-1960) and Whitney Tool Company (1960-1999)***. (Emphasis added.)

As discussed in the EKI Investigation Report, elevated vapor concentrations of TCE were detected in the soil beneath the buried slab; petroleum hydrocarbons were detected at the Site as well. TCE-impacted groundwater, deeper soil vapor, and sub-slab vapor were encountered primarily on the northern half of the Site. EKI concluded that, based upon historical uses of the Site, releases of TCE to the subsurface may have occurred in the form of a pure liquid solvent or as a spent liquid solvent after potential use as a degreaser. EKI also identified a potential release area outside the northeast corner of the existing

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[4] EKI collected historical documentation associated with the Site when preparing its Phase I report. In connection with that effort, EKI encountered the SES Phase II, but the figures and tables associated with the original report appeared to be missing. The Successor Agency has provided all portions of the SES Phase II to which it and EKI have access.

building, where the hardening and plating room of the historical Marchant facility was once located. Cadmium and TPH concentrations exceeding screening levels were also detected in the northern portion of the Site, near the northeast corner of the existing building.

- **Swagelok/Whitney, from approximately 1963 until 1999:** Swagelok/Whitney manufactured valves for gas and fluid systems at the Site. As described in the Final Remedial Investigation Report prepared by EKI and submitted to DTSC in June 2016 ("Final RI"), Swagelok/Whitney's manufacturing processes were conducted in the existing warehouse building at the Site, and included areas for a grease room, hazardous waste, solvent recovery, empty drum storage, full drum storage, pallets, a chip processor, a chip spinner, sanders, a bandsaw, a scale, shipping, receiving, dumpsters, a battery charger, an air operator, an oven, a jet drill line, a tool room, an inspection department, and a lathe department. A true and correct copy of the Final RI is attached hereto as Attachment I.

  Swagelok/Whitney used and disposed of chlorinated solvents, and specifically TCE, during the course of its operations at the Site. The SES Phase II reported elevated levels of VOCs, including TCE; the metals arsenic, lead, chromium and nickel; and the hydrocarbon additive MTBE in groundwater at the Site. SES's findings suggested that contamination on the Site was responsible for TCE detections in groundwater. The SES Phase II also identified Swagelok/Whitney's prior operations on the Site, noting that the Swagelok/Whitney facility manufactured precision tools at the Site until May 1999 and utilized all contaminants of concern at the Site (with the exception of arsenic and lead).

  Swagelok/Whitney was also historically listed as Resource Conservation and Recovery Act ("RCRA") large quantity generator for disposal of RCRA hazardous waste, and used significant quantities of TCE prior to 1978. A RCRA Emergency Contingency Plan from April 1990 indicated that Swagelok/Whitney stored caustic soda, nitric acid, petroleum naphtha, and petroleum oil at the Site. A 1992 review of hazardous materials at the Swagelok/Whitney facility, summarized in the SES Phase II, reported 4,000 gallons of a combination of petroleum, naphtha, trichlorotrifluoroethane, methanol, and sodium nitrite and 50 pounds of sodium hydroxide at the site. The SES Phase II also reported that a 1997 Hazardous Materials Business Plan ("HMBP") listed large quantities of Ashland Solvent 140-66, Mobilemet Omicron Oil, Petroleum Oil, Mobilemet Omega Oil, waste spill control pads, and sodium nitrate in use at the Site.

  In addition, the former Swagelok/Whitney plant manager from 1978 to 1999, Terry Sandlin, stated that various hazardous materials were utilized at the Site. According to Mr. Sandlin, Swagelok/Whitney used cutting oils and lubricants in various metal cutting and finishing machines at the Site. Swagelok/Whitney also cleaned raw cut metal product using degreasers, including TCE and Freon. Sharp edges on products were removed by electrochemical means using two aboveground tanks, one of which

contained a salt electrolyte bath solution, and another which was used to precipitate metals. The residual liquid in the precipitation tank was filtered through a cloth filter, and the filter material, primarily chrome and nickel, was stored in 55-gallon drums for later off-site disposal. A summary of the interview with Mr. Sandlin appears in the SES Phase II.

Contamination encountered during the EKI investigation of the Site, as described in the EKI Investigation Report, also indicates that Swagelok/Whitney contributed to contamination at the Site. During subsurface investigations, a buried concrete slab was identified beneath the existing building slab and was encountered across the majority of the Site, beyond the extent of the slab of the existing warehouse building. EKI concluded that it is likely that the buried slab was the floor slab of prior buildings located at the Site during Marchant's time of occupation. EKI discovered a layer of fill soil between the buried slab and the existing building slab which was likely put in place by Swagelok/Whitney. That soil contained elevated vapor concentrations of TCE. Contamination present in the fill soil between the two slabs could not have been present during Marchant's period of ownership, and the contamination is consistent with the known use of TCE in Swagelok/Whitney's operations. It is therefore likely that Swagelok/Whitney caused at least this contamination between the two slabs. In addition, the redevelopment of the Site by Swagelok/Whitney, and Swagelok/Whitney's subsequent operations, may have exacerbated the already existing contamination at the Site.

Response to Request #5: Identify all federal, state and local authorities that regulated the Site Operator and/or that interacted with the Site Operator. Your response is to address all interactions and in particular all contacts from agencies/departments that dealt with health and safety issues and environmental concerns.

The Successor Agency incorporates the Prefatory Statement above, and all objections and reservation of rights set forth therein, into its Response to Request No. 5 as if set forth here in full. Subject to and without waiving any of the Prefatory Statement, the Successor Agency responds as follows:

Due to the Successor Agency's limited familiarity at this point with the details of the Swagelok/Whitney and Marchant operations (i.e., the present very early stage of the Pending Litigation), and the evolution of health, safety and environmental regulations that occurred during the decades those operations were conducted by first Marchant and then Swagelok/Whitney, the Successor Agency cannot provide a comprehensive response to this question. Much, perhaps most, of the information sought is outside the possession and/or control of the Successor Agency. Further, the Successor Agency notes that the request can be read as seeking information about interactions between the site operators and regulators that are not

rooted in operations at the Site. The Successor Agency has no way of knowing what any such non-Site interactions may have been.

For the purposes of responding to this request, the Successor Agency has construed "Site Operator" to refer to the Successor Agency and the Emeryville Redevelopment Agency for the years they have owned the Site.

As DTSC is aware, the Successor Agency has had extensive interactions with DTSC and has submitted, through its consultant, EKI, documentation to DTSC pertaining to, among other things, a risk assessment and remedial investigations.

The Alameda County Department of Environmental Health ("ACDEH") conducted inspections of the Site in April 2003 and July 2012 as described in the EKI Phase I. ACDEH requested that various record keeping and other minor violations (e.g., lack of timely submittal of HMBPs) be corrected. These are discussed in the EKI Phase I. ACDEH also oversaw removal of an underground storage tank ("UST") located in the Horton Street right-of-way adjacent to the Site from 2015 to 2017. The UST, which contained oily liquid, was discovered during groundwater investigation activities associated with the Site, and was removed in June 2015 in accordance with an ACDEH-approved closure plan. Approximately 26 cubic yards of soil were also excavated and properly disposed of as part of UST closure activities in accordance with the closure plan. Given that the boundaries of the APN associated with the Site changed to accommodate the Horton Street right-of-way, the Successor Agency believes the UST was associated with former Marchant or Swagelok/Whitney operations at the Site.

The Successor Agency has also interacted with the Bay Area Air Quality Management District ("BAAQMD") with respect to the Site. A permit application to operate a pilot multi-phase extraction system was submitted to BAAQMD in December of 2016, and was approved in November 2017.

The City of Emeryville Fire Department may also have contacted the Emeryville Redevelopment Agency in connection with hazardous materials business plans and other emergency response issues. The Successor Agency is not aware of other interactions with agencies and/or departments dealing with health and safety issues and environmental concerns at the Site.

Response to Request #6: Identify all leaks, spills, or releases into the environment of any hazardous substances, hazardous waste, pollutants, or contaminants that have occurred at or from the Site. In addition, identify: (a) When such releases occurred; (b) How the releases occurred (e.g. when the substances were being stored, delivered by a vendor, transported or transferred (to or from any tanks, drums, barrels, or recovery units), and treated); (c) The amount of each hazardous substances, pollutants, or contaminants so released; (d) Where such releases occurred; (e) Any and all activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release; (f) Any and all investigations of the circumstances, nature, extent or location of each release or threatened release including, the results of any soil, water (ground and surface), or air testing undertaken; and (g) All persons with information relating to these releases.

The Successor Agency incorporates the Prefatory Statement above, and all objections and reservation of rights set forth therein, into its Response to Request No. 6 as if set forth here in full. Subject to and without waiving any of the Prefatory Statement, the Successor Agency responds as follows:

The Successor Agency objects to this request on the grounds that it seeks information outside of the possession and/or control of the Successor Agency. The Successor Agency is a party to the Pending Litigation which has not yet reached the discovery phase, so the Successor Agency does not yet have access to third-party information responsive to the subparts of this Request.

The information the Successor Agency currently possesses with respect to historical releases at the Site is reflected in documentation either previously provided to DTSC in connection with the remedial investigation and other remedial activities at the Site, or addressed elsewhere in these responses. In general, and as discussed above, leaks, spills, and/or other releases of hazardous materials apparently occurred during Marchant's and Swagelok/Whitney's periods of operation. In particular, the information in the Purchase Agreement and First Amendment to Purchase Agreement, Community Profile, EKI Phase I, SES Phase II Report, EKI Investigation Report, and Final RI demonstrate the presence of hazardous materials at the Site during those historic operations and the likelihood of release of hazardous materials as a result of those operations.

Based upon EKI's investigations of the Site, Successor Agency believes that significant releases of hazardous materials, including CVOCs, petroleum hydrocarbons, and metals, occurred at the Site prior to 1999, in areas of the Site that historically housed Marchant's and Swagelok/Whitney's operations. The individuals with knowledge of EKI's investigations of the Site are:

Earl James, ejames@ekiconsult.com
1870 Ogden Drive
Burlingame, CA 94010
(650) 292-9100

Joy Su, jsu@ekiconsult.com
1870 Ogden Drive
Burlingame, CA 94010
(650) 292-9100

Terry Sandlin, a former employee of Swagelok/Whitney, may have information relevant to historical releases at the Site. Mr. Sandlin can be contacted by phone at (510) 410-6439 and by e-mail at sandlintl@gmail.com. He may also be contacted by mail through attorneys for Swagelok at:

Terry Sandlin
c/o Sonja A. Inglin, Esq.
Baker & Hostetler LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025

Persons presently unknown to the Successor Agency but affiliated with Swagelok/Whitney and/or the Catherine Lennon Lozick Trust, Marchant, and/or Hanson Building Materials Limited may have information relevant to investigation of the Site, or otherwise relevant to the requests in this Request for Information. If any such individuals are identified to the Successor Agency in initial disclosures or discovery responses from Swagelok/Whitney or Hanson Building Materials Limited, the Successor Agency will forward their names and contact information to the Department.

Response to Request #7: Was there ever a spill, leak, release or discharge of hazardous substances, hazardous waste, pollutants, or contaminants into any subsurface disposal system or floor drain inside or under the former Marchant/Whitney building? If the answer to the preceding question is anything but an unqualified "no," identify: (a) When the spill, leak, release or discharge of hazardous substances, hazardous waste, pollutants or contaminants occurred; (b) Where the disposal system or floor drains were located; (c) When the disposal system or floor drains were installed; (d) Whether the disposal system or floor drains were connected to pipes; (e) Where such pipes were located and emptied; (f) When such pipes were installed; (g) How and when such pipes were replaced, or repaired; and (h) Whether such pipes ever leaked or in any way released hazardous substances, pollutants, or contaminants into the environment.

The Successor Agency incorporates the Prefatory Statement above, and all objections and reservation of rights set forth therein, into its Response to Request No. 7 as if set forth here in full. Subject to and without waiving any of the Prefatory Statement, the Successor Agency responds as follows:

The Successor Agency cannot respond definitively to this request at this time. While the environmental testing data could be explained, at least in substantial part, by spills, leaks, releases, or discharges to one or more subsurface disposal systems, and while historic records and field observations indicate that there were drains and subsurface conveyances that could have allowed spills or leaks to enter the subsurface, the Successor Agency does presently have operating era documentation explicitly and definitively addressing the subparts to this Request. As discussed above, the Pending Litigation regarding the Site has not yet reached the discovery phase; nor have expert witnesses developed their opinions or provided deposition testimony.

The EKI Phase I confirms that three floor drains were observed during a 2014 walk-through of the existing building on site. One drain was located in the central portion of the west wall of the existing building. Another was located next to a water fountain in the central area of the existing building. The third drain was located in the southern portion of the east wall of the building. There was a basin drain adjacent to the third floor drain; the pump in that drain was not in use at the time of observation. These floor drains appear to be remnant structures related to historical Swagelok/Whitney operations at the Site, as described in the Final RI.

EKI also observed piping in the former restroom area that would have connected to the sanitary sewer. Sanitary sewer lines run through the northeastern portion of the existing building, as documented by EKI. It is possible that the floor drains also connect to these sanitary sewer lines; however, as-built drawings of the existing building have not been available to the Successor Agency to confirm this. While Marchant also had historical operations in the vicinity of the existing building, the structures utilized by Marchant were demolished prior to construction of the current building and the Swagelok/Whitney operations. The Successor Agency is not currently aware of any documentation confirming the piping and drainage systems that were contained within the historical Marchant buildings. The Successor Agency is also not aware of documentation establishing the extent, if any, to which the site preparation activities undertaken by Swagelok/Whitney took advantage of, modified, abandoned, or otherwise altered pre-existing drainage systems and subsurface pipes. Such operations could have caused leaks and spills with the scope of this Response.

Based on the TCE groundwater data gathered by EKI, as well as separate phase liquid ("SPL") and membrane interface probe ("MIP") data and field observations, the northeast corner of the existing building at the Site—which, as discussed above, was historically the location of the hardening and plating room, receiving area, and storeroom for the Marchant operations—was an area at the Site where shallow releases of hazardous materials occurred historically. The sampling conducted by EKI indicates that hazardous materials were likely released into the soil and/or groundwater as a liquid as a result of spills and/or leaks from production or waste storage drums and tanks, or through drains and leaking sanitary sewer pipes.

Conclusion

As discussed in the Prefatory Statement, the responses herein represent the Successor Agency's

understanding of the information in its possession at this time. The Successor Agency reserves the right to supplement these responses at a later date should additional information become available.

Subject to the foregoing, the Successor Agency represents, under penalty of perjury, that the responses contained herein are true and correct to the best of the Successor Agency's knowledge at the time of this response.

Please do not hesitate to contact our legal counsel, Robert Doty of Cox, Castle & Nicholson LLP, if you have any questions regarding this response. We look forward to working with you on this matter.

Very truly yours,

Michael A. Guina
General Counsel

cc: Robert Doty, rdoty@coxcastle.com
Stephanie Lai, Esq., Stephanie.Lai@dtsc.ca.gov
Michael G. Biddle, MBiddle@bwslaw.com

APPENDIX Q

Biddle, Michael G.

From: Earl James <ejames@ekiconsult.com>
Sent: Thursday, October 25, 2018 10:01 AM
To: Christine Daniel; Michael Guina
Cc: Biddle, Michael G.; Doty, Robert P.; Joy Su; Ryan Ford
Subject: Fw: Status of Marchant/Whitney Site in Emeryville, California

Christine -

I spoke with Tom Price yesterday. He indicated he did not want to have a meeting as he had not made significant progress in reading the file for the site. I explained where the City of Emeryville is at and we agreed to the email exchange that you have been cc'd on. Likely this email will be most definitive indication of the forthcoming Order that will be available to support the ROPS process.

EKI will submit our proposal for work we discussed for the 2019/2020 time period next week.

Please call if you have any questions.

Earl

Earl James
415-385-2326
Vice President
EKI Environment & Water, Inc.

From: Price, Thomas@DTSC <Thomas.Price@dtsc.ca.gov>
Sent: Thursday, October 25, 2018 9:32 AM
To: Earl James
Cc: Christine Daniel
Subject: RE: Status of Marchant/Whitney Site in Emeryville, California

Earl,

Thank you for providing that background information, as the new Project Manager of the site that helps me understand the history and context better.

Janet Naito, Branch Chief of the Site Mitigation and Restoration Program in the Berkeley office of the Department of Toxic Substances Control (DTSC) has assigned me to work on the on an an Order (e.g. Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order) for the Marchant/Whitney Site in accordance with authority set forth in the California Health and Safety Code. As we discussed on the phone, I intend to submit a draft document to DTSC's Office of Legal Counsel (OLC) as soon as my schedule allows, by the end of November (or hopefully sooner). I will keep you apprised of my progress.

I hope this helps for your planning. Please feel free to contact me if you have any questions.

Thank you,

Tom Price – Project Mgr.
Site Mitigation and Restoration Program
Dept. of Toxic Substances Control/Cal EPA
700 Heinz Ave.
Berkeley, CA 94702
(510) 540-3811

From: Earl James [mailto:ejames@ekiconsult.com]
Sent: Thursday, October 25, 2018 9:08 AM
To: Price, Thomas@DTSC <Thomas.Price@dtsc.ca.gov>
Cc: Christine Daniel <cdaniel@emeryville.org>
Subject: Status of Marchant/Whitney Site in Emeryville, California

Tom –

Thank you for talking with me today about the status of the Marchant/Whitney Site located at 5976 Horton Street, Emeryville, California. As you know the Successor Agency to the Emeryville Redevelopment Agency has been actively working on the remedial investigation of the Marchant/Whitney Site since 2011 and had submitted a draft feasibility study/remedial action plan (FS/RAP) to DTSC in early 2017 that was nearing release for public comment in April 2017. However, on April 14, 2017, the Successor Agency was advised by the State Department of Finance (DOF), after 5 years since the onset of the redevelopment dissolution process, that it was disallowing funding for Marchant/Whitney Site cleanup because it decided that the Successor Agency was not legally obligated to do so.

As you might imagine the Successor Agency was dumbfounded by DOF's decision; not only does the Successor Agency have an obligation under state and federal law for the condition of the Site as the owner, but it also has an obligation under the terms of a court approved settlement agreement relating to South Bayfront Site B to "study, investigate, evaluate, and remediate" hazardous substances which are "migrating to" Site B. As the remedial investigations of Site B and the Marchant/Whitney Site clearly show, hazardous materials are migrating to Site B from the Marchant/Whitney Site. Accordingly, the Successor Agency believes the obligation imposed upon it under state and federal law as the owner of the Marchant/Whitney Site, as well as the terms of the court approved settlement agreement for South Bayfront Site B, constitute enforceable obligations under the redevelopment dissolution law that justify funding the cleanup of the Marchant/Whitney Site.

Nevertheless, without the benefit of funding, the Successor Agency staff met with DTSC representatives in June 2017 and thereafter terminated the voluntary cleanup agreement that the parties had entered into back in 2012. However, at that meeting DTSC representatives continued to express their warranted concern regarding the condition of the Marchant/Whitney Site and its ongoing impacts to neighboring properties, including Site B. Thus, as was communicated to the Successor Agency at that meeting in June 2017, it is my understanding that you are currently working on an Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order ("Order") for the Marchant/Whitney Site in accordance

with authority set forth in the California Health and Safety Code. This Order will require the Successor Agency to conduct and implement measures necessary to remediate chemicals of concern in soil and groundwater at the Marchant/Whitney Site to levels that will protect human health and the environment as determined by DTSC. It is our understanding that the Order will have requirements for various milestones to be achieved within a reasonable timeframe.

You have indicated that it is your goal to get the Order drafted by the end of November 2018 and it will then need to be reviewed by the DTSC legal staff. The timing for review of the Order by DTSC's legal department is uncertain at this point and thus the issuance of the Order to the Successor Agency is likewise undetermined.

However, given the ongoing threat of harm the Marchant/Whitney Site poses to neighboring properties and the environment, please be advised that time is of the essence. Issuance of an Order as outlined above clearly would constitute an enforceable obligation under the redevelopment dissolution law and thus enable the Sucessor Agency to enter into contracts with third parties to implement the terms of the Order. Please be advised that the next recognized obligation payment schedule (ROPS) that will provide funding for the period of July 1, 2019 through June 30, 2020 (ROPS 19-20), must be approved by the Alameda County Oversight Board and submitted to the State Department of Finance on or before February 1, 2019. I am advised that the Alameda County Oversight Board will hold their meeting to consider the Emeryville Successor Agency's ROPS 19-20 on January 23, 2019. Thus, issuance of the Order before January 23, 2019 is critically important, otherwise the Successor Agency will likely be unable to secure funding necessary to undertake remedial activities at the Marchant/Whitney Site until the start of the next ROPS funding cycle, ROPS 20-21 starting July 1, 2020.

Thank your for keeping the Emeryville Successor Agency informed regarding your progress on the Marchant/Whitney Site project. Please respond to this email with any additional information and to confirm our understanding.

Earl James

Earl James
415-385-2326
Vice President
EKI Environment & Water, Inc.

APPENDIX R

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13 December 2018

Michael A. Guina, Esq.
City Attorney/Successor Agency Counsel
City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency
Office of the City Attorney
1333 Park Avenue
Emeryville, California 94608

Subject: Proposal for Environmental Consulting Services Associated with the Former Marchant/Whitney Site
5679 Horton Street, Emeryville, California
(B8-206)

Dear Mr. Guina:

EKI Environment & Water (formerly known as Erler & Kalinowski, Inc.) ("EKI" or "Consultant") is pleased to submit this proposal to the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency"; "Client") for environmental consulting services associated with the Former Marchant/Whitney Site, located at 5679 Horton Street in Emeryville, California, (the "Subject Property" or "Site"). The Site is currently owned by the Successor Agency. The Site is approximately 1.75 acres and contains one large warehouse building plus an exterior paved parking lot. The Public Works Department vacated the building in 2012 to allow for environmental investigation/remediation activities to be conducted.

BACKGROUND

Oversight of previous environmental investigations at the Site conducted between 2011 and 2016 was provided by the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") in accordance with a Voluntary Cleanup Agreement ("VCA") entered between DTSC and the Successor Agency on 14 May 2012. DTSC approved the Remedial Investigation ("RI") Report on 8 July 2016, and DTSC determined that the RI Report was sufficient to proceed with a feasibility study ("FS") and remedial action plan ("RAP") for the Site. Alternative approaches to the remediation were developed and analyzed as part of the FS in consultation with Client and DTSC.

In accordance with State law, the Client provided the responsible parties an opportunity to propose and undertake necessary remediation activities. The responsible parties did not provide

a timely and adequate response to the notices provided to them to remedy the Site. Therefore, EKI submitted a Draft FS/RAP to DTSC for review on 21 October 2016, on behalf of the Client, to propose the necessary remediation required for the Site. The Draft FS/RAP is consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (US-EPA, 1993). The Draft FS/RAP recommended a remedy that included:

i. Above grade building demolition,
ii. Shallow site-wide soil excavation and limited deeper excavation,
iii. In-situ thermal treatment ("ISTT") in conjunction with multi-phase extraction ("MPE") for shallower groundwater in areas of the Site with elevated concentrations of volatile organic compounds ("VOCs"),
iv. Following completion of ISTT,
    a. In-situ polishing within the ISTT treatment area to further reduce concentrations of VOCs in groundwater, and
    b. Continued MPE and to control off-site migration of impacted groundwater from the 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.
v. Monitored natural attenuation ("MNA") for deeper groundwater, and
vi. Institutional controls.

Funding for Site investigations and remediation activities conducted under DTSC oversight was provided by the Successor Agency pursuant to its recognized obligation payments schedule ("ROPS") process administered by the Oversight Board and State Department of Finance ("DOF") after dissolution of redevelopment agencies effective on 1 February 2012. On 14 April 2017, following an extensive meet and confer process between the Successor Agency and DOF, the DOF advised the Successor Agency that the investigation, monitoring, and remediation of the Site were not "enforceable obligations" of the Successor Agency and that funding for these activities at the Site was disallowed (herein referred to as "DOF's determination").

In a letter to DTSC, dated 13 June 2017, the Successor Agency notified DTSC of DOF's determination and provided notice of termination of the VCA. The Successor Agency and DTSC also met on 13 June 2017 to discuss the Site status, and DTSC expressed concern regarding the ongoing impacts of the Site on neighboring properties. In an email dated 25 October 2018, DTSC confirmed that it is in the process of preparing an Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order ("Order") for the Site in accordance with DTSC's authority set forth in the California Health and Safety Code. This Order would require implementation of cleanup and mitigation measures, as necessary, at the Site to be protective of human health and the environment as determined by DTSC within a reasonable timeframe.

Prior to termination of the VCA, the Draft FS/RAP and Draft Initial Study/Mitigated Negative Declaration ("IS/MND") prepared in accordance with the California Environmental Quality Act ("CEQA") were reviewed by DTSC and were in the process of being finalized for public review. DTSC's Office of Environmental Justice and Tribal Affairs also performed Assembly Bill 52 Consultation outreach with potentially affected tribes in November 2016 and no response was received from these tribes. It is EKI's understanding that DTSC was in the process of preparing to file a Notice of Completion ("NOC") indicating its intent to adopt the IS/MND with the State Clearinghouse and County Clerk prior to releasing the Draft FS/RAP for the public comment period. It is EKI's understanding that the Successor Agency intends to proceed with implementation of the recommended remedy in the Draft FS/RAP subject to funding from the DOF and/or responsible parties after an Order is issued for the Site by DTSC. It is EKI's understanding that the Successor Agency requested this proposal to conduct preparatory activities for continuation of the process of finalizing a publicly reviewed and DTSC approved IS/MND, FS/RAP and implementing the approved remedy. It should be noted that the DTSC Project Manager and Supervisor have changed since DOF's determination and termination of the VCA, but nevertheless, this proposal assumes that substantial changes to documents previously reviewed and commented on by DTSC will not be needed.

SCOPE OF SERVICES

EKI's proposed scope of services is described below.

Task 1 – Finalize FS/RAP and IS/MND

To finalize the FS/RAP and IS/MND, the following scope of work would need to be completed:

1) Draft FS/RAP: Review and update the Draft FS/RAP, as needed based on current site conditions and estimated remediation costs, and submit to DTSC for review. It is EKI's understanding that the Successor Agency intends to proceed with implementation of the recommended remedy in the Draft FS/RAP as required by the Order subject to funding from the DOF and/or responsible parties after an Order is issued for the Site by DTSC.

2) Draft IS/MND: Review and update the Draft IS/MND, as needed based on current site conditions, and submit to DTSC's CEQA Unit for review. It is assumed that DTSC's CEQA Unit's comments will be minimal based on prior approval of the draft document. It is assumed that Assembly Bill 52 Consultation Notification will not need to be performed again.

3) Fact Sheet and Public Notice and Pubic Meeting: Review and update the Draft Fact Sheet and Public Notice. It is assumed that DTSC's public participation specialist will provide the mailing list and publication requirements for the public comment period. EKI will

distribute the mailing list and coordinate publication in required media outlets. The Successor Agency will coordinate publication of these documents on the City of Emeryville's website. A public meeting to review the FS/RAP and take comments will be conducted as part of this process. Comments received at the meeting will also be addressed in the final FS/RAP.

4) Final FS/RAP and IS/MND: Assist DTSC with preparation of response to public comments and finalize FS/RAP and IS/MND. It is assumed that public comments will be extensive, especially from potential responsible parties identified by the Successor Agency.

Task 2 – MPE Pilot Tests

The recommended remedy in the Draft FS/RAP included the use of MPE during and after in-situ thermal treatment ("ISTT") to control groundwater and soil vapor plume migration. MPE Pilot Tests will be conducted to better understand the hydrogeology of the area and to assist with designing the hydraulic and vapor control requirements during ISTT and long-term plume remediation. It is EKI's understanding that: (1) the MPE Pilot Tests require a DTSC approved FS/RAP to qualify for an exemption from obtaining a federal Treatment, Storage, and Disposal ("TSD") permit for the MPE System and (2) the MPE Pilot Test will be conducted prior to well abandonment activities described below in Task 4. The anticipated steps for completing the MPE Pilot Tests are as follows:

- Work Plan: EKI previously submitted a draft Work Plan for Multi-Phase Extraction Pilot Tests ("MPE Work Plan"), dated February 2017, for DTSC review and received comments back from DTSC on 29 March 2017. EKI was in the process of responding to DTSC comments on the MPE Work Plan when DOF's determination was received and the VCA terminated. EKI will review and update the draft MPE Work Plan based on current Site conditions, finish incorporating DTSC comments, and submit the revised draft MPE Work Plan for DTSC review. It is assumed that DTSC review comments of the revised draft MPE Work Plan will be minimal prior to finalizing this document.

- Permitting/Notification:
    - Bay Area Air Quality Management District ("BAAQMD") Permit: EKI previously submitted a permit application to the BAAQMD on behalf of the Successor Agency and received authority to construct the MPE system for the MPE pilot tests. For the purposes of this proposal, the term "MPE System" shall refer collectively to the multi-phase extraction and treatment components of the system. The permit application approval process took approximately 7 months. The BAAQMD authority to construct permit was issued in July 2017 and expires in July 2019. It is assumed that BAAQMD will require submittal of a new permit application and fee

as construction of the MPE system will not have started prior to the expiration date of the existing permit. BAAQMD will issue a Permit to Operate after MPE system startup documentation is submitted that demonstrates compliance with permit conditions (Subtask 5b).

- Treated Water Discharge Permit: Treated water will be discharged to the sanitary sewer in accordance with an East Bay Municipal Utility District ("EBMUD") permit. EKI will prepare and submit an EBMUD Special Discharge permit application on behalf of the Successor Agency. The EBMUD Special Discharge permit does not allow for sanitary sewer discharges during rain events. Therefore, it is assumed that the MPE pilot tests will be conducted during the dry season. It is also assumed that sufficient groundwater data are available to obtain an EBMUD permit and that additional sampling is not needed.

- Building Permit: Prior to receiving DOF's determination, EKI was in the process of completing a building permit application for the MPE system based on previous discussions with the City on building permit requirements. EKI will review and update the draft permit application package, as needed, and submit to the City for review. It is assumed that one round of City comments and EKI response to comments will be sufficient to receive a building permit.

- Onsite Hazardous Waste Treatment Notification form: This notification form will be submitted to the Certified Unified Program Agency ("CUPA") for Emeryville, the Alameda County Department of Environmental Health ("ACDEH"), including the basis for federal hazardous waste permit exemption. It is EKI's understanding that DTSC has the authority to exempt an owner/operator from obtaining a TSD permit if the treatment of hazardous waste is part of remedial actions conducted pursuant to a RAP. After DTSC approval of the RAP, it is expected that a TSD permit will not be required, but the remediation system still must comply with all rules, regulations, standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of a Resource Conservation and Recovery Act ("RCRA") hazardous waste treatment facility.

- MPE System Installation and Operation During MPE Pilot Tests: EKI previously subcontracted with a Contractor to provide design build services for the MPE system. Based on an evaluation of statement of qualifications ("SOQs") provided by 7 potential contractors, EKI in consultation with the Successor Agency sent requests for proposal ("RFPs") to 3 contractors for bids before selecting a preferred Contractor for such services. Prior to receiving DOF's determination, the MPE system design was substantially complete enough to purchase and build the main components and controls of the MPE

system, to obtain a BAAQMD authority to construct permit, and to prepare a building permit application. The purchased and built components of the MPE system are currently temporarily stored inside the building at the Site.

The MPE System will be installed and operated in accordance with applicable permits and a DTSC approved work plan for up to 3 months based on field observations. The following activities are anticipated in order to complete this task:

- Review and update design of MPE System for MPE Pilot Test operations;
- Installation of MPE system by Contractor with oversight by EKI and inspection by City;
- Startup of MPE system by Contractor with oversight by EKI;
- Conduct operation, monitoring, and sampling activities during MPE Pilot Tests;
- Coordinate waste characterization and disposal of spent treatment media on behalf of the Successor Agency. The Successor Agency will sign manifests for disposal of the hazardous wastes; and
- Perform data management and data quality control and review.

- Reporting: EKI will prepare and submit any reports required by applicable permits. EKI will also prepare a report summarizing the results of the MPE Pilot Tests, which is anticipated to be included as an appendix to the remedial design and implementation plan ("RDIP") for ISTT. The MPE Pilot Test report will include: (1) a description of the methods used for data collection; (2) field logs; (3) an evaluation of pilot test-specific data collected; (4) treatment system monitoring data; (5) estimate of mass of separate phase liquid ("SPL") removed; and (6) and an overall discussion of the conclusions of the pilot test.

Task 3 – Above Grade Building Demolition

The recommended remedy in the Draft FS/RAP included above grade building demolition as a preparatory activity for conducting shallow soil excavation and ISTT at the Site. EKI will prepare plans and specifications for above grade building demolition activities, subcontract with a contractor to perform the demolition activities, obtain necessary permits for the demolition activities, and coordinate the recycling or disposal of the building materials in accordance with applicable laws and regulations, including the City's Construction and Demolition Waste Ordinance. EKI will also coordinate with Pacific Gas & Electric ("PG&E") for termination of utility services to the building, which will likely be performed in conjunction with PG&E coordination efforts to conduct shallow soil excavation (Task 4) and ISTT (Task 5).

Client will sign manifests for the offsite disposition of wastes. Visual inspections and appropriate sampling and analysis of building materials were previously conducted by RGA Environmental

("RGA") between 2009 and 2017. To the extent that asbestos, lead based paint, or other hazardous wastes as part of the building materials were identified in the RGA reports or are identified during demolition activities, the Client will sign manifests for disposal of the hazardous wastes. It is assumed that historical sampling results of building materials is sufficient for acceptance of these hazardous wastes at permitted offsite disposal facilities and that additional sampling and analysis will not be required. It is assumed that above grade building demolition will occur after approval of the Final FS/RAP.

Task 4 – Well Abandonment

The recommended remedy in the Draft FS/RAP included ISTT with MPE for shallower groundwater in area of Site with elevated concentrations VOCs. Groundwater wells located within the ISTT area will be abandoned by overdrilling in accordance with Alameda County Public Works Agency ("ACPWA") requirements and permits because the stainless steel well casing would interfere with the effectiveness of ISTT. The majority of the wells to be abandoned are located inside the building on the Site and/or are needed for the MPE Pilot Tests. Therefore, well abandonment will be conducted after above grade building demolition for easy access to wells by a drilling rig and after completion of the MPE Pilot Tests. It is assumed that well abandonment work will occur after approval of the Final FS/RAP. Procedures for well abandonment will be submitted to DTSC for review and approval either as a stand-alone work plan or as an appendix to the RDIP for soil excavation.

Task 5 – Preparatory Activities for Shallow Soil Excavation

The recommended remedy in the Draft FS/RAP included shallow soil excavation (~5 ft. bgs) across the entire Site to address non-volatile chemicals of concern ("COCs") in shallow soil and limited deeper excavation (~10-15 ft. bgs) of VOC-impacted soil where SPL was encountered at shallow depths. Based on the likely concentrations of VOCs to be encountered in subsurface media, a portion of the soil excavation will be conducted in a ventilated tent structure with air treatment. Preparatory activities for shallow soil excavation include:

- Subtask 5a - Remedial Design and Implementation Plan ("RDIP") for Soil Excavation: Prior to DOF's determination, EKI was in the process of preparing a draft RDIP for Soil Excavation. The RDIP describes procedures to implement soil excavation activities, to provide guidance for health and safety measures to be employed during soil excavation activities, and will incorporate required mitigation measures specified in the approved IS/MND. The RDIP will include the following plans: (1) EKI's Health and Safety Plan, (2) Traffic Control and Waste Transportation Plan, (3) Decontamination Plan, (4) Dust, Vapor, and Odor Control Plan, (5) Perimeter Air Monitoring Plan, (6) Storm Water Plan, (7) Sampling and Analysis Plan, and (8) Quality Assurance Project Plan. The draft RDIP will be completed and submitted to the Successor Agency for review. Successor Agency

review comments will be incorporated into the draft RDIP, which will then be submitted to DTSC for review. It is assumed that multiple rounds of comments and response to comments will be needed prior to finalizing the RDIP for DTSC approval. It is EKI's understanding that the RDIP will not require a public comment period.

- Subtask 5b – Permitting, Coordination, and Evaluations: Permits and evaluations that are necessary to be obtained or conducted prior to selection of a remedial Contractor are described below.
    - BAAQMD Permit: Prior to DOF's determination, EKI was in the process of preparing a BAAQMD permit application for the proposed extraction and treatment system of ventilated air from the tent structure during shallow soil excavation. EKI will review and update the draft permit application package and submit the application and fee to BAAQMD on behalf of the Successor Agency. EKI will respond to BAAQMD comments on the permit application. It is assumed that responses to multiple rounds of BAAQMD comments may be required based on previous experience. Once approved, BAAQMD will issue an authority to construct permit. Based on EKI's previous experience, application approval may take approximately 6 to 7 months but will likely be longer given the nature of the work. BAAQMD will issue a Permit to Operate after startup documentation is submitted that demonstrates compliance with permit conditions.

    - Building and Fire Department Permit: It is EKI's understanding that the tent structure will require a building permit from the City and a fire department permit from the Alameda County Fire Department ("ACFD"). The driveway for the Site is the only way to access buildings, located immediately north of Site, from Horton Street. ACFD will also review the proximity of these buildings to the anticipated footprint of the tent structure and the need to maintain a fire lane. EKI will submit a building and fire department permit application. It is assumed that one meeting with City building department representatives will be conducted and one round of City comments and EKI response to comments will be sufficient to receive a building permit. This proposal assumes that the building and fire department will allow the use of a tent structure to conduct soil excavation on the portion of the Site with the highest concentrations of VOCs detected on the Site and where SPL was encountered in shallow soil on the Site.

    - Planning Department Permit: Based on EKI's previous discussions with a City planning department representative, it is EKI's understanding that a permit will likely be required if Site trees located adjacent to the sidewalk along Horton Street need to be removed for purposes of accessing the Site during soil excavation activities. The schedule for remediation and construction on the adjacent Horton

Landing Park to the south of the Site is unknown and may not be able to be used to facilitate access to the Site during soil excavation activities. EKI will submit a planning department permit application. It is assumed that one meeting with City planning department representatives will be conducted and one round of City comments and EKI response to comments will be sufficient to receive a permit.

- PG&E Coordination: Prior to soil excavation, EKI will coordinate with PG&E to terminate utility service at the Site, remove any PG&E utility infrastructure remaining on the Site, and install interim service to provide power during soil excavation activities. Based on preliminary discussions with PG&E, it is EKI's understanding that PG&E would remove an underground transformer located on the southwest portion of the Site and would remove onsite gas lines from access points located within Horton Street. This subtask will be performed in conjunction with PG&E coordination efforts to conduct above grade building demolition (Task 3) and ISTT (Task 6). The budget for combined PG&E coordination efforts are included in Task 6.

- Geotechnical Evaluation: Complete a geotechnical evaluation to evaluate required structural support criteria to excavate alongside the Union Pacific Railroad tracks to the west of the Site, neighboring buildings to the north, and Horton Street to the east in accordance with mitigation measures to be specified in the IS/MND.

- Subtask 5c – Pre-Excavation Evaluations: Prior to soil excavation, pre-excavation evaluations will be conducted to facilitate full-scale soil excavation activities. These evaluations are described below. It is EKI's understanding that these evaluations will be performed after a final RAP is approved by DTSC, based on previous discussions with DTSC.
  - Pre-Excavation Waste Characterization and Potential Vapor Emission Evaluation: Soil and vapor sampling will be conducted prior to soil excavation for: (1) waste characterization for pre-approval of waste disposal classification which will allow for direct soil loading and off-haul and (2) evaluation of potential vapor emissions to assist in the design of vapor mitigation measures during soil excavation. EKI previously submitted a draft Work Plan for Pre-Excavation Waste Characterization and Potential Vapor Emission Evaluation, ("Pre-Excavation Work Plan"), dated February 2017, for DTSC review and received review comments back from DTSC on 7 March 2017. EKI was in the process of responding to DTSC comments on the Pre-Excavation Work Plan when DOF's determination was received. EKI will review and update the draft Pre-Excavation Work Plan based on current Site conditions, finish incorporating DTSC comments, and submit the revised draft Pre-Excavation Work Plan for DTSC review. It is anticipated that an additional round of DTSC

comments and response to comments will be needed prior to finalizing this work plan. EKI will conduct waste characterization sampling and analysis and vapor emissions evaluations in accordance with the final work plan approved by DTSC.

- Pre-Excavation Exploratory Trenches: Exploratory trenches will be excavated to obtain field data to test vapor emission mitigation measures for VOC emissions during full-scale excavation activities. EKI previously submitted a draft Work Plan for Pre-Excavation Exploratory Trenches, ("Trench Work Plan"), dated February 2017, for DTSC review and received review comments back from DTSC on 7 March 2017. EKI was in the process of responding to DTSC comments on the Trench Work Plan when DOF's determination was received. EKI will review and update the draft Trench Work Plan based on current Site conditions, finish incorporating DTSC comments, and submit the revised draft Trench Work Plan for DTSC review. It is anticipated that an additional round of DTSC comments and response to comments will be needed prior to finalizing this work plan. EKI will conduct exploratory trenching in accordance with the final work plan approved by DTSC.

- Subtask 5d – Remedial Technical Plans and Specifications and Bid Assistance: This subtask includes:
  (1) Preparation of draft remedial technical plans and specifications for soil excavation;
  (2) Incorporating Successor Agency comments and finalizing plans and specifications for bid;
  (3) Preparation of a bid sheet, description of bid items, and engineer's estimate; and
  (4) Assisting the Successor Agency with pre-qualification of potential remedial Contractors, the pre-bid walk, and evaluation of bids.

  It is EKI's understanding that the remedial technical plans and specifications will be appended to the contract specifications provided by the Successor Agency. Contract documents will incorporate mitigation measures described in the final RDIP and IS/MND approved by DTSC.

  Prior to DOF's determination, it was anticipated that the adjacent City-owned parcel located to the south of the Site, a portion of the future Horton Landing Park, would be used to facilitate access during implementation of the proposed remedy due to the Site's unique configuration and shared driveway as the only means of access for neighbors located immediately to the north of the Site. Previous preliminary planning and public outreach to neighbors to the north incorporated this use of Horton Landing Park. It is EKI's understanding that the remediation of Horton Landing Park will likely be conducted in 2019, and the portion of Horton Landing Park to the south of the Site will likely not be

available for use during Site remediation, which will increase the challenges of Site access and public outreach.

In order to identify the low bidder and secure funding during the ROPS 20-21 cycle (i.e. July 1, 2020 – June 30, 2021) to implement shallow soil excavation described above commencing July 1, 2020, the Successor Agency will need to receive bids no later than December 20, 2019. Thereafter the Successor Agency will need to award a contract to the low bidder concurrently with its approval of ROPS 20-21 in January 2020, conditioned on approval of ROPS 20-21 by the Alameda County Oversight Board and DOF.

Task 6 – Planning for In-Situ Thermal Treatment ("ISTT")

The recommended remedy in the Draft FS/RAP included ISTT with MPE. Long-term planning activities for ISTT that are covered in this include:

- PG&E Coordination: It is EKI's understanding ISTT will require a temporary 12 kilovolt ("kV") service at 5 megawatts ("MW"). Prior to soil excavation, EKI will coordinate with PG&E to terminate utility service at the Site and remove any PG&E utility infrastructure remaining on the Site. Based on previous conversation with PG&E, it is EKI's understanding that ISTT power requirements could be met by installation of a dedicated high power overhead line on the east of the Site, which would be abandoned after ISTT is completed. PG&E will require a single-line diagram, a three-line diagram, loading descriptions if motors exceed 50 horsepower, and other documents deemed necessary by PG&E to conduct an engineering evaluation to supply the necessary power. It is EKI's understanding that this 12 kV temporary service would only be utilized for ISTT. It is EKI's understanding that the MPE system, operating in conjunction with ISTT and after completion of ISTT, would be powered by a new 480 V service that would also be the same service to power the future corporation yard redevelopment at the Site. It is EKI's understanding that a 480 V service would be sufficient based on the estimated loads of the MPE system and the future corporation yard building.

- Architectural Coordination: As described above, it is anticipated that the MPE system would utilize the same electrical service as the future corporation yard. Prior to investigation of the extent of contamination at the Site, the City had previously developed plans to remodel the existing corporation yard building. However, these plans are no longer feasible given the magnitude and extent of contamination and the proposed remedy in the Draft FS/RAP. Prior to DOF's determination, the City requested proposals from 3 architectural design firms for developing conceptual designs of the future corporation yard layout given the public works needs of the City and the anticipated layout of remedial work. An architectural firm was selected by the City but subsequent

contracting and design efforts did not commence due to DOF's determination. It is EKI's understanding that an architectural firm will be engaged by the City to complete the scope of work described above such that the permanent location of the future 480 V service for the Site can be located and incorporated into the design of remedial work at the Site.

- RDIP for ISTT: A draft RDIP for ISTT will be prepared and will describe procedures to implement ISTT with MPE activities, to provide guidance for health and safety measures to be employed during ISTT with MPE, and will incorporate required mitigation measures specified in the approved IS/MND. The RDIP will describe the layout, installation, and operation of the ISTT and MPE Systems such as but not limited to process flow diagrams for the heating, extraction and design specifications for ISTT and MPE wells, well heads, soil vapor monitoring points, groundwater monitoring wells, conveyance piping, secondary containment, alarm systems, etc. It is anticipated that the RDIP will include the following plans: (1) EKI's Health and Safety Plan, (2) Well Installation Work Plan, (3) Startup and Operations & Maintenance Plan, (4) Sampling and Analysis Plan, and (5) Quality Assurance Project Plan. The draft RDIP will be completed and submitted to the Successor Agency for review. Successor Agency review comments will be incorporated into the draft RDIP, which will then be submitted to DTSC for review. It is assumed that multiple rounds of comments and response to comments will be needed prior to finalizing the RDIP for DTSC approval. It is EKI's understanding that the RDIP will not require a public comment period.

  Prior to DOF's determination, EKI in consultation with the Successor Agency requested proposals from the two primary ISTT contractors, as these services are a specialty niche. One ISTT contractor was selected in consultation with the Successor Agency, and EKI subcontracted with the selected ISTT contractor to begin preliminary design services to primarily assist with PG&E coordination. It is EKI's understanding that it may take PG&E up to one year to provide the required power service. EKI will subcontract and coordinate with the ISTT contractor for design services to provide the necessary information for inclusion in the RDIP. Detailed design services for preparation of plans and specifications for contract documents are not included in this proposal.

- BAAQMD Permit: With assistance from the ISTT contractor, EKI will prepare a draft permit application package for ISTT with MPE on behalf of the Successor Agency. EKI will respond to BAAQMD comments on the permit application. It is assumed that responses to multiple rounds of BAAQMD comments may be required based on previous experience. Once approved, BAAQMD will issue an authority to construct permit. Based on EKI's previous experience, application approval may take approximately 6 to 7 months but will likely be longer given the nature of the ISTT and MPE Systems and the magnitude of VOC

contaminant mass to be extracted and treated. BAAQMD will issue a Permit to Operate after startup documentation is submitted that demonstrates compliance with permit conditions.

Task 7 – Public Outreach Assistance

Prior to DOF's determination, EKI assisted the Successor Agency with public outreach efforts with the owners and tenants of adjacent properties to the north of the Site ("Corporation Yard neighbors"), which would be most directly impacted by implementation of remedial actions at the Site. Shallow soil excavation on the northern end of the Site to impact access, parking, and utilities for Corporation Yard neighbors. The Successor Agency held a meeting with the Corporation Yard Neighbors on 24 March 2017, wherein EKI made a presentation describing the proposed remedy and the potential staging of implementation of remedial components at the request of the Successor Agency. It is assumed that the following public outreach assistance will be required by the Successor Agency for the scope of work included in this proposal:

(1) prepare for and attend another meeting with the Corporation Yard Neighbors;
(2) draft notices when identified milestones in the Corporation Yard Neighbors Communication Plan are met; and
(3) prepare and distribute work notices for conducting MPE Pilot Tests, pre-excavation sampling, and evaluations in accordance with DTSC requirements.

Task 8 – General Environmental Project Management Services

This task includes project management services and ongoing technical and legal support services.

- Monthly Progress Reports and Budget Updates: EKI will prepare monthly progress reports for the Client that will accompany EKI invoices. The progress reports will summarize tasks completed in the previous month and planned for the coming month. This task will also include preparation of specific workplans or amended scopes of work prepared for review and approval by Client for major phases of remediation-related services. Certain specialized work will be completed by EKI's subcontractors or subconsultants.

- Ongoing Technical Support and Consultation to Legal Counsel: EKI will provide continued technical support and environmental engineering consultation services regarding coordination with regulatory agencies and litigation over environmental issues related to the Site, when requested by the Client and its legal counsel. EKI representatives will attend meetings and participate in conference calls with Client, its staff, other consultants, regulatory agencies, and legal counsel, when requested.

FUTURE TASKS

Based on EKI's current understanding, an overview of future tasks to complete implementation of the proposed remedy in the Draft FS/RAP in subsequent ROPs cycles are described below.

- Demobilization and temporary storage of MPE system prior to shallow soil excavation;
- Environmental Management of Implementation of shallow soil excavation by 3rd Party Contractor:
    - Selected Contractor to submit plan/plan addenda for DTSC review and approval in accordance with the DTSC-approved RDIP for shallow soil excavation;
    - Selected Contractor to implement shallow soil excavation in accordance with DTSC-approved RDIP and plan/plan addenda;
    - Environmental sampling and Contractor oversight to confirm implementation of shallow soil excavation in accordance with DTSC-approved RDIP and plan/plan addenda;
    - Overexcavation, if needed, based on confirmation soil sampling results;
    - Backfilling excavation with DTSC-approved import fill;
    - Approximately 6 months to complete;
    - Ongoing public outreach during implementation of shallow soil excavation; and
    - Preparation of a completion report summarizing soil excavation, off-site disposal, and backfilling activities, field observations, and field monitoring and sampling results for DTSC review and approval.

- Environmental Management of Implementation of ISTT with MPE by 3rd Party Sub-Consultant to EKI:
    - Prepare detailed design and plans and specifications for contract documents;
    - Installation of temporary power supply for ISTT and permanent power supply for future public works facility that will also supply power for the MPE system;
    - Mobilization of MPE system back to Site;
    - Installation of ISTT wells and monitoring points, above grade infrastructure, power control unit, and treatment system;
    - Installation of MPE vertical/horizontal wells and/or shallow trenches;
    - Conduct sampling to evaluate baseline conditions prior to ISTT;
    - Operation of ISTT system to remove VOCs by vaporizing VOCs from soil, groundwater, and separate phase liquid. Approximate operation time of 1 year;
    - Recovery of vapor and steam using MPE and treated aboveground. Maximize the efficiency of ISTT using MPE for hydraulic and vapor control to prevent migration of VOCs outside the ISTT treatment area. Modify and optimize MPE treatment system, as needed, based on the change in the waste stream compared with the MPE pilot test phase.

- Conduct interim confirmation sampling to determine if ISTT remediation goals met and ways to optimize the ISTT system for portions of treatment areas that don't meet ISTT remediation goals;
- Continued operation of ISTT/MPE system to meet ISTT remediation goals and conduct final confirmation sampling to verify;
- Demobilization of ISTT system and removal of temporary power supply for ISTT;
- Preparation of a completion report summarizing ISTT/MPE system installation, operation, and treatment activities, field observations, and field monitoring and sampling results for DTSC review and approval.

- Planning and Implementation of Post-Thermal In-Situ Polishing:
  - Development and design of a post-thermal in-situ polishing strategy for the ISTT treatment area based on the ISTT results. Assumed to likely include enhanced reductive dechlorination ("ERD") as microbial population would likely benefit from the warmer subsurface conditions after ISTT.
  - Preparation of a work plan for DTSC review and approval;
  - Installation of injection and monitoring points/wells if not feasible to reuse existing ISTT subsurface infrastructure depending on when future redevelopment of the Site occurs;
  - Conduct sampling to evaluate baseline conditions prior to in-situ polishing;
  - Implementation of in-situ polishing;
  - Conduct interim and subsequent monitoring to evaluate the effectiveness of in-situ polishing and to determine if additional in-situ polishing rounds are needed;
  - Preparation of a completion report summarizing in-situ polishing activities and baseline and initial post-in-situ polishing sampling results for DTSC review and approval; and
  - Conduct ongoing routine groundwater monitoring to evaluate effectiveness of in-situ polishing and to determine if additional in-situ polishing rounds are needed. Prepare ongoing groundwater monitoring reports for DTSC review and approval.

- Planning and Implementation of Post-Thermal MPE:
  - Development and design of a post-thermal MPE system configuration to control off-site migration and onsite impacts from upgradient sources and to address impacted groundwater remaining between the ISTT and in-situ polishing area and the property boundary;
  - Preparation of a work plan for DTSC review and approval;
  - Installation of MPE/monitoring wells if not feasible to reuse existing ISTT subsurface infrastructure, if applicable, depending on when future redevelopment of the Site occurs;

- Conduct ongoing MPE system operations, maintenance, and monitoring ("OM&M"), routine groundwater monitoring to evaluate effectiveness of the MPE system, and to determine if changes to the MPE and associated treatment system configuration are needed. Assumed long-term operation for 30+ years needed; and
- Prepare ongoing OM&M and groundwater monitoring reports for DTSC review and approval. These reports would be coordinated and combined with reporting requirements for in-situ polishing.

- Monitored Natural Attenuation for Deeper Groundwater:
  - Based on available data, monitored natural attenuation ("MNA") was selected as the proposed remedy for deeper groundwater in the Draft FS/RAP. Deeper groundwater refers to groundwater deeper than that treated by ISTT;
  - Preparation of a proposed monitoring plan that would be incorporated to the appropriate RDIP or work plan for DTSC review and approval, as described above;
  - Installation of monitoring wells, as needed, with locations in consideration of future redevelopment of the Site;
  - Conduct ongoing routine groundwater monitoring to evaluate effectiveness of MNA for deeper groundwater and to determine if in-situ polishing, as a contingency measure, is needed; and
  - Prepare ongoing groundwater monitoring reports for DTSC review and approval. These reports would be coordinated and combined with reporting requirements for post-thermal in-situ polishing and MPE.

- Long-term Indoor Air Vapor Mitigation:
  - Based on the proposed redevelopment of the Site, design a long-term indoor air vapor control system for any future inhabited structures to be protective from the structure's intended use. Likely to include a geomembrane, sub-slab piping network, and sub-slab soil vapor monitoring points;
  - Prepare plans and specifications for the long-term indoor air vapor control system;
  - Obtain BAAQMD permit, if treatment of air discharge is needed;
  - Installation of long-term indoor air vapor control system during Site redevelopment;
  - Conduct ongoing routine OM&M and reporting. Assumed long-term operation for 30+ years needed.

- Institutional Controls:
  - Prepare a soil management plan ("SMP") after implementation of shallow soil excavation and prior to redevelopment activities for DTSC review and approval that provides a framework to manage any residual contamination in a manner that is

consistent with planned future land uses and is protective of human health for expected future populations;
- Prepare and record a deed restriction that incorporates the SMP and land use controls for the protection of human health and the environment; and
- Routine inspections by DTSC to verify compliance with the deed restriction.

The detailed scope within each of these future tasks is subject to change based on: (1) results of evaluations and pilot tests performed as part of Tasks 2, 5, and 6 of this proposal, (2) public comments and input received and incorporated as part of Tasks 1 and 7 of this proposal, (3) DTSC comments received and incorporated as part of Tasks 1, 2, 5, and 6 of this proposal, (4) permit approval conditions from public and private entities as part of Tasks 2, 5, and 6 of this proposal, and (5) results of future tasks themselves that occur earlier in the sequence of tasks for remedy implementation.

PROJECT SCHEDULE

It is EKI's understanding that this proposal is for the July 2019 to June 2020 ROPS period and is subject to initial funding approval by the Alameda County Oversight Board in January 2019 and final funding approval by DOF in April/May 2019. The scope of work in this proposal includes preparatory activities, based on EKI's current understanding of the project, such that the shallow soil excavation component of the proposed remedy in the Draft FS/RAP would begin in July 2020, as requested by the Successor Agency, and subsequent components of the proposed remedy can be implemented shortly thereafter. We are prepared to begin work immediately on this project upon receipt of authorization to proceed from Client.

COMPENSATION FOR CONSULTING SERVICES

Compensation for consulting services by EKI will be on a time and expense reimbursement basis in accordance with our current Schedule of Charges, dated 13 December 2018. On the basis of the proposed Scope of Work, we propose a budget of $2,995,000 for completion of Tasks 1 through 8, which will not be exceeded without prior authorization from Client. A breakdown of the proposed project budget by key task is presented below.

Proposed Task		Proposed Budget
Task 1	Finalize FS/RAP and IS/MND	$60,000
Task 2	MPE Pilot Tests	$1,140,000
Task 3	Above Grade Building Demolition	$1,000,000
Task 4	Well Abandonment	$160,000
Task 5	Preparatory Activities for Shallow Soil Excavation	$400,000
Task 6	Planning for In-Situ Thermal Treatment	$180,000
Task 7	Public Outreach Assistance	$25,000
Task 8	General Environmental Project Management Services	$ 30,000
	Total Proposed Budget	**$2,995,000**

The budget may be reallocated among tasks as necessary to achieve the project goals. EKI will inform the Client in writing if work beyond the scope identified in this proposal will be required to achieve the objectives described herein or to comply with requirements of the designated regulatory agency. EKI will perform such additional services upon written authorization from the Client.

AUTHORIZATION

We assume that the Client will provide a written Agreement providing specific work authorization for this project. We assume that the terms of this Agreement will be consistent with the previous agreements between EKI and the Client, with modifications appropriate to this specific scope of work.

We are pleased to have the opportunity to work with you on this project. Please call if you have any questions or wish to discuss this proposal in greater detail.

Very truly yours,

EKI ENVIRONMENT & WATER, INC.

Earl James, P.G.
Vice President

Client/Address:

City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency
1333 Park Avenue
Emeryville, California 94608

Proposal/Agreement Date: 13 December 2018 **EKI Proposal # B8-206**

SCHEDULE OF CHARGES FOR EKI ENVIRONMENT & WATER, INC. **13 December 2018**

Personnel Classification	Hourly Rate	Disc. Hourly Rate
Officer and Chief Engineer-Scientist	286	271
Principal Engineer-Scientist	275	261
Supervising I, Engineer-Scientist	265	252
Supervising II, Engineer-Scientist	255	242
Senior I, Engineer-Scientist	243	231
Senior II, Engineer-Scientist	230	219
Associate I, Engineer-Scientist	219	208
Associate II, Engineer-Scientist	205	195
Engineer-Scientist, Grade 1	191	182
Engineer-Scientist, Grade 2	180	171
Engineer-Scientist, Grade 3	165	157
Engineer-Scientist, Grade 4	146	139
Engineer-Scientist, Grade 5	129	123
Engineer-Scientist, Grade 6	113	107
Technician	104	99
Senior GIS Analyst	133	126
CADD Operator / GIS Analyst	118	112
Senior Administrative Assistant	130	124
Administrative Assistant	103	99
Secretary	85	81

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work will be at cost plus ten percent (10%) for items such as:

a. Maps, photographs, reproductions, printing, equipment rental, and special supplies related to the work.
b. Consultants, soils engineers, surveyors, drillers, laboratories, and contractors.
c. Rented vehicles, local public transportation and taxis, travel and subsistence.
d. Special fees, insurance, permits, and licenses applicable to the work.
e. Outside computer processing, computation, and proprietary programs purchased for the work.

A Communication charge for e-mail access, web conferencing, cellphone calls, messaging and data access, file sharing, local and long distance telephone calls and conferences, facsimile transmittals, standard delivery U.S. postage, and incidental in-house copying will be charged at a rate of 4% of labor charges. Large volume copying of project documents, e.g., bound reports for distribution or project-specific reference files, will be charged as a project expense as described above.

Reimbursement for company-owned automobiles, except trucks and four-wheel drive vehicles, used in connection with the work will be at the rate of sixty cents ($0.60) per mile. The rate for company-owned trucks and four-wheel drive vehicles will be seventy-five cents ($0.75) per mile. There will be an additional charge of thirty dollars ($30.00) per day for vehicles used for field work. Reimbursement for use of personal vehicles will be at the federally allowed rate plus fifteen percent (15%).

CADD Computer time will be charged at twenty dollars ($20.00) per hour. In-house material and equipment charges will be in accordance with the current rate schedule or special quotation. Excise taxes, if any, will be added as a direct expense.

Rate for professional staff for legal proceedings or as expert witnesses will be at a rate of one and one-half times the Hourly Rates specified above.

The foregoing Schedule of Charges is incorporated into the Agreement for the Services of EKI Environment & Water, Inc. and may be updated annually.

APPENDIX S

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Attorneys for plaintiffs
The Successor Agency to the former Emeryville Redevelopment Agency and The City of Emeryville

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE SUCCESSOR AGENCY TO THE FORMER EMERYVILLE REDEVELOPMENT AGENCY AND THE CITY OF EMERYVILLE,

Plaintiffs,

vs.

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,

Defendants.

Case No. 17-cv-00308-WHO

SECOND AMENDED COMPLAINT UNDER CERCLA, 42 U.S.C. SECTION 9601 *ET SEQ.*, RCRA, 42 U.S.C. SECTION 6901 *ET SEQ.*, AND STATE LAW TO RECOVER ENVIRONMENTAL CLEANUP COSTS AND RELATED RELIEF

Plaintiffs, Successor Agency to the former Emeryville Redevelopment Agency ("Successor Agency") and the City of Emeryville ("City"), hereby allege against: Hanson Building Materials Limited; Swagelok Company; Whitney Research Tool Co.; and Catherine Lennon Lozick (collectively "Defendants") as follows and based on Plaintiffs' investigation thus far of publicly available documents, knowledgeable individuals, and other information and belief:

NATURE OF THIS ACTION

1. This is an action to recover environmental cleanup costs and damages caused by, and to obtain injunctive and declaratory relief against, Defendants.

2. The action arises out of polluted groundwater and real property located on Horton Street in the City of Emeryville, Alameda County, California (the "Property"). The impacted groundwater is beneath and down gradient from (i.e., to the west of) the Property. The contamination was caused by industrial activities that occurred at the Property in the 1900s, and it is continuing and spreading to this day. Defendants are legally responsible for the contamination under federal statutes, California statutes that were derived from and largely mirror those federal statutes, and California common law.

3. The industrial operations in question occurred from approximately 1910 until the late 1990s. From approximately 1910 to approximately 1959, the Property was owned by the Marchant Calculating Machine Company, a California corporation ("Marchant"), which used the site to manufacture mechanical calculating machines. In the late 1950s, Marchant merged with and into a company incorporated in the state of New York and famous, primarily, for typewriters—Smith-Corona. Smith-Corona was the surviving corporation in that merger. After the merger, Smith-Corona changed its name to Smith-Corona-Marchant, and the mechanical calculator business operated as the Marchant Division. Smith-Corona-Marchant subsequently shortened its name to SCM (hereafter, "SCM-NY"). SCM-NY owned and operated the Property for a time and eventually conveyed it to a third party by grant deed recorded in approximately 1959 as part of shifting the Marchant calculator division operations to a different but nearby location straddling the Emeryville-Berkeley border. SCM-NY's operations at the new property also contaminated that property with various hazardous substances. Both before and after its merger with Marchant, SCM-NY regularly conducted business

in California, including but not limited to acquiring the Marchant Corporation in a merger transaction, and operating the Marchant mechanical calculator business as a division within SCM-NY.

4. From approximately the mid-1960s to the late 1990s, the Property was owned by affiliates of Defendant Swagelok Company ("Swagelok") and operated, nominally, by Whitney Research and Tool Company ("Whitney")—an entity controlled and dominated by Swagelok to such an extent that it had no true separateness from Swagelok and was instead merely an agent, instrumentality, and alter ego through which Swagelok conducted its own integrated business. At Swagelok's behest, Whitney produced machine valves and/or parts for such valves at the Property. Swagelok continues to have a presence in California and conducts business in California.

5. Marchant, as an independent company, SCM-NY through its Marchant Division, and Swagelok through its control and management of Whitney used chlorinated solvent compounds and petroleum-based compounds, among other chemicals, in their operations. The soil and soil vapor at the Property, and the groundwater at and down gradient from the Property, are contaminated primarily with chlorinated solvents (all such chemicals being commonly, and hereafter, referred to as "CVOCs"). The Property is also contaminated with petroleum-based compounds. The list of "contaminants of concern" also includes certain metals. The "contaminants of concern" are intermingled, in varying combinations at various locations at and down gradient from the Property. All of the contaminants of concern are traceable to the operations of Marchant, SCM-NY's Marchant division, and Whitney/Swagelok, but on account of their intermingled nature they cannot be allocated or apportioned among the historic owners or operators of the Property, except by arbitrary means.

6. In addition to the severe impact on groundwater at and down gradient from the Property, the contamination has rendered the approximately 47,000 square foot building located on the Property unsafe for use by the City employees who worked in the building until 2012. The contamination is thus causing ongoing loss of use damage to the City. Those damages are similarly incapable of apportionment, except by arbitrary means.

7. Plaintiffs therefore seek the imposition of joint and several liability among the Defendants.

8. Consistent with federal guidance documents followed by the State of California, the cost of the cleanup work needed to meet applicable state and federal standards has been estimated in a range from $35 million to $65 million, with $42 million listed on Plaintiff Successor Agency's most recent accounting of anticipated expenditures. Approximately $7.6 million of site investigation and remedial evaluation work has been conducted through the end of 2016. The Successor Agency, in cooperation with the City, has been implementing the necessary investigation and remedial planning work under regulatory oversight provided by the California Environmental Protection Agency's Department of Toxic Substances Control ("DTSC"). Notices pursuant to various statutes have been sent to the Defendants advising them that they could take responsibility for the remediation. None of the Defendants has indicated a willingness to conduct the necessary cleanup work.

SUBJECT MATTER JURISDICTION

9. This Court has subject matter jurisdiction over this action and the parties pursuant to section 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9613(b); 42 U.S.C. § 6972(a) (a portion of the Solid Waste Disposal Act commonly referred to as the Resource Conservation and Recovery Act ("RCRA")); and 28 U.S.C. § 1331 (federal question jurisdiction). This Court has jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367(a) (supplemental jurisdiction).

VENUE

10. Venue is appropriate in this District under CERCLA because the release of hazardous substances which gives rise to this action occurred within the District, and venue is appropriate under RCRA because the endangerment to health and the environment alleged here is occurring within the District.

THE PARTIES

11. Plaintiff Successor Agency is a public entity, located and operating in Alameda County, possessing its own name and legal capacity, authorized to sue and be sued in its own name, and created by the State of California to serve as the successor to the former Emeryville Redevelopment Agency, which was a public entity created pursuant to California's Community Redevelopment Law, section 33000 *et seq.* of the California Health and Safety Code. The former

Redevelopment Agency was authorized, among other things, to undertake certain environmental cleanup projects such as the one ongoing at the Property and to recover its cleanup costs and attorneys' fees from those parties made liable for the cleanup by CERCLA and its California analogues. All of the former Redevelopment Agency's rights, powers, duties and obligations are, by statute, now vested in the Successor Agency. Among its other duties, Plaintiff Successor Agency is responsible for enforcing all of the former Redevelopment Agency's rights that may benefit public agencies within California that share in property tax revenues. The Former Redevelopment Agency purchased all but a small fraction of the Property in 1999.

12. Plaintiff City is a municipal corporation and a public body, corporate and politic, located in Alameda County, California. In connection with extending Horton Street, and through the exercise of eminent domain authority, the City acquired a factional interest in one parcel within the Property. On those and other grounds the City is not legally responsible for the contamination or any of the cleanup costs as a property owner. The City brings this action on its own behalf, as one of the land owners, and on behalf of the People of the State of California as authorized by § 731 of the California Code of Civil Procedure.

13. Defendant Swagelok Company is an Ohio Corporation, with its principal place of business in Solon, Ohio. Swagelok manufactures, distributes, and sells precision valves and other components of gas and fluid control systems.

14. Defendant Whitney Research Tool Co., which for a time used the name Whitey Research Tool Company, is a dissolved California Corporation and its principal place of business was in Emeryville, California.

15. Defendant Hanson Building Materials Limited ("Hanson") is a British Corporation with its principal place of business in Maidenhead, Berkshire, United Kingdom. Hanson has at various times been known by other names, most prominently "Hanson PLC." Hanson was originally incorporated in or about 1950 as C. Wiles, Limited, and its "company number" with the Registrar of Companies for England Wales is 488067.

16. Defendant Catherine Lennon Lozick ("Lozick") is an individual who resides in Ohio, and she was the sole beneficiary of the Catherine Lennon Lozick Trust, which was an Ohio trust

("CLL Trust"), and the Revocable Trust Agreement #3 f/b/o Catherine L. Lozick (also known or sometimes referred to as the Inter Vivos Revocable Trust Agreement #3 f/b/o Catherine L. Lozick u/a dated 10/1/86), which is an Ohio trust ("CLL Revocable Trust #3"), which was/were the former owner(s) of the Property.

THE PROPERTY AND THE CONTAMINATION

17. The Property is located at 5679 Horton Street, Emeryville, Alameda County, California, and it is identified by Alameda County Assessor's ***Parcel Numbers 49-1552-1 and 49-1319-1-20***. The Property is approximately 1.75 acres in size and is generally bounded by Union Pacific railroad tracks to the west, commercial/industrial properties to the north, Horton Street to the east, and Stanford Avenue and a former rail spur to the southeast/south. A map generally depicting the Property, its location in Emeryville, and the plume of contaminated groundwater emanating from it is attached to this Complaint as Exhibit A.

18. Samples of soil, soil gas, and indoor air at the Property, and groundwater at and down gradient from the Property, confirm that the soil, soil gas, and indoor air at the Property, and groundwater at and down gradient from the Property are polluted with varying combinations of CVOCs including trichloroethene ("TCE"), tetrachloroethene ("PCE"), cis-1,2-dichloroethene ("cDCE"), trans-1,2-dichloroethene ("1,2-DCE"), vinyl chloride, 1,1- dichloroethane ("1,1-DCA"), 1,2- dichloroethane ("1,2-DCA"), 1,1,2-trichloroethane ("1,1,2-TCA"), chloroform, bromomethane, chlorobenzene, and methylene chloride. Each of the those chemicals is a "hazardous substance" within the meaning of federal law (i.e., CERCLA Section 101(14)) and within the corresponding definitions in the California statutes that are modeled after CERCLA and designed to enable local government to bring about the cleanup of contaminated properties—e.g., Health and Safety Section 33459(c) (the definition of "hazardous substance" applicable to the Successor Agency's claim under the Polanco Act) and Health and Safety Code Section 25403(i) (the definition of "hazardous material" applicable to the City's claim under the Gatto Act, which extended cleanup authority similar to the Polanco Act to cities and other public agencies within California). Other hazardous chemicals meeting one or more of the foregoing statutory definitions have also been identified in the sampling

data, including cadmium, lead, and various petroleum hydrocarbons. The various chemicals are intermixed to varying degrees in varying locations.

19. The contamination at the Property has been evaluated using protocols approved by federal and state regulatory agencies, and the results of that analysis have been presented in, among other things, a Remedial Investigation and a Health Risk Assessment submitted to and approved by the State of California's DTSC, the lead regulatory agency for the site. The analysis presented in the risk assessment demonstrates unacceptable levels of ongoing risk to human health and the environment from material that is "solid waste" within the meaning of 42 U.S.C. ' 6903(27), thus establishing that conditions at the Property present an "imminent and substantial endangerment to health or the environment" within the meaning of RCRA, i.e., 42 U.S.C. § 6972(a)(1)(B).

20. The investigation and cleanup work at the Property is being carried out in the public interest to reduce blight and alleviate nuisance conditions at and in the vicinity of the Property.

HANSON'S CONNECTION TO THE CONTAMINATION

21. Documentary and other evidence link hazardous substances at the Property to, among other things, the production of Marchant calculating machines. That operation included, but was not limited to, nickel-plating and enameling operations; grinding, hardening, and assembly operations; and associated functions. Marchant used various oils, chlorinated solvents, and other chemicals in its manufacturing operations at the Property; generated a variety of wastes in the course of its operations; and through those operations and waste-generating activities contributed to the CVOC and other contamination at the Property.

22. Responsibility for the Marchant's operations and contamination at and near the Property flowed first to SCM-NY, via the merger referenced above in Paragraph 3, and subsequently to Defendant Hanson through later transactions, beginning in the mid-1980s. As of the mid-1980s, Hanson (then known as Hanson Trust Public Limited Company and then simply Hanson PLC) was, among other things, one of the foremost corporate raider/asset strippers of the era.

23. Using hostile takeover tactics, including one or more tender offers to SCM-NY shareholders, some of whom were California residents, Hanson acquired control over SCM-NY, and SCM-NY became an indirect subsidiary of Hanson. Hanson acquired control over SCM-NY with the

intention of dissecting SCM-NY and transferring the resulting pieces of SCM-NY into various Hanson-controlled subsidiaries, which Hanson would then liquidate at opportune times. Hanson anticipated earning huge profits as the raider that captured the so-called break-up premium inherent in conglomerates like SCM-NY.

24. Consistent with Hanson's plan, and in the summer of 1985 as Hanson was commencing a tender offer for SCM-NY, Hanson caused approximately 23 new Delaware corporations to be formed as indirect Hanson subsidiaries. The vast majority were given names beginning with "HSCM," "H" corresponding to Hanson and "SCM" corresponding to the target to be dissected. As a group they have been referred to as the "fan" companies.

25. Shortly after winning its hostile tender offer battle for control over SCM-NY, Hanson orchestrated a series of transactions among SCM-NY and Hanson's fan companies. This "plan of liquidation" represented a single, unified business purpose—maximizing the benefit to Hanson from dismembering or de-conglomerating SCM-NY.

26. Pursuant to Hanson's plan of liquidation for SCM-NY, Hanson caused specific assets and liabilities corresponding to specific business units within SCM-NY to be parceled out among HSCM-1 through HSCM-19. In each case, the "fan" company obtained the assets identified by Hanson by relinquishing SCM-NY shares that Hanson had caused to be allocated to the fan company. The fan companies then went on, as direct by Hanson, to liquidate SCM-NY in pieces. HSCM-6, for example, became the vehicle by which Hanson caused SCM-NY's Glidden paint business to be sold to a third party. HSCM-10, which would be renamed "Smith Corona Corporation," and another subsidiary dominated and controlled by Hanson, HM Holdings, Inc., were the conduits through which Hanson liquidated a majority stake in SCM-NY's historic typewriter/word processor business.

27. As part of its unsuccessful takeover defense against Hanson, SCM-NY had created a subsidiary into which SCM-NY placed its chemical business. Hanson decided that chemical business would reside in HSCM-20, and Hanson accomplished that transition by causing SCM-NY to merge into HSCM-20 in late 1986, with HSCM-20 as the surviving entity. By employing a statutory merger of SCM-NY into HSCM-20 for this element of its dissection of SCM-NY, Hanson caused the

Marchant contamination liability at the Property to flow into HSCM-20 from SCM-NY (where it had been located since the late 1950s when the Marchant entity was merged into the pre-Hanson SCM-NY).

28. The merger of SCM-NY into HSCM-20 also caused Marchant's jurisdictional contacts with California to pass into HSCM-20. That merger similarly caused SCM-NY's contacts with California, which arose from SCM-NY's operation of its Marchant Division at the Property, and at other locations in California, to flow into HSCM-20.

29. In 1988, Hanson caused HSCM-20 to merge into yet another indirect, wholly owned, and Hanson-dominated subsidiary, HSCM Holdings Inc. Hanson then caused HSCM Holdings Inc. to merge into yet another indirect, wholly owned, and Hanson-dominated subsidiary, HM Holdings, Inc. The surviving entity at the end of that series of mergers was HM Holdings, Inc. ("HM Holdings"). HM Holdings thus inherited Marchant's liability for contamination at the Property, and SCM-NY's liability for contamination at the Property, as a result of being a tool and instrumentality by which Hanson accomplished Hanson's goal of de-conglomerating SCM-NY.

30. The transactions referred to in Paragraphs 26 to 31 above, and by which Hanson shifted SCM-NY's business units into to various Hanson subsidiaries, and caused Marchant liabilities to flow into HM Holdings, were not conducted at arms' length. The nature, forms, and terms of the transactions entered into by the various Hanson subsidiaries, through which Hanson implemented its plan to dismantle and selectively liquidate SCM-NY's businesses, were completely controlled by Hanson, to serve Hanson's interests. None of the Hanson subsidiaries participating in these transactions exercised any separate corporate minds, wills, agency, or existence in connection with these transactions. None of them was governed by a board of directors independent of Hanson. None of them was guided by a subset of board members independent of Hanson. None of them was advised by accountants, investment bankers, attorneys, and/or other professionals independent of Hanson. Instead, through overlapping boards of directors and officers as well as other means, each and all of them functioned simply as the agents, instrumentalities, conduits and alter egos by which Hanson pursued Hanson's business—the dismemberment and gradual liquidation of SCM-NY.

31. There was at all relevant times a complete unity of interests among Hanson and the subsidiaries it used in pursuing the dismemberment of SCM-NY as evidenced by Hanson's

domination of the subsidiaries' pertinent policies, processes, and finances with the subsidiaries' cash accounts managed on a centralized basis such that Hanson could and did shift hundreds of millions of dollars back and forth without the negotiations and documentation that would have occurred if the involved entities had actually been separate corporations exercising their own separate corporate minds, wills, existence, and agency with their own professional advisors and agents.

32. Hanson's plenary control over the dissection and selective liquidation of SCM-NY is well demonstrated by, among other things, Hanson's actions with respect to SCM-NY's well known typewriter and word processor business, which Hanson monetized via a 1989 initial public stock offering (the " Typewriter IPO") that was marketed in California, among other places.

33. Prior to and throughout the Typewriter IPO, Hanson dominated the entity that would be sold off in the public offering, HSCM-10. For example, Hanson caused HSCM-10 to change its name to Smith Corona Corporation so that the subsidiary could take advantage of that well-known name. According to public records prepared in connection with the Typewriter IPO, Hanson extracted $121 million of net cash payments from Smith Corona Corporation before the offering commenced. The Typewriter IPO prospectus indicates that sum was in addition to "approximately $386 million in dividend and other net payments to be made to Hanson in connection with the Reorganization and the Offerings."

34. The transfers of those funds occurred without the negotiations and documentation that would have occurred if Smith Corona Corporation or its nominal parent entity (HM Holdings) had actually been corporations exercising corporate minds, wills, agency, or existence separate from Hanson's.

35. Hanson also caused Smith Corona Corporation, HM Holdings, and various other entities controlled by Hanson to enter into a series of transactions referred to (in the 1989 prospectus for the Typewriter IPO) as the "Reorganization." The 1989 prospectus explains that the Reorganization transactions were not conducted at arms' length.

36. In the Reorganization and preparation for the Typewriter IPO, Hanson addressed, among other things, SCM-NY's legacy liabilities—i.e., liabilities associated with SCM-NY's past businesses, operations, and properties such as the Marchant mechanical calculator business

and the Property. To facilitate the IPO, so that Hanson could profit from it, Hanson caused two of its subsidiaries (Smith Corona Corporation and HM Holdings) to enter into a "Cross Indemnity Agreement." Through that agreement, Hanson assured prospective buyers of the Typewriter IPO shares that the company they would be investing in was protected from all "Hanson Liabilities." Hanson caused that term to be defined to include any and all liabilities associated with any and all of SCM-NY's non-typewriter businesses including their (1) past use of property for manufacturing or industrial purposes; (2) releases of hazardous substances; and (3) "nuisances of whatever kind" arising from those past, non-typewriter operations and/or properties.

37. Hanson thus explicitly and implicitly adopted as its own, assumed, and inherited Marchant's environmental liability at the Property, Marchant's contacts as a California corporation with its headquarters in California, and SCM-NY's liabilities and contacts associated with the mechanical calculator business conducted at the Property.

38. Hanson reaped hundreds of millions of dollars of benefits from this process as follows. The assets and liabilities placed in Smith Corona Corporation prior to the IPO were valued by Hanson at approximately $82 million. The IPO generated net "proceeds" on the order of $290 million, and the 1989 prospectus explained that Hanson was the sole beneficiary of those net proceeds.

39. Neither Smith Corona Corporation, the issuing company, nor HM Holdings, the ostensible parent of Smith Corona, obtained any substantial proceeds from the Typewriter IPO according to the prospectus issued in connection with that offering.

40. In connection with the Reorganization, the Cross-Indemnity Agreement, and the Typewriter IPO, neither Smith Corona Corporation nor its nominal parent, HM Holdings, had or exercised any separate corporate mind, will, agency, or existence. Neither had independent director vet the terms of the transactions instigated by Hanson. Neither of them engaged financial advisors, accountants or lawyers independent of Hanson to advise them on the transactions instigated by Hanson. Instead, throughout the process culminating in the sale of Typewriter IPO shares to the public, and through overlapping boards of directors and officers and other means, Smith Corona and HM Holdings functioned as mere agents, instrumentalities, conduits, and alter egos of Hanson by and through which Hanson continued to pursue its business objective—the systematic dismantling and

liquidation of SCM-NY. There was at all relevant times a complete unity of interests among Hanson, Smith Corona and HM Holdings as evidenced by Hanson's domination of the subsidiaries' pertinent policies, processes, and finances prior to the IPO.

41. Hanson's alter ego relationship with HM Holdings continued subsequent to the 1989 Typewriter IPO, and included a series of transactions undertaken in connection with Hanson's 1996 "demerger." In those transactions, Hanson again dominated and controlled HM Holdings, forcing HM Holdings to engage again in non-arms-length transactions without vetting by directors, financial advisors, or legal counsel independent of Hanson.

42. As part of the demerger, Hanson caused Millennium Chemicals, Inc. to be formed and caused HM Holdings to become a subsidiary of Millennium Chemicals.

43. To obtain favorable tax treatment from U.K. tax authorities for Hanson and its shareholders, Hanson forced Millennium Chemicals to manage and control the HM Holdings chemical business in the U.K. despite the fact that the chemical business was an American corporation with predominantly American and other non-U.K operations.

44. Hanson similarly dictated where Millennium's Board of Directors would function and meet.

45. According to financial statements submitted to the SEC, Hanson obtained benefits worth hundreds of millions of dollars by using Millennium in this fashion, i.e., as an agent, instrumentality and/or alter ego of Hanson's.

46. Neither HM Holdings, which subsequently became known as Millennium Holdings LLC, nor its nominal parent in the Hanson demerger (Millennium Chemical) exercised any corporate mind, will, agency, or existence separate from Hanson. Instead, they functioned during the demerger process as mere agents, instrumentalities, alter egos, and conduits by which Hanson pursued Hanson's interests in de-conglomerating itself. The nature, forms, and terms of the transactions entered into by HM Holdings and Millennium Chemical in the Hanson demerger were all controlled by Hanson to serve Hanson's interests. Hanson also dominated Millennium Chemicals' and HM Holdings' policies, processes, and finances controlling them as Hanson saw fit and without the

negotiations and documentation that would have occurred if the involved entities had actually been corporations with their own separate minds, wills, agency, and existence.

47. In their dealings with Hanson up to and including the Hanson demerger, HM Holdings and Millennium were not advised by directors, financial advisors, accountants, and/or legal counsel independent from Hanson.

48. All of the actions and transactions alleged above, which give rise to (a) Hanson's alter ego status in relation to SCM-NY, HSCM-20, HM Holdings, and Millennium Holdings in connection with Marchant's liability for the contamination at the Property, and (b) the imputation to Hanson of Marchant's and SCM-NY's contacts with California were freely, voluntarily and purposefully undertaken by Hanson in pursuit of Hanson's own self-interest such that Hanson knew and understood, or in the exercise of reasonable diligence should have known and understood, that it could be subject to litigation in California over the environmental contamination at the Property.

49. Hanson sold itself to a German corporation, Heidelberg Cement, in 2007 and exists today as a non-publicly traded subsidiary of that entity. By the time of that transaction, Hanson owned "a dense network of sand, gravel and hard stone production sites in the United States," including several in California according to the websites documenting its corporate history and press reports.

50. Hanson holds itself out to the marketplace using various names such as Hanson UK and, in the United States, Lehigh-Hanson. Hanson claims a business presence in the Northern District of California dating back to at least 1952.

51. It would be unfair and inequitable to allow Hanson to profit from the shuffling of the Marchant/SCM-NY liabilities, while simultaneously allowing it to disclaim the liabilities it assumed and/or controlled to obtain those gains. This is especially true where, as here, any such disclaimer would shift those liabilities to the tax paying public, as opposed to another willing for-profit market participant. For example, it would be unfair and inequitable for Hanson to characterize the contamination at the Property as a "Hanson Liability," as it caused its subsidiaries to do in the aforementioned Cross Indemnity Agreement, when doing so served Hanson's purposes in connection with the Typewriter IPO, only to later allow it avoid either the jurisdictional contacts associated with

Marchant's mechanical calculator operations at the Property or liability for the environmental cleanup needed to abate the contamination associated with what Hanson freely and voluntarily labeled as a "Hanson Liability."

SWAGELOK AND LOZICK

52. Documentary and other evidence also link the hazardous substances and materials at the Property to Swagelok via its operation of Whitney (f/k/a /Whitey) Research and Tool Co. Those operations included a grease room, hazardous waste area, solvent recovery area, and drum storage areas, among others. Whitney used and disposed of chlorinated solvents, and specifically TCE in the course of its operations at the Property.

53. Whitney was founded in or around 1959 as a California Corporation, and changed its name to Whitney from Whitey in or around 1976. Whitney manufactured valves for gas and fluid systems and those valves were sold under the brand name "Whitey" as a unified product offering by Swagelok. Whitney/Whitey began manufacturing operations at the Property around 1963 and continued such operations until approximately 1999. Throughout its history, Whitney/Whitey was an integrated component of Swagelok, not a corporation with any true and separate corporate existence, mind, will, or agency. Swagelok's corporate website lists "Whitey" as a Swagelok brand that has been "unifie[d]" into Swagelok for many years.

54. Swagelok's domination and control over Whitney was accomplished by and through, among other things, shared executives and stockholders. Fred A. Lennon, the founder and majority owner Swagelok, was a majority owner of Whitney, and Mr. Lennon's son-in-law, Edward A. Lozick, held executive positions at both Swagelok and Whitney. At the time Whitney dissolved as a California Corporation, in 1999, Mr. Lozick was identified as the sole director of Whitney. Francis Joseph Callahan, who at various times held the positions of president, chief executive officer, and chairman of the board of Swagelok also served as president of Whitney. By these and other means, Swagelok exercised complete control over Whitney's operations, finances, and business policies and practices such that Whitney was merely an agent or instrumentality through which Swagelok conducted one part of Swagelok's business.

55. Swagelok directed and controlled the operations of Whitney, including Whitney's manufacturing and waste-handling and disposal activities at the Property, which have contributed to the releases of hazardous substances at the Property. Upon its dissolution, which Swagelok instigated, Swagelok directed the assets of Whitney be transferred to Swagelok so that the latter could and did continue Whitney's operations without interruption. Thus, Swagelok is the mere continuation of Whitney, and/or the operations of Whitney were merged into Swagelok. Swagelok also assumed, either explicitly or implicitly, all liabilities of Whitney so that the operations associated with Whitney could continue without interruption.

56. During the period when Whitey/Whitney operated there, title to the Property was held in other Swagelok-affiliated companies and entities including Endicott Co., Calbit, Co. and the CLL Trust and/or CLL Revocable Trust #3. Those entities were under common control at all relevant times with Swagelok and/or Fred A. Lennon such that they functioned as additional conduits for Swagelok's control over Whitney.

57. At all relevant times, a unity of interests existed between Swagelok and Whitney such that any individuality and separateness between Swagelok and Whitney ceased, and Whitney existed as a mere alter ego of Swagelok as follows: (a) Whitney was a mere shell, instrumentality and/or conduit through which Swagelok carried on its business; and (b) Whitney was controlled, dominated and/or operated by Swagelok. Adherence to the fiction of the separate existence of Whitney as an entity distinct from Swagelok would permit an abuse of the corporate privilege and would sanction fraud, promote injustice, and lead to an inequitable result in that it would permit Swagelok to escape its obligation to clean up the hazardous substances released at the Property at its behest and leave innocent taxpayers with that obligation.

58. Swagelok continues to maintain a presence in California, maintaining offices and/or division in northern California, Los Angeles, and San Diego and continues to sell and distribute its product in California including, but not limited to, legacy Whitney products.

59. Title to the Property shifted from Calbit, Co. (a Swagelok/Fred A. Lennon controlled entity) to the CLL Trust in 1988, an entity that was under common control with Swagelok and/or Fred A. Lennon. In 1999, the CLL Trust and/or CLL Revocable Trust #3 sold the Property to

the Emeryville Redevelopment Agency. At the time of the sale, the successor trustee of the CLL Trust was Edward Lozick, who was Catherine Lennon Lozick's husband and an officer of both Swagelok and Whitney. During the time the trust owned the Property, operations directed by Swagelok caused additional releases of hazardous chemicals. Swagelok's executives, including Edward Lozick, were aware of contamination at the Property at the time the Property was sold to the Emeryville Redevelopment Agency.

60. Catherine Lennon Lozick was the sole beneficiary of the CLL Trust and/or CLL Revocable Trust #3. In 2003, the assets of the CLL Trust and/or CLL Revocable Trust #3 were distributed to Ms. Lozick. Those assets are believed to have exceeded $1.5 billion, and included an approximately 65% ownership interest in Swagelok as well as the proceeds of the 1999 sale of the Property. At some point thereafter, the CLL Trust and/or CLL Revocable Trust #3 was/were dissolved.

FIRST CLAIM FOR RELIEF

(CERCLA—By Successor Agency and City against Defendants Hanson, Swagelok, Whitney, and Lozick)

61. Plaintiffs re-allege paragraph 1 through 60 above and incorporate those paragraphs here by reference.

62. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—
>
> * * *
>
> (1) the owner and operator of a vessel or facility,
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, [and]
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances owned or possessed by such person, [or] by any other party or entity, at any facility or incineration vessel owned or operated by another person or entity and containing such hazardous substances,
>
> * * *
>
> shall be liable for—

> (A) all costs of removal or remedial action incurred by the United States Government or a State, or an Indian Tribe not inconsistent with the national contingency plan;
>
> (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan . . . .

42 U.S.C. § 9607(a)(1)–(3), (A) and (B).

63. The Successor Agency and City are each a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

64. Defendants Hanson, Swagelok, Whitney, and Lozick are each a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

65. The Property constitutes a "facility" under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), in that hazardous substances were deposited, stored, disposed of, placed, or came to be located there.

66. Defendants Hanson, Swagelok, Whitney, and Lozick including predecessors, affiliates, and/or subsidiaries for which they are liable, were each owners and/or operators of the Property at the time hazardous substances were disposed of there within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Section 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a) (2).

67. Defendants Hanson, Swagelok, Whitney, and Lozick including predecessors and/or subsidiaries for which they are liable, each arranged for the treatment or disposal of one or more hazardous substances at the Property within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

68. Some or all of the hazardous substances (including but not limited to TCE) discharged, deposited, disposed, spilled or emitted into the soil and groundwater at the Property constitute "hazardous substances" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and in the regulations promulgated under Section 102 of CERCLA, 42 U.S.C. § 9602.

69. There were one or more "releases" of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). The release(s) at the Property are ongoing.

70. The costs the Successor Agency and City have incurred and/or will incur in responding to the release(s) of hazardous substances at the Property are necessary costs of response that are consistent with the National Contingency Plan.

71. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendants Hanson, Swagelok, Whitney, and Lozick each are strictly and jointly and severally liable to the Successor Agency and City for all response costs the Successor Agency and City have incurred to date and/or will incur in the future.

72. Wherefore Plaintiffs pray for judgment as set forth below.

SECOND CLAIM FOR RELIEF

(CERCLA Declaratory Relief—By Successor Agency and City against Defendants Hanson, Swagelok, Whitney, and Lozick)

73. Plaintiffs re-allege paragraph 1 through 72 above and incorporate those paragraphs here by reference.

74. An actual controversy has arisen and now exists between Plaintiffs on the one hand and the defendants Hanson, Swagelok, Whitney, and Lozick on the other with respect to their respective rights and obligations under CERCLA.

75. Issuance of a declaratory decree pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 9613(g)(2) therefore is necessary and appropriate.

THIRD CLAIM FOR RELIEF

(RCRA—By Successor Agency and City against Defendants Hanson, Swagelok, and Whitney)

76. Plaintiffs re-allege paragraph 1 through 60 above and incorporate those paragraphs here by reference.

77. Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), provides in pertinent part:

> (a) Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—
>
> * * *
>
> (1)(B) against any person, . . . who has contributed or who is contributing to the past or present handling, storage, treatment,

> transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment . . .

78. The Successor Agency and the City are each a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

79. Defendants Hanson, Swagelok, and Whitney, including predecessors and/or subsidiaries for which they are liable, each are a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

80. Defendants Hanson, Swagelok, and Whitney, including predecessors and/or subsidiaries for which they are liable, each are a person who has contributed to the past or present handling, "storage," "treatment," or "disposal" of a "solid waste" or "hazardous waste" within the meaning of Sections 1004(3), 1004(5), 1004(6) 1004(27) 1004(33) and 1004(34) of RCRA, 42 U.S.C. § 6903(3), 6903(5), 6903(6), 6903(27), 6903(33) and 6903(34).

81. The storage, treatment, handling or disposal of solid or hazardous waste contributed to by defendants Hanson, Swagelok, and Whitney, including predecessors and/or subsidiaries for which they are liable, present an imminent and substantial endangerment to health or the environment in and around the Property.

82. In accordance with Section 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A), and 40 C.F.R. Part 245, the Successor Agency and City provided notice of the endangerment to the Administrator of EPA, the Regional Administrator of EPA Region 9, the Director of California Department of Toxic Substances Control and to the Defendants more than ninety days before commencing this action.

83. Under Section 7002(a) of RCRA, 42 U.S.C. § 6972(a)(2), this Court has jurisdiction to:

> restrain any person who has contributed to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both . . . and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

84. The Plaintiffs are entitled, therefore, to an injunction ordering defendants Hanson, Swagelok, and Whitney to take such action as may be necessary to abate the imminent and substantial endangerment to health and the environment at the Property, i.e., implement the cleanup plan to be approved by the State of California.

FOURTH CLAIM FOR RELIEF

(Polanco Act—By Successor Agency against Defendants Hanson, Swagelok, Whitney, and Lozick)

85. The Successor Agency re-alleges paragraphs 1 through 75 above and incorporates those paragraphs here by reference.

86. The Polanco Redevelopment Act, Section 33459 *et seq.* of the California Health and Safety Code, authorizes redevelopment agencies and their statutorily designated successor agencies to take actions to remedy or remove releases of hazardous substances from property within redevelopment areas, and to recover cleanup costs, interest, and attorneys' fees from responsible parties.

87. The Property is located within a duly created redevelopment area, and plaintiff Successor Agency enjoys all rights previously held by the Emeryville Redevelopment Agency, including but not limited to right to assert a cause of action under the Polanco Act.

88. Sections 33459.4(a) and (c) of the California Health and Safety Code provide, in pertinent part:

> [If] a redevelopment agency undertakes action to remedy or remove, or to require others to remedy or remove, including compelling a responsible party through a civil action, to remedy or remove a release of hazardous substance, any responsible party or parties shall be liable to the redevelopment agency for the costs incurred in the action . . . includ[ing] the interest on the costs accrued from the date of expenditure and reasonable attorney's fees . . .
>
> * * *
>
> An agency may recover any costs incurred to develop and to implement a cleanup or remedial action plan approved pursuant to Sections 33459.1 and 33459.3, to the same extent the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") is authorized to recover those costs.

> The scope and standard of liability for cost recovery pursuant to this section shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 *et seq.*) [CERCLA] as that act would apply to [DTSC]; provided, however, that any reference to hazardous substance therein shall be deemed to refer to hazardous substance as defined in subdivision (c) of Section 33459.

89. Under CERCLA Section 107(a), 42 U.S.C. § 9607(a), DTSC is entitled to recover response costs unless the costs were incurred in an arbitrary and capricious fashion.

90. The costs the Successor Agency has incurred and will incur in connection with investigating and cleaning up hazardous substances at the Property are neither arbitrary nor capricious, and the Successor Agency has complied with all its obligations under Section 33459 et seq. and other applicable laws, or its compliance has been waived or excused.

91. Defendants Hanson, Swagelok, Whitney, and Lozick are "responsible parties" as that term is defined in Section 33459(h) of the California Health and Safety Code.

92. Pursuant to California Health and Safety Code Section 33459.4, defendants Hanson, Swagelok, Whitney, and Lozick are strictly and jointly and severally liable to the Successor Agency for the costs incurred and to be incurred in connection with investigating and cleaning up the hazardous substances on, under and/or emanating to and from the Property, interest on those costs, and the Successor Agency's attorneys' fees.

93. Wherefore the Successor Agency prays for judgment as hereinafter set forth.

FIFTH CLAIM FOR RELIEF

(Gatto Act (AB440)—By the City against Defendants Hanson, Swagelok, Whitney, and Lozick)

94. The City re-alleges paragraphs 1 through 75 above and incorporates those paragraphs here by reference.

95. The Gatto Act (AB440), Section 25403 et seq. of the California Health and Safety Code, authorizes local agencies such as the City to take actions to remedy or remove releases of

hazardous materials from blighted property within a blighted area, and to recover cleanup costs, interest, and attorneys' fees from responsible parties.

96. On June 16, 2015, the City adopted a resolution that the Property is a "blighted property" as that term is defined in Section 25403(b) of the California Health and Safety Code because of the presence of hazardous materials (particularly TCE) at the Property. The City also determined that the area of the City known as the Horton District (which includes the Property) is a "blighted area" as that term is defined in Section 25403(a) of the California Health and Safety.

97. Sections 25403.5(a) and (c) of the California Health and Safety Code provide, in pertinent part:

> [I]f a local agency undertakes action to investigate property or clean up, or to require others to investigate or clean up, including compelling a responsible party through a civil injunctive action, a release or hazardous material, the responsible party shall be liable to the local agency for the costs incurred in the action . . . includ[ing] the interest on the costs accrued from the date of expenditure and reasonable attorneys' fees.
>
> * * *
>
> A local agency may recover any costs incurred to develop and to implement a cleanup plan approved pursuant to this chapter, to the same extent the department [DTSC] is authorized to recover costs. The scope and standard of liability for cost recovery pursuant to this section shall be the scope and standard of liability under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 *et seq.*) [CERCLA] as that act would apply to the department [DTSC]. However, any reference to hazardous substance in that act shall be deemed to refer to hazardous material as defined in section 25403.

98. Under CERCLA Section 107(a), 42 U.S.C. § 9607(a), DTSC is entitled to recover response costs unless the costs were incurred in an arbitrary and capricious fashion.

99. The costs the City has incurred and/or will incur in connection with investigating and cleaning up hazardous materials at the Property are neither arbitrary nor capricious, and the City has complied with all its obligations under Section 25403 et seq. of the California Health and Safety Code and other applicable laws, or its compliance has been waived or excused.

100. Defendants Hanson, Swagelok, Whitney, and Lozick are each a "responsible party" as that term is defined in Section 25403(s) of the California Health and Safety Code.

101. Pursuant to California Health and Safety Code Section 25403.5, Hanson, Swagelok, Whitney, and Lozick are strictly and jointly and severally liable to the City for the costs incurred and to be incurred by the City in connection with investigating and cleaning up the hazardous materials on, under and/or emanating from the Property, interest on those costs, and the City's attorneys' fees.

102. Wherefore the City prays for judgment as hereinafter set forth.

SIXTH CLAIM FOR RELIEF

(Continuing Public Nuisance—By City against Defendants Hanson, Swagelok, Whitney, and Lozick)

103. The City re-alleges paragraphs 1 through 75 and 94 through 102 above and incorporates those paragraphs here by reference.

104. The discharging, depositing, disposing, or releasing of hazardous substances at the Property has resulted in conditions that constitute a public nuisance within the meaning of Section 3480 of the California Civil Code.

105. The nuisance is continuing in that the hazardous substances, materials and/or wastes discharged, deposited, disposed of, or released at the Property is actually and practically abatable by reasonable measures and without unreasonable expenses, and in that its impact varies over time.

106. The discharging, depositing, disposing, or release of hazardous substances violated, among other things, California Fish and Game Code § 5650(a), Water Code § 13304, and California Health & Safety Code § 5411. The conditions thus constitute a nuisance per se.

107. The City is entitled to maintain this action for public nuisance because it is a public body authorized by law to abate this type of nuisance within the meaning of California Civil Code Section 3494 and Section 731 of the California Code of Civil Procedure.

108. Defendants Hanson, Swagelok, Whitney, Lozick and the entities for which they are liable, caused the nuisance conditions by discharging, depositing, disposing of, or releasing hazardous substances, materials and/or wastes onto the Property or by allowing other persons or entities subject to their direction and control to engage in such activities.

109. As a direct and proximate result of the nuisance created and/or maintained by defendants Hanson, Swagelok, Whitney, and Lozick, the City has suffered the damages alleged herein and is entitled to seek abatement as provided by California law.

110. Wherefore the City prays for judgment as hereinafter set forth.

SEVENTH CLAIM FOR RELIEF

(Continuing Private Nuisance—Successor Agency and City against Defendants Hanson, Swagelok, Whitney, and Lozick)

111. Plaintiffs re-allege paragraphs 1 through 75 and 85 through 110 above and incorporate those paragraphs here by reference.

112. The hazardous substances, materials and/or wastes discharged, deposited, disposed of, or released at the Property as a result of the conduct by defendants Hanson, Swagelok, Whitney, Lozick, and/or entities for which they are liable, have resulted, alternatively, in conditions that constitute a continuing private nuisance within the meaning of Section 3479 of the California Civil Code.

113. The nuisance is continuing in that the hazardous substances, materials and/or wastes discharged, deposited, disposed of, or released at the Property is actually and practically abatable by reasonable measures and without unreasonable expenses, and in that its impact varies over time.

114. The discharging, depositing, disposing, or release of hazardous substances violated, among other things, California Fish and Game Code § 5650(a), Water Code § 13304, and California Health & Safety Code § 5411. The conditions thus constitute a nuisance per se.

115. Defendants Hanson, Swagelok, Whitney, Lozick and/or entities for which they are liable, caused the nuisance conditions by discharging, depositing, disposing of, or releasing hazardous substances, materials and/or wastes at the Property or by allowing other persons or entities subject to their direction and control to engage in these activities.

116. The nuisance has interfered with and continues to interfere with the City's use and enjoyment the Property.

117. As a direct and proximate result of this nuisance, Plaintiffs have suffered the damages alleged herein.

118. Wherefore Plaintiffs pray for judgment as hereinafter set forth.

EIGHTH CLAIM FOR RELIEF

(Continuing Trespass—Successor Agency and City against Defendants Hanson, Swagelok, Whitney, and Lozick)

119. Plaintiffs re-allege paragraphs 1 through 75 and 85 through 118 above and incorporates those paragraphs here by reference.

120. Defendants Hanson, Swagelok, Whitney, Lozick and/or entities for which they are liable, have committed trespass against Successor Agency's and the City's property interests because Defendants have discharged, deposited, disposed of, or released hazardous substances, materials and/or wastes onto the Property without Plaintiffs' consent and/or by failing to remove such hazardous substances, materials and/or wastes from the Property, or by permitting other persons or entities subject to the Defendants' direction or control to engage in these activities.

121. The trespass is continuing in that the hazardous substances, materials and/or wastes discharged, deposited, disposed of, or released onto the Property are actually and practically abatable by reasonable measures and without unreasonable expenses.

122. As a direct and proximate result of the trespass Plaintiffs have suffered the damages alleged herein.

123. Wherefore Plaintiffs pray for judgment as hereinafter set forth.

NINTH CLAIM FOR RELIEF

(Equitable Indemnity—Successor Agency and City against Defendants Hanson, Swagelok, Whitney, and Lozick)

124. The Successor Agency re-alleges paragraphs 1 through 123 (except paragraphs 76 through 84 and 94 through 110) and incorporates those paragraphs here by reference. The City re-

alleges paragraphs 1 through 123 (except paragraphs 76 through 93) and incorporates those paragraphs here by reference.

125. The contamination at the Property was caused by the wrongful conduct of defendants Hanson, Swagelok, Whitney, Lozick and/or entities for which they are liable as alleged herein. Plaintiffs are without fault in connection with the contamination at and emanating from the Property.

126. As a direct and proximate result of the wrongful conduct of these Defendants, Plaintiffs have incurred and will continue to incur costs, expenses, and damages.

127. Plaintiffs are entitled to full equitable indemnity for such costs, damages, and expenses from defendants Hanson, Swagelok, Whitney, and Lozick.

128. Therefore Plaintiffs pray for judgment as hereinafter set forth.

TENTH CLAIM FOR RELIEF

(Declaratory Relief—Successor Agency and City against Defendants Hanson, Swagelok, Whitney, and Lozick)

129. The Successor Agency re-alleges paragraphs 1 through 128 (except paragraphs 76 through 84 and 94 through110) and incorporates those paragraphs here by reference. The City re-alleges paragraphs 1 through 128 (except paragraphs 76 through 93) and incorporates those paragraphs here by reference.

130. An actual controversy exists between Plaintiffs and defendants Hanson, Swagelok, Whitney, and Lozick with respect to their rights and obligations under state law, and Plaintiffs seek a judicial determination of the respective rights and duties of the parties with respect to the rights, claims and damages alleged herein.

131. The requested declaration is necessary and appropriate at this time.

132. Wherefore Plaintiffs pray for judgment as hereinafter set forth.

PRAYER FOR RELIEF

Wherefore, the Successor Agency and City pray for relief as follows:

1. On the first claim for relief, for recovery of all response costs incurred or to be incurred by the Successor Agency and/or the City in connection with the Property consistent with the National Contingency Plan, including statutory interest;

2. On the second claim for relief, for a judicial declaration that defendants Hanson, Swagelok, Whitney, and Lozick are jointly and severally liable for all response costs incurred and to be incurred by the Successor Agency and/or the City in connection with the Property consistent with the National Contingency Plan;

3. On the third claim for relief, for an injunction ordering the Defendants to abate the imminent and substantial endangerment to health and the environment;

4. On the fourth claim for relief, for recovery of all response costs incurred or to be incurred by the Successor Agency in connection with the Property, including attorneys' fees and statutory interest;

5. On the fifth claim for relief, for recovery of all response costs incurred or to be incurred by the City in connection with the Property, including attorneys' fees and statutory interest;

6. On the sixth claim for relief, for recovery by the City for compensatory damages and abatement in amount to be determined at trial;

7. On the seventh claim for relief, for recovery by the Successor Agency and the City for compensatory damages in amount to be determined at trial;

8. On the eighth claim for relief, for recovery by the Successor Agency and the City for compensatory damages in amount to be determined at trial;

9. On the ninth claim for relief, for recovery by the Successor Agency and City for compensatory damages in amount to be determined at trial;

10. On the tenth claims for relief, for entry of declaratory judgment on the Successor Agency's and City's state law claims;

11. As to all claims for relief, for all costs, attorneys' fees, interest and expenses, to the fullest extent provided by law; and

///

///

12. For such other and further relief as the Court may deem just and proper.

October 5, 2017

COX, CASTLE & NICHOLSON LLP

By: */s/ Robert P. Doty*

Robert P. Doty
Ali P. Hamidi
Christopher W. Gribble
Attorneys for Plaintiffs
The Successor Agency to the former Emeryville Redevelopment Agency and The City of Emeryville

APPENDIX T

BakerHostetler

Baker&Hostetler LLP

11601 Wilshire Boulevard
Suite 1400
Los Angeles, CA 90025-0509

T 310.820.8800
F 310.820.8859
www.bakerlaw.com

John F. Cermak, Jr.
direct dial: 310.442.8885
jcermak@bakerlaw.com

February 15, 2016

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Nancy Lima, City Clerk
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Michael Guina
City Attorney's Office
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Re: Notice of Intent to File Citizen Suit under the Resource Conservation and Recovery Act with Regard to Property at 5679 Horton Street, Emeryville, California

Dear Ms. Lima and Mr. Guina:

Baker Hostetler represents the Swagelok Company ("Swagelok"). This letter serves as notification, as required by Section 7002(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6972(a), that Swagelok intends to commence an action under RCRA against the City of Emeryville, including in its capacity as successor agency to the Emeryville Redevelopment Agency (the "City"). This action will seek, among other things, injunctive relief and costs of suit (including attorneys' fees and expert witness fees). This notice is provided pursuant to RCRA 7002(b)(2)(A)) (42 U.S.C. Section 6972(b)(2)(A)) and constitutes the required 90-day notification.

The City is the current owner of the real property at 5679 Horton Street in Emeryville, California (the "Property"). In a revised RCRA notice dated January 28, 2016, recently served by the City (a copy of which is attached for ease of reference), the City alleges as follows:

> The Property is generally bounded by Union Pacific Railroad property to the west, light commercial/industrial properties to the north, Horton Street to the east, Stanford Avenue to the southeast, and a former rail spur to the south ("Property"). A legal description that identifies the Property is attached as Exhibit A. As a result of operations at the Property, soil and groundwater at and near the Property has been contaminated with various "solid" and/or "hazardous" wastes as those terms are defined in 42 U.S.C. § § 6903(27) and 6903(5), respectively. The continued presence of these solid and or hazardous wastes constitutes an "imminent and substantial endangerment to health or the environment" within the meaning of 42 U.S.C. § 6972(a)(1)(B).

Id. at 1.

The City goes on to allege that:

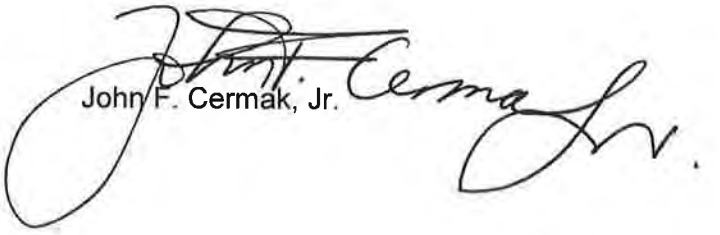
> The soil and groundwater at the Property are contaminated with volatile organic compounds ("VOCs"), including trichloroethene ("TCE"), vinyl chloride ("VC"), tetrachloroethene ("PCE"), cis-1,2-dichloroethene (cDCE), trans-1,2-dichloroethene ("tDCE"), 1,1-dichloroethane ("1,1,-DCA"), 1,2-dichloroethane ("1,2-DCA"), 1,1,2-trichloroethane ("1,1,2-TCA"), chloroform, bromomethane, chlorobenzene, and methylene chloride. One or more of these VOCs impacts soil, sub-slab soil vapor, soil vapor, groundwater, and indoor air. Total extractable petroleum hydrocarbons ("TEPH"), including diesel and motor oil ranges, are also present on the Property, and cadmium and lead have been detected in the soil at the Property. The presence of these contaminants on the Property appears to be associated with historic manufacturing operations at the Property, including the use of chlorinated solvents and other chemicals. At least one primary release area has been identified in the northeast portion of the Property, and evidence suggests other on-site release areas as well. Releases at the Property are continuing and ongoing.
>
> From the early 1900s to about 1960, the Property was owned and/or operated by Marchant Calculating Machine Company ("Marchant") as a manufacturing facility for mechanical calculating machines. Historic evidence shows activities/areas on the Property during this time included a nickel plating area, an enameling area, plating room, grinding room, hardening room, machine shop, press room, assembly room, dressing room, tool shop and store room among other activities. Marchant was acquired by Smith Corona in the late 1950s, and the company became known as SCM Corporation in the 1960s.

The City also alleges in the notice that Swagelok is liable for the operations of Whitney Research Tool Company ("Whitney") which operated at the Property from 1963 to 1999. Swagelok is not the successor to or otherwise responsible for the obligations of Whitney. Moreover, and in any event, the City's own consultant concluded in a June 1999 Phase II site acquisition investigation and documentation report that "it is unclear if the operations [by Whitney] at the site since 1963 are responsible for the contamination."

Based on the City's own allegations, including its allegation that releases at the Property are "continuing and ongoing," the City is a "past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation or disposal of . . . solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment."

Please contact me at the address listed above if you have any questions regarding this notice.

Sincerely,



John F. Cermak, Jr.

JFC:nlw
Enclosures

cc: Gina McCarthy, Administrator (via certified mail)
United States Environmental Protection Agency
Office of the Administrator
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Eric Holder, Attorney General of the United States (via certified mail)
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator (via certified mail)
Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Barbara A. Lee, Director (via certified mail)
California Dept. of Toxic Substances Control
1001 'I' Street
P.O. Box 806
Sacramento, CA 95812-0806

Matthew Rodriguez, Secretary (via certified mail)
California Environmental Protection Agency
1001 'I' Street
Sacramento, CA 95812-2815

Peter M. Morrisette (via certified mail)
Cox, Castle & Nicholson
555 California Street, 10th Floor
San Francisco, CA 94104-1513

ATTACHMENT

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111
P: 415.262.5100 F: 415.262.5199

Peter M. Morrisette
415.262.5145
pmorrisette@coxcastle.com

File No. 70431

January 28, 2016

BY REGISTERED MAIL
RETURN RECEIPT REQUESTED

Arthur F. Anton, CEO
Swagelok Company
29500 Solon Road
Solon, Ohio 44139

Re: Revised Notice of Intent to File Citizen Suit under Section 7002(a) of the Resource Conservation and Recovery Act

Dear Sir:

My firm represents the City of Emeryville as the Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency"). Please be advised that the Successor Agency hereby provides a ninety-day notice of intent to assert claims against the above-identified entity pursuant to Section 7002(a) of the Solid Waste Disposal Act, 42 U.S.C. § 6972(a). These claims include injunctive relief, reasonable attorneys' fees, and expert witness fees. The general basis for these claims is as follows:

The above identified entity was either a former owner or operator or successor or parent of a former owner or operator of a manufacturing facility located at 5679 Horton Street in Emeryville, California (the "Property"). The Property is generally bounded by Union Pacific Railroad property to the west, light commercial/industrial properties to the north, Horton Street to the east, Stanford Avenue to the southeast, and a former rail spur to the south ("Property"). A legal description that identifies the Property is attached as Exhibit A. As a result of operations at the Property, soil and groundwater at and near the Property has been contaminated with various "solid" and/or "hazardous" wastes as those terms are defined in 42 U.S.C. §§ 6903(27) and 6903(5), respectively. The continued presence of these solid and or hazardous wastes constitutes an "imminent and substantial endangerment to health or the environment" within the meaning of 42 U.S.C. § 6972(a)(1)(B).

We are sending this revised notice letter to provide you with more information regarding the conditions at the Property. The California Department of Toxic Substances Control ("DTSC") is responsible for the oversight of the cleanup at the Property. Detailed technical information about the Property can be found at DTSC's EnviroStor database at the following link: http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=60001628#

The soil and groundwater at the Property are contaminated with volatile organic compounds ("VOCs"), including trichloroethene ("TCE"), vinyl chloride ("VC"), tetrachloroethene ("PCE"), cis-1,2-dichloroethene ("cDCE"), trans-1,2- dichloroethene ("tDCE"), 1,1- dichloroethane ("1,1,-DCA"), 1,2- dichloroethane ("1,2-DCA"), 1,1,2-trichloroethane ("1,1,2-TCA"), chloroform, bromomethane, chlorobenzene, and methylene chloride. One or more of these VOCs impacts soil, sub-slab soil vapor, soil vapor, groundwater, and indoor air. Total extractable petroleum hydrocarbons ("TEPH"), including diesel and motor oil ranges, are also present on the Property, and cadmium and lead have been detected in the soil at the Property. The presence of these contaminants on the Property appears to be associated with historic manufacturing operations at the Property, including the use of chlorinated solvents and other chemicals. At least one primary release area has been identified in the northeast portion of the Property, and evidence suggests other on-site release areas as well. Releases at the Property are continuing and ongoing.

From the early 1900s to about 1960, the Property was owned and/or operated by Marchant Calculating Machine Company ("Marchant") as a manufacturing facility for mechanical calculating machines. Historic evidence shows activities/areas on the Property during this time included a nickel plating area, an enameling area, plating room, grinding room, hardening room, machine shop, press room, assembly room, dressing room, tool shop and store room among other activities. Marchant was acquired by Smith Corona in the late 1950s, and the company became known as SCM Corporation in the 1960s.

From the early 1960s to the early 1990s the site was owned/operated by Whitney Research Tool Company, which was also known as Whitey Research Tool Company (collectively "Whitney"). Whitney manufactured valves at the Property. Historic evidence shows activities/areas on the Property at the time included a grease room, hazardous waste area, solvent recovery, empty drum storage, full drum storage, pallets, chip processor, chip spinner, sanders, bandsaw, scale, shipping, receiving, dumpsters, battery charger, air operator, oven, jet drill line, tool room, inspection department, and lathe department. The evidence also shows that the Whitney facility was constructed on top of the older Marchant facility without first cleaning up contamination at the Property, which likely contributed to the spread of contamination at the Property.

The above-identified entity has been identified as a party who is liable for the historic liabilities of Whitney Research Tool Company/Whitey Research Tool Company. As such, the above-identified entity has, within the meaning of 42 U.S.C. § 6972(a)(1)(B), "contributed . . . to the past or present handling, storage, treatment, transportation, or disposal" of the solid and/or hazardous wastes which present an imminent and substantial endangerment to health or the environment.

Please contact me at the number above, or Robert Doty of my office at 415-262-5115, if you have questions regarding this notice.

Very truly yours,

Peter M. Morrisette

PMM/se
Attachment

704031\7441013v1

cc: Gina McCarthy, Administrator *(via mail)*
United States Environmental Protection Agency
Office of the Administrator
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Jared Blumenfield, Regional Administrator *(via mail)*
Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Matthew Rodriguez, Secretary *(via mail)*
California Environmental Protection Agency
1001 'I' Street
Sacramento, California 95812-2815

Barbara Lee, Director *(via mail)*
Department of Toxic Substances Control
1001 'I' Street
Sacramento, California 95812-2815

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

PARCEL "A" AS SHOWN ON PARCEL MAP 7868, FILED IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY ON FEBRUARY 14, 2005 IN MAP BOOK 280 AT PAGES 41 AND 42.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT TO CROSS AND RE-CROSS WITH AND FOR THE MANEUVERING OF MOTOR VEHICLES, APPURTENANT TO PARCEL 1, HEREINABOVE DESCRIBED, OVER THE FOLLOWING DESCRIBED LAND:

COMMENCING AT THE INTERSECTION OF THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF LOT 8 IN BLOCK 37 WITH THE EASTERN LINE OF LANDREGAN, FORMERLY 4TH STREET, AS SAID LOT, BLOCK AND STREET ARE SHOWN ON THE "MAP OF THE PROPERTY OF L. M. BEAUDRY & G. PELADEAU", FILED NOVEMBER 6, 1876, IN BOOK 6 OF MAPS, PAGE 14, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY; RUNNING THENCE ALONG SAID EXTENDED LINE AND ALONG THE NORTHERN LINE OF SAID LOT 8, SOUTH 75°28' WEST, 208.44 FEET; THENCE SOUTH 14°32' EAST, 72 FEET TO THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; RUNNING THENCE FROM SAID ACTUAL POINT OF BEGINNING, SOUTH 14°32' EAST, 33 FEET; THENCE SOUTH 75°28' WEST, 98.87 FEET TO THE EASTERN LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC COMPANY; THENCE ALONG THE LAST NAMED LINE, NORTHERLY 33.01 FEET TO A LINE DRAWN SOUTH 75°28' WEST FROM THE ACTUAL POINT OF BEGINNING; AND THENCE NORTH 75°28' EAST, 98.06 FEET TO THE ACTUAL POINT OF BEGINNING.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR SEWER LINES, PUBLIC UTILITIES AND INGRESS AND EGRESS OF MOTOR VEHICLES AND PEDESTRIANS, APPURTENANT TO PARCEL 1, HEREINABOVE DESCRIBED, OVER THE FOLLOWING DESCRIBED LAND:

COMMENCING AT THE INTERSECTION OF THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF LOT 8 IN BLOCK 37 WITH THE EASTERN LINE OF LANDREGAN, FORMERLY 4TH STREET, AS SAID LOT, BLOCK AND STREET ARE SHOWN ON THE "MAP OF THE PROPERTY OF L. M. BEAUDRY & G. PELADEAU", FILED NOVEMBER 6, 1876, IN BOOK 6 OF MAPS, PAGE 14, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY; RUNNING THENCE ALONG SAID EXTENDED LINE AND ALONG THE NORTHERN LINE OF SAID LOT 8, SOUTH 75°28' WEST, 208.44 FEET; THENCE SOUTH 14°32' EAST, 55 FEET TO THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; RUNNING THENCE FROM SAID ACTUAL POINT OF BEGINNING, SOUTH 14°32' EAST, 50 FEET; THENCE NORTH 75°28' EAST, 208.75 FEET TO THE DIRECT EXTENSION SOUTHERLY OF THE EASTERN LINE OF LANDREGAN STREET; THENCE ALONG LAST SAID EXTENDED LINE, NORTH 14°42' WEST, 105 FEET TO THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF SAID LOT 8; THENCE ALONG LAST SAID EXTENDED LINE, SOUTH 75°28' WEST, 48 FEET; THENCE SOUTH 14°42' EAST, 55 FEET TO A LINE DRAWN NORTH 75°28' EAST FROM THE ACTUAL

POINT OF BEGINNING; AND THENCE SOUTH 75°28' WEST, 160.60 FEET TO THE ACTUAL POINT OF BEGINNING.

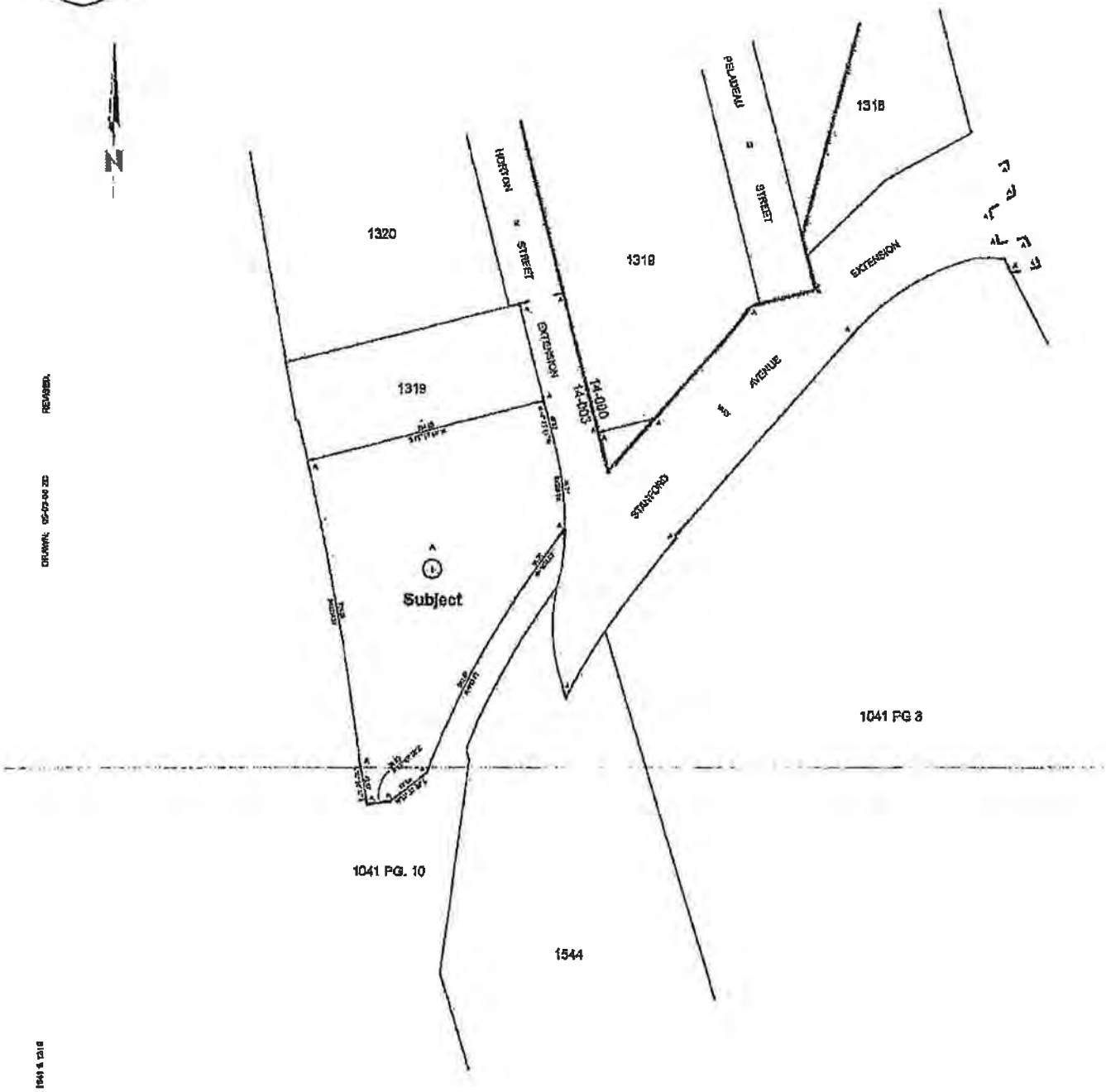
APN: 049-1552-001

ASSESSOR'S MAP 49

1552 SCALE: 1" = 80'

Code Area Nos. 14-000 14-009

(A) P.M. 7838 262/41-42



REVISED:

DRAWN: 05-03-04 JB

FORMERLY: POR. BLK. 1041 & 1318

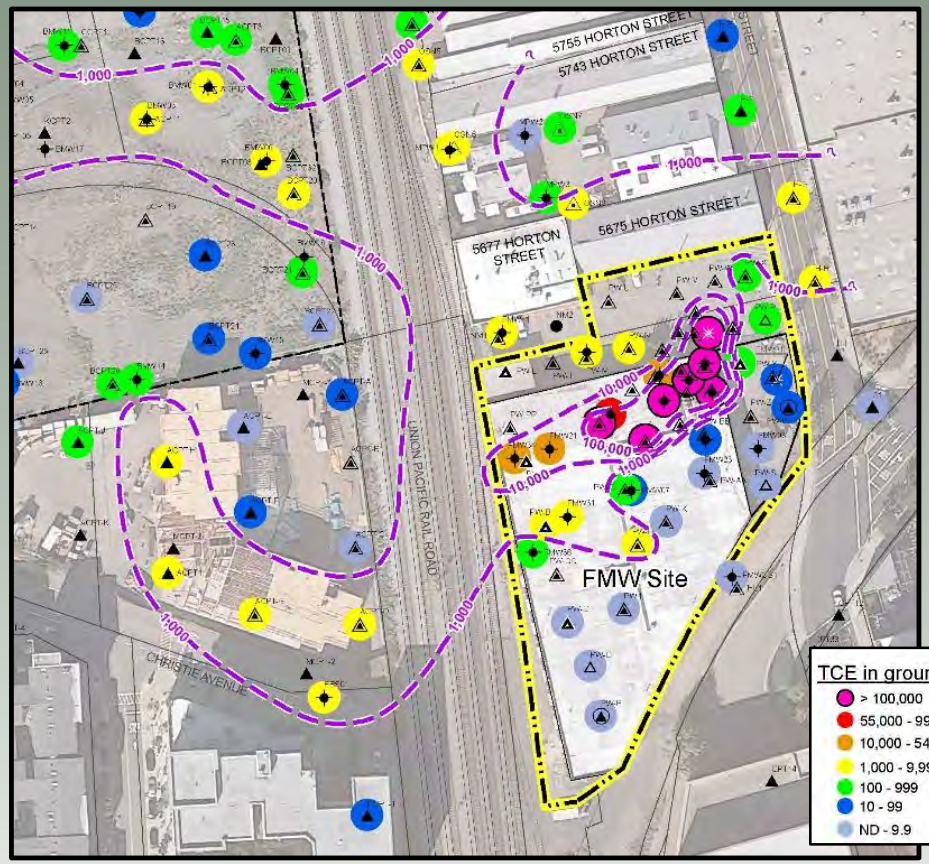
ACM: Site: 28 REF: -

XPN: 1 IND Pgs: 3

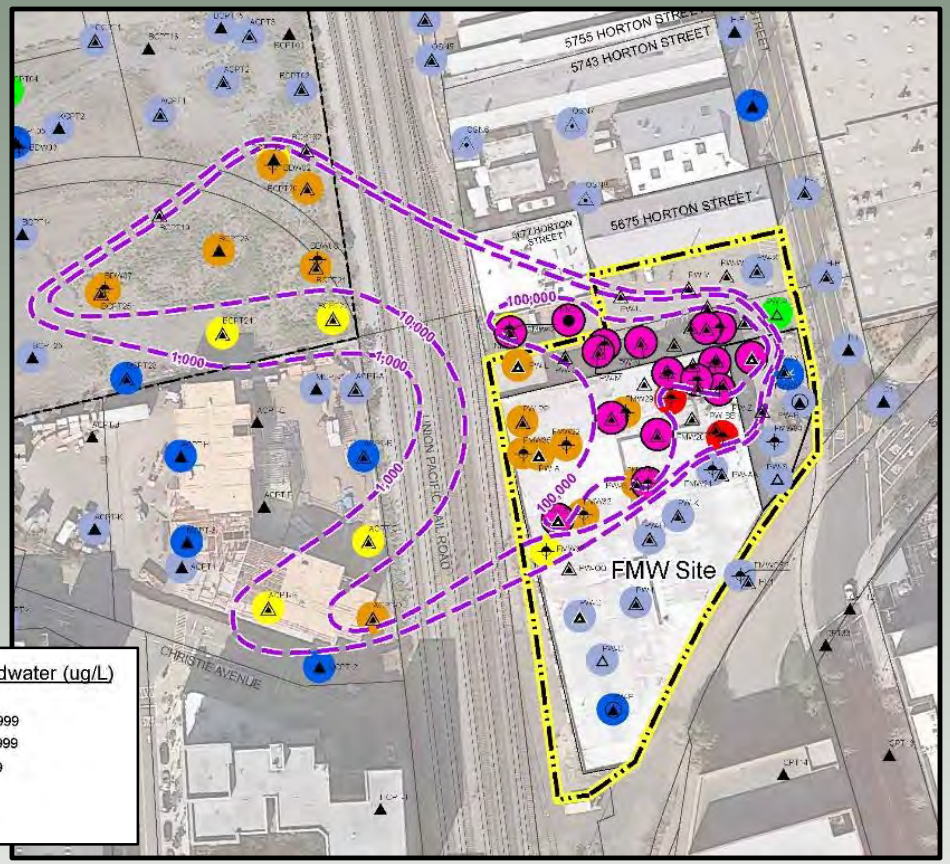
APPENDIX U

Trichloroethene ("TCE") in Groundwater

~0 to 23 feet below ground surface ("bgs")



~23 to 45 feet bgs



- TCE concentrations up to **<u>100,000 times</u>** greater than the drinking water standard of 5 micrograms per liter ("ug/L").