



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: January 15, 2019
TO: Christine Daniel, City Manager
FROM: Michael A. Guina, City Attorney
SUBJECT: Resolution Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Approving The Expenditure Of Up To \$175,000 During The Rops 19-20 Cycle For The Premium Payable Through Integro Insurance Brokers To Renew The \$10,000,000 Environmental Insurance Policy For South Bayfront Site B For A Term Up To Ten Years And Authorizing The City Manager To Negotiate, Enter Into, Execute And Implement The Terms Of Said Insurance Policy On Behalf Of The Successor Agency

RECOMMENDATION

Staff recommends the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") adopt the attached resolution approving a one-time expenditure of up to \$175,000 during the ROPS 19-20 cycle for the premium payable through Integro Insurance Brokers ("Integro") to renew the \$10,000,000 environmental insurance policy for South Bayfront Site B for a term up to ten years and authorizing the City Manager to negotiate, enter into, execute and implement the terms of said insurance policy on behalf of the Successor Agency. The Successor Agency has the authority to enter into this agreement pursuant to California Health And Safety Code Section 34177.3(a).

BACKGROUND

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

After an extensive process of environmental investigation and assessment, in June 2008 the Redevelopment Agency awarded a contract for soil remediation of hazardous materials contamination at South Bayfront Site B. Soil remediation activities were conducted in accordance with the Final Feasibility Study/Remedial Action Plan ("FS/RAP") and Final Remedial Design and Implementation Plan ("RDIP") prepared by EKI Environment & Water, Inc., formerly known as Erler & Kalinowski, Inc., and approved by the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC"). Soil

remediation activities were completed in the Fall of 2009 and the Soil Remediation Completion Report was approved by DTSC on June 15, 2010.

Upon completion of the soil remediation, the next phase of remediation related to groundwater contamination commenced in accordance with the FS/RAP and Final RDIP. With respect to groundwater remediation, the approved FS/RAP anticipated that the Redevelopment Agency would implement a remedy involving the construction of a containment trench around the northeast edge of South Bayfront Site B and then continuously pump the contaminated groundwater and treat it before disposal. The FS/RAP also contained as an alternative a bio-remediation concept.

Based on the results of the soil remediation and its favorable impact to groundwater, the Redevelopment Agency and DTSC agreed to pursue the bio-remediation concept rather than the construction of the containment trench and pumping and treating of contaminated groundwater. Thereafter, to advance the bio-remediation remedy, the Redevelopment Agency undertook a pilot study of enhanced reductive dechlorination ("ERD"), involving injecting organic amendments into the groundwater in order to address tetrachloroethene ("PCE"), trichloroethene ("TCE"), and its breakdown products, including vinyl chloride ("VC"). Thereafter, based on the very favorable results from the pilot study, the RDIP was amended to authorize the bio-remediation of groundwater contamination across South Bayfront Site B.

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

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

As reflected in the completion report and the recently submitted First 2018 Semi Annual Groundwater Monitoring Report, notwithstanding the effectiveness of the ERD injections to both shallow and deeper groundwater, it is evident that contaminants in shallow groundwater from off-site sources will continue over time to migrate onto and impact the shallow groundwater beneath South Bayfront Site B. Thus, unless and until those off-site sources of contamination are addressed, there may need to be continued injections of ERD into the shallow groundwater under South Bayfront Site B for the foreseeable future.

Accordingly, with respect to South Bayfront Site B, in calendar year 2019 the Successor Agency will evaluate post-injection baseline soil vapor conditions to determine whether long-term injections will be required since data indicates the primary ongoing source of CVOCs in shallow groundwater are upgradient off-site sources. It is anticipated that this evaluation will show that impacts from soil vapor conditions to indoor air of structures built on the site can be adequately and appropriately mitigated with engineering controls (e.g. vapor barriers, passive/active vapor systems) and thereby eliminate the need for costly on-going ERD injections. During the remainder of the ROPS 18-19 cycle and ROPS 19-20 cycle, the Successor Agency will conduct this evaluation to assist with the preparation of the Operation and Maintenance Plan (O&M Plan”).

Once the results of the aforementioned evaluation is completed, the Successor Agency will be able to move forward with preparation of the O&M Plan for South Bayfront Site B. The O&M Plan will address the installation of engineering controls, location of groundwater monitoring wells as well as a schedule for on-going groundwater monitoring obligations, and a soil management plan governing any future on-site excavation activities associated with site redevelopment. Further, depending on DTSC, there may need to be an operations and maintenance agreement (“O&M Agreement”) governing the obligation of the property owner to implement the O&M Plan. Finally, there will be a need to enter into a land use covenant (“LUC”) with the DTSC that will place restrictions on use of groundwater beneath the site, as well as future uses of the site.

Once the Successor Agency completes the groundwater remediation efforts required by the FS/RAP and RDIP, it will obtain immunity from future regulatory actions pursuant to the Polanco Redevelopment Act, which immunity can be transferred to future owners of South Bayfront Site B. Further, once DTSC approves the O&M Plan, O&M Agreement, LUC, and confirms the application of the immunity pursuant to the Polanco Redevelopment Act, the South Bayfront Site B parcels are to be transferred to the City of Emeryville (“City”) for future development pursuant to the terms of the approved Long Range Property Management Plan (“LRPMP”).

DISCUSSION

In 2008, after the Redevelopment Agency had assembled all of the parcels comprising South Bayfront Site B and was readying to commence site remediation, it procured a \$10,000,000 environmental liability insurance policy through its insurance broker, Integro Insurance Brokers (“Integro”), from Chubb Insurance Company for a 10 year term. The policy provides coverage for unknown contaminants uncovered in the remedial process, but more importantly coverage for known and unknown contaminants that are uncovered once site closure has been obtained from regulatory agencies. Thus, the policy provides important coverage during site development activities and is key to facilitating financing for site development and construction.

As noted above, once regulatory closure is secured from DTSC, South Bayfront Site B is to be transferred to the City in accordance with the LRPMP for future development. The LRPMP provides that the Successor Agency was to transfer and assign the environmental insurance policy to the City, which the City would thereafter assign to the developer of the site. However, the policy expired November 3, 2018, and thus in order to fulfill its obligation under the LRPMP to provide the policy to the City upon transfer of South Bayfront Site B, the Successor Agency is in the process of securing a new policy with a term up to ten (10) years.

Based on discussions with Integro, it is anticipated that the cost of the one-time premium should not exceed \$175,000. In 2008 when the initial policy was secured, the Redevelopment Agency paid a one-time premium of approximately \$176,000. However, since the soil remediation has been accepted as complete by DTSC and a completion report for the groundwater remediation has been submitted to DTSC for approval, the risk associated with South Bayfront Site B from an insurer’s perspective has been significantly diminished and thus it is expected that the cost of the premium will be measurably less than the amount paid back in 2008. Also, staff is advised that the market for these types of insurance products remains strong and that there are more potential insurers in the market from which to solicit insurance proposals. As a result, staff is advised that Integro will likely solicit and receive proposals from up to five (5) insurance companies to evaluate.

It should be noted that procuring environmental insurance is similar to soliciting a contract for professional services and thus is not a “low bid” situation or decision. Rather, staff will be evaluating the scope and quality of insurance coverage and terms, in addition to the cost of the premium.

Accordingly, for the ROPS 19-20 cycle and as reflected in ROPS line item 124, it is estimated that the Successor Agency will incur a one-time expenditure of approximately \$175,000.00, payable through Integro Insurance Brokers, for renewal of the South Bayfront Site B \$10,000,000 environmental insurance policy for a 10 year term.

RECOMMENDATION

Pursuant to authority provided by Section 34177.3(a), it is recommended that the Successor Agency consider the information contained in this report and all public testimony, and thereafter adopt the attached resolution approving a one-time expenditure of up to \$175,000 during the ROPS 19-20 cycle for the premium, payable through Integro Insurance Brokers, to renew the \$10,000,000 environmental insurance policy for South Bayfront Site B for a term up to ten years and authorizing the City Manager to negotiate, enter into, execute and implement the terms of said insurance policy on behalf of the Successor Agency.

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



Christine Daniel, City Manager

ATTACHMENTS

- Resolution Approving ROPS 19-20 Expenditure & Procuring Environmental Insurance Policy