

RESOLUTION NO. SA02-19

Resolution Of The City Council Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Approving The Expenditure Of Up To \$150,000 During The ROPS 19-20 Cycle To Reimburse The California Environmental Protection Agency, Department Of Toxic Substances Control (DTSC), For Environmental Regulatory Oversight Services Required For Soil And Groundwater Remediation At The Corporation Yard Site, 5679 Horton Street, Emeryville, CA, Pursuant To The Terms Of An Imminent And/Or Substantial Endangerment Order And Remedial Action Order Anticipated To Be Issued To The Successor Agency By DTSC

WHEREAS, the former Redevelopment Agency acquired the property located at 5679 Horton Street, Emeryville, California in July 1999 from the Lozick Trust in order to facilitate the connection of Horton Street with former Landregan Street, and the remainder, which includes a large warehouse structure and surface parking, was utilized by the City as a temporary location for the Public Works Department's corporation yard (hereinafter, the "Corporation Yard" or "FMW"); and

WHEREAS, the Dissolution Act was enacted on June 28, 2011, and in accordance with the terms of the Act, fee title to the Corporation Yard remains vested in the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency"); and

WHEREAS, as the owner of the Corporation Yard site, the Successor Agency is a responsible party under state and federal law for the remediation of hazardous materials on the site; and

WHEREAS, under the terms of the Chevron USA/Union Oil Settlement Agreement related to South Bayfront Site B, the Successor Agency is obligated to *"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

WHEREAS, investigative work undertaken in relation to South Bayfront Site B under the oversight of the California Environmental Protection Agency, Department Of Toxic Substances Control ("DTSC") has conclusively revealed that *"investigations conducted since the time that the Feasibility Study/Remedial Action Plan was approved [for South Bayfront Site B] 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"*; and

WHEREAS, in accordance with its obligations as an owner of property severely contaminated with hazardous materials as well as its contractual obligation under the Chevron USA/Union Oil Settlement Agreement to *"study, investigate, evaluate, and remediate"* hazardous substances or contamination migrating to South Bayfront Site B, the former Redevelopment Agency entered into contracts with DTSC and the

environmental engineering firm now known as EKI Environment & Water, Inc. (“EKI”), in January 2012, to remediate the contamination at the Corporation Yard; and

WHEREAS, after approving approximately \$7,000,000 in funding over the previous five (5) years to address the contamination at the Corporation Yard, in April 2017, the State of California, Department of Finance (“DOF”), disapproved further funding for remediation of the Corporation Yard site based on the premise that the Chevron USA/Union Oil Settlement Agreement did not specifically require remediation of the Corporation Yard site; and

WHEREAS, as a result of the lack of funding to move forward with implementing the Feasibility Study/Remedial Action Plan (“FS/RAP”) for the Corporation Yard, the Successor Agency met with DTSC representatives in June 2017 to advise them of the situation and subsequently terminated the voluntary cleanup agreement pertaining to the Corporation Yard site; and

WHEREAS, given the severity of the contamination at the Corporation Yard site, DTSC advised that they would subsequently issue an Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order (“Order”), and in October 2017, issued a Request For Information And Documents to the Successor Agency which is a precursor to preparation and issuance of the Order; and

WHEREAS, in recent communications with DTSC’s newly assigned project manager, Successor Agency staff have been advised that a draft Order was prepared and submitted to DTSC’s office of legal counsel in November 2018, and thus issuance of the Order to the Successor Agency by DTSC is imminent; and

WHEREAS, in anticipation of receipt of the Order from DTSC, and in order to be able to promptly restart the final stages of the FS/RAP approval process for the Corporation Yard and begin implementation of remedial activities during the ROPS 19-20 cycle, pursuant to authority provided by Section 34177.3, it is recommended that the Successor Agency authorize expenditures up to \$150,000 for the ROPS 19-20 cycle to reimburse DTSC for their costs of oversight that will be required as part of such an Order; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency that an expenditure up to \$150,000 during the ROPS 19-20 cycle is hereby approved and authorized in order to reimburse DTSC for their regulatory oversight services required under the terms of the Order.

ADOPTED, by the City Council of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency at a regular meeting held Tuesday, January 15, 2019, by the following vote:

AYES:	<u>5</u>	Mayor Medina, Vice Mayor Patz, and Council Members Bauters, Donahue, and Martinez
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

Ally Mc
MAYOR

ATTEST:

Drew
CITY CLERK

APPROVED AS TO FORM:

Michael Guindon
CITY ATTORNEY