City of Emeryville
CALIFORNIA

DATE: July 11, 2022

TO: County of Alameda Countywide Oversight Board

FROM: Christine Daniel, City Manager/Executive Director

City of Emeryville as the Successor Agency to the Emeryville Redevelopment Agency

SUBJECT: Resolution of the County of Alameda Countywide Oversight Board Approving the Settlement Agreement between the Successor Agency to the former Redevelopment Agency for the City of Emeryville, a public entity, and the City of Emeryville, another public entity, and Defendants Swagelok Company, Whitney Research Tool Company, and Catherine Lennon Lozick, an individual

BACKGROUND

The purpose of this item is to request the County of Alameda Countywide Oversight Board's ("Oversight Board") approval of a settlement agreement between the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") and the City of Emeryville ("City," collectively "Emeryville"), and Swagelok Company ("Swagelok"), Whitney Research Tool Company ("Whitney"), and Catherine Lennon Lozick ("Lozick," collectively with Swagelok and Whitney the "WSL Defendants")[1]. The settlement agreement arises out of on-going litigation over environmental cleanup work at property owned by the Successor Agency and located at 5679 Horton Street in the City of Emeryville, Alameda County, California (the "Property").

The underlying litigation arises primarily as a result of polluted groundwater at and emanating from the Property. The contamination was caused by industrial activities that occurred at the Property in the 1900s. The former Redevelopment Agency acquired the Property in July 1999 from the Lozick Trust in order to facilitate the connection of Horton Street with the former Landregan Street, as called out in the circulation element of the City's General Plan. The remainder of the Property not utilized for the roadway extension project was thereafter used by the City as a temporary location for the Public Works Department's corporation yard ("Corporation Yard") until approximately 2012.

In the claims it is litigating, the Successor Agency and the City allege that defendants are legally responsible for the contamination under federal statutes, California statutes that were derived from and largely mirror the federal statutes, and California common law. From approximately 1910 until approximately 1959, the Property was operated by the Marchant Calculating Machine Company, a California corporation ("Marchant"), which used the Property and adjacent lands it owned to manufacture mechanical calculating machines. In the late 1950s, Marchant merged with and into a

[1] A fourth defendant in the lawsuit, Hanson Building Materials Limited ("Hanson"), is a British Corporation and is not a party to this settlement agreement.

company incorporated in the state of New York – Smith-Corona. Smith-Corona was the surviving corporation in that merger, and, after the merger, Smith-Corona changed its name to Smith-Corona Marchant, and the mechanical calculator business operated as the Marchant Division. Soon thereafter, the company shortened its name to SCM.[2] From approximately the mid-1960s to the late 1990s, the Property was owned by affiliates of defendant Swagelok and operated by Whitney – an entity controlled and dominated by Swagelok – which produced machine valves and/or parts for such valves at the Property. Both of the historic operators used chlorinated solvent compounds and petroleum-based compounds, among other chemicals. Whether by spillage and leaks, active disposal, or a combination thereof, 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 referred to as "CVOCs"). The Property is also contaminated with petroleum-based compounds.

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 persons working in the building. Accordingly, the building was vacated in 2012.

DISCUSSION

In 2017, after providing the historic operators and/or their successors with an opportunity to avoid litigation by implementing a cleanup plan consistent with applicable regulations, Emeryville filed a lawsuit against the WSL Defendants as well as Hanson. Emeryville seeks, among other things, joint and several liability for its environmental remediation costs.

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 approximately $47 million to approximately $88 million. Approximately $13 million of site investigation and remedial evaluation work has been conducted through the end of 2021. 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 and Control ("DTSC") pursuant to the Imminent and Substantial Endangerment Order ("I&SE Order") issued by DTSC to the Successor Agency in August 2020.

Following settlement negotiations with all of the named defendants, the WSL Defendants and their liability insurers agreed to the terms of a settlement agreement which includes the following: (1) a lump sum cash payment to the Successor Agency of $33 million dollars, (2) a "structured" assignment of the WSL Defendants' contribution claims against Hanson, which could increase Emeryville's recovery by up to $7 million dollars; (3) an agreement that Emeryville will litigate the WSL Defendants' assigned claims as a "tag-along" to Emeryville's claims against Hanson; (4) a broad release of claims in favor of the WSL Defendants and their insurers; and (5) a requirement for court approval via a "good faith settlement" motion, as well as approval by the Oversight Board and the California Department of Finance ("DOF"). A copy of the executed Settlement Agreement is attached as Attachment 2.

The settlement agreement requires that the $33 million dollars must be deposited and held in a separate fund of the Successor Agency and expended only to pay for cost incurred to clean up the Property. DOF has agreed that these settlement funds can be held by the Successor Agency and expended to pay for cleanup costs related to the Property once the settlement agreement funds have been listed on an approved Recognized Obligation Payment Schedule (the "ROPS"), beginning in fiscal year July 1, 2023 through June 30, 2024. Once all of the settlement agreement funds have been expended pursuant to an approved ROPS, then any other funding still required to complete

[2] Responsibility for Marchant's operations and contamination at and near the Property flowed first to SCM and subsequently to Hanson as a result of it acquiring control over SCM and making SCM an indirect subsidiary of Hanson during the mid-1980s.

the cleanup of the Property will be requested by the Successor Agency on a future ROPS as Redevelopment Property Tax Trust Funds, unless other funds are available and sufficient. One such alternative funding source is if the Successor Agency is able to prevail and collect on its claims and the assigned WSL Defendants' claims against Hanson.

With respect to the assignment of the WSL Defendants' contribution claims against Hanson to the Successor Agency, to the extent the Successor Agency does in fact obtain a judgment and award of those claims, the sum recovered will first be applied and paid to cover 50% of the Successor Agency's legal fees, expert witness costs, and related litigation expenses and disbursements incurred by the Successor Agency on or after June 1, 2022. Thereafter, the sum recovered shall be applied and paid to the Successor Agency up to a maximum of $7 million dollars. Any sum recovered that is in excess of the Successor Agency's litigation expenses and the $7 million dollars outlined above, shall then be paid by the Successor Agency to the WSL Defendants.

The settlement agreement also contains additional terms including: (1) WSL Defendants will remit payment within 45 days of final court, the Oversight Board, and DOF approvals; (2) WSL Defendants will continue to pay 50% of costs billed by four expert witnesses shared by Emeryville and the WSL Defendants until the expert witness disclosure process is completed; (3) WSL Defendants will pay 100% of costs billed by their experts who assign liability to Hanson; and (4) the Successor Agency will agree to comply with the 2020 DTSC Imminent and Substantial Endangerment Order, and segregate the settlement proceeds and dedicate them to clean up the Property.

CONCLUSION

The settlement agreement, if approved, imposes two obligations on the Successor Agency. One of the obligations already exists by virtue of the I&SE Order issued to the Successor Agency by DTSC and the other is contingent on recovery on the assigned claims of the WSL Defendants against Hanson. If the settlement agreement is approved by the Oversight Board and DOF, these obligations will be listed on the Successor Agency's Recognized Obligation Payment Schedule ("ROPS") for fiscal year 2023-24 that will be presented to the Oversight Board in January 2023.

First, in exchange for the $33 million dollar payment from the WSL Defendants, the Successor Agency agrees that it will comply with and implement the cleanup of the Property in accordance with the I&SE Order. The I&SE Order is an enforceable obligation under the Dissolution Act and has previously been included and approved as an enforceable obligation on the Successor Agency's ROPS. (See ROPS 2022-23, line item 122). Accordingly, the settlement agreement infuses $33 million dollars from responsible parties to the Successor Agency to fund an existing enforceable obligation of the Successor Agency.

Second, as the Successor Agency continues to pursue its claims against Hanson, it will likewise pursue the assigned claims of the WSL Defendants' against Hanson. If successful, after covering 50% of the Successor Agency's litigation expenses and an additional $7 million dollars for remediation of the Property, any excess recovery on the assigned claims of the WSL Defendants will be remitted to the WSL Defendants.

Emeryville recommends that the Oversight Board consider the information contained in this report and approve the Settlement Agreement since the $33 million lump sum cash payment represents approximately 50% of the projected future environmental remediation and cleanup costs for the Property, the settlement is in the best interest of the public and the taxing entities by saving valuable tax payer dollars and by having the responsible parties pay for these costs, and the settlement allows Emeryville to continue to litigate its claims against Hanson going forward.

APPROVED AND FORWARDED TO THE COUNTY OF ALAMEDA COUNTYWIDE OVERSIGHT BOARD

Christine Daniel
City Manager/Executive Director

Attachments

- Attachment 1 - Draft Resolution Approving Settlement Agreement
- Attachment 2 - Settlement Agreement

ATTACHMENT 1

County of Alameda Countywide Oversight Board Resolution

COUNTY OF ALAMEDA COUNTYWIDE OVERSIGHT BOARD

RESOLUTION NUMBER NO. OB-2022-__

A RESOLUTION OF THE COUNTY OF ALAMEDA COUNTYWIDE OVERSIGHT BOARD APPROVING THE SETTLEMENT AGREEMENT AMONG THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY FOR THE CITY OF EMERYVILLE, A PUBLIC ENTITY, AND THE CITY OF EMERYVILLE, ANOTHER PUBLIC ENTITY, AND DEFENDANTS SWAGELOK COMPANY, WHITNEY RESEARCH TOOL COMPANY, AND CATHERINE LENNON LOZICK, AN INDIVIDUAL.

WHEREAS, the Successor Agency is the owner of certain real property located at 5679 Horton Street in the City of Emeryville, Alameda County, California (the "Property"); and

WHEREAS, the former Redevelopment Agency acquired the Property in July 1999 from the Lozick Trust in order to facilitate the connection of Horton Street with former Landregan Street, as called out in the circulation element of the City's General Plan, and the remaining property not utilized for the roadway extension project was thereafter used by the City as a temporary location for the Public Works Department's Corporation Yard until approximately 2012; and

WHEREAS, commencing in 2011 the former Redevelopment Agency commenced environmental investigation activities around and on the Property and confirmed the presence of hazardous materials contamination which has rendered the approximately 47,000 square foot building located on the Property unsafe for use by persons working inside the building, and thus the building has been vacant since 2012, causing an ongoing loss of use; and

WHEREAS, in 2017, after providing the historic operators and/or their successors with an opportunity to avoid litigation by implementing a cleanup plan consistent with applicable regulations, the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") and the City of Emeryville ("City," collectively "Emeryville") filed a lawsuit against the Swagelok Company ("Swagelok"), Whitney Research Tool Company ("Whitney"), and Catherine Lennon Lozick ("Lozick," collectively with Swagelok and Whitney the "WSL Defendants") and Hanson Building Materials Limited ("Hanson") seeking joint and several liability to recover the cost of environmental remediation and cleanup of the Property as well as damages; and

WHEREAS, the County of Alameda Countywide Oversight Board ("Oversight Board") is requested to approve a Settlement Agreement among the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") and the City of Emeryville ("City," collectively "Emeryville"), and Swagelok Company ("Swagelok"), Whitney Research Tool Company ("Whitney"), and Catherine Lennon Lozick ("Lozick," collectively with Swagelok and Whitney the "WSL Defendants") regarding on-going litigation over environmental cleanup work at the City's old Corporation Yard; and

WHEREAS, the Successor Agency and the City allege that the WSL Defendants and Hanson 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 in which the industrial operations in question occurred from approximately 1910 until the late 1990s; and

WHEREAS, from approximately 1910 to the mid-1960s, the Property was owned and operated by entities acquired by Hanson and from the mid-1960s to the late 1990s, the Property was owned by affiliates of defendant Swagelok and operated by Whitney – an entity controlled and dominated by Swagelok – which produced machine valves and/or parts for such valves at the Property; and

WHEREAS, these defendants used chlorinated solvent compounds and petroleum-based compounds, among other chemicals, in their operations, and, as a result, the soil and soil vapor at the Property, and the groundwater at and down gradient from the Property, are contaminated primarily with chlorinated solvents and petroleum-based compounds; and

WHEREAS, 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 $47 million to $88 million; and

WHEREAS, 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 and Control ("DTSC") pursuant to the Imminent and Substantial Endangerment Order ("I&SE Order") issued by DTSC to the Successor Agency in 2020; and

WHEREAS, following settlement negotiations with all of the named defendants, the WSL Defendants and their liability insurers agreed to the terms of a settlement agreement which includes the following: (1) a lump sum cash payment to the Successor Agency of $33 million dollars, (2) a "structured assignment of the WSL Defendants' contribution claims against Hanson, which could increase Emeryville's recovery by up to $7 million dollars; (3) an agreement that Emeryville will litigate the WSL Defendants' assigned claims as a "tag-along" to Emeryville's claims against Hanson; (4) a board release of claims in favor of the WSL Defendants and their insurers; and (5) a requirement for court approval via a "good faith settlement" motion as well as approval by the Oversight Board and the California's Department of Finance; and

WHEREAS, Emeryville recommends that the Oversight Board consider the information contained in the staff report and approve the Settlement Agreement since the $33 million lump sum cash payment represents approximately 50% of the projected future environmental remediation and cleanup costs for the Property, the settlement is in the best interest of the public and the taxing entities by saving valuable tax payer dollars and by having the responsible parties pay for these costs, and the settlement allows Emeryville to continue to litigate its claims against Hanson going forward; and

WHEREAS, a copy of the executed Settlement Agreement is attached **as** Attachment 2.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby approves the Settlement Agreement, as set forth in Attachment 2.

PASSED AND ADOPTED at a special meeting of the County of Alameda Countywide Oversight Board this 25th day of July 2022 by the following vote;

Board Members	**Carson** County Board of Supervisors	**Halliday** City Selection Committee	**Sethy** Ind. Special District Committee	**Heldman** County Office of Education	**Dela Rosa** Chancellor of the CA Comm. College	**O'Connell** County Board of Supervisors (Public)	**Katz Mulvey** Recognized Employee Organization
AYES:							
NOES:							
ABSENT:							
ABSTAIN:							
EXCUSED:							

_____
Chairperson, Barbara Halliday

ATTEST:

_____
Secretary of the County of Alameda
Countywide Oversight Board

ATTACHMENT 2

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (**"Agreement"**) is entered into by and between the **"Emeryville Parties"** and the **"WSL Defendants,"** as those terms are defined below, for the purpose of resolving their claims against each other in the action captioned *The Successor Agency To The Former Emeryville Redevelopment Agency, et al. v. Swagelok Company, et al.* (Case number: 3:17-CV-00308-WHO, N.D. Cal.) (the **"Action"**); as of the date it became fully executed; and subject to the conditions precedent noted in the last Recital clause and elsewhere in this Agreement. The Emeryville Parties and the WSL Defendants are collectively referred to herein as the **"Parties"** and each of them is a **"Party."**

In consideration for the **"Settlement Payment,"** as that term is defined below, and the other consideration reflected in this Agreement, the Parties agree as follows:

I. RECITALS

WHEREAS, the Action was filed by the Successor Agency to the former Redevelopment Agency for the City of Emeryville (**"Successor Agency"**), a public entity, and by the City of Emeryville, another public entity (**"City"** and collectively with the Successor Agency, **"Emeryville"** or the **"Emeryville Parties"**);

WHEREAS, the Emeryville Parties have asserted claims in the Action against Swagelok Company, an Ohio Corporation (**"Swagelok"**), Whitney Research Tool Co., a dissolved California Corporation (**"WRTC"**), and Catherine Lennon Lozick, an individual (**"Lozick,"** and collectively with Swagelok and WRTC the **"WSL Defendants"**);

WHEREAS, the Emeryville Parties have also asserted claims in the Action against Hanson Building Materials Limited, a corporation chartered under United Kingdom law and related entities (collectively **"HBML"**);

WHEREAS, the Emeryville Parties allege that they have incurred and will continue to incur environmental response costs and other damages as a result of (A) the presence, investigation, and cleanup of various **"Hazardous Substances"** (as that term is defined in 42 U.S.C. § 9601(14) and Section 33459(c) of the California Health & Safety Code) at, on, under, or migrating from an approximately 1.75-acre area comprised of (1) the property commonly referred to as 5679 Horton Street and (2) the adjacent portion of the Horton Street right of way (collectively, the **"FMW Site,"** which is depicted with certain other nearby properties on the map attached as Exhibit A to this Agreement) and (B) an Imminent and Substantial Endangerment Order (**"I&SE Order"**) issued in August 2020 by the California Environmental Protection Agency's Department of Toxic Substances Control (**"DTSC"**);

WHEREAS, the Emeryville Parties allege that pursuant to the combined operation of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* (**"CERCLA"**), the Polanco Redevelopment Act, Cal. Health & Safety Code Section 33459 *et seq.,* the Gatto Act, and other statutes and legal doctrines, they are entitled to recover their environmental response costs, damages, attorneys' fees, and interest thereon jointly and severally from the WSL Defendants and HBML;

WHEREAS, the WSL Defendants and HBML have asserted cross-claims against one another, and counter-claims against the Emeryville Parties;

WHEREAS, the claims and allegations in the Action have been denied and liability, *vel non*, is disputed by the Emeryville Parties and defendants in the Action;

WHEREAS, Century Indemnity Company (as successor to CCI Insurance Company, a successor to Insurance Company of North America); Constance Insurance Company; Continental Casualty Company, the Continental Insurance Company (individually and as successor by merger to The Fidelity and Casualty Company of New York), and Columbia Casualty Company; and American Home Assurance Company have agreed to

contribute to the **"Settlement Payment"** provided for in Section II.A (and are hereafter collectively referred to as the **"WSL Carriers"**);

WHEREAS, the Emeryville Parties, all defendants in the Action, and the WSL Carriers participated in a two-day mediation in December 2020, as well as a third day of mediation on April 19, 2022, all of which were conducted under the auspices of a mediator with considerable experience in matters similar to the Action;

WHEREAS, the Emeryville Parties, the WSL Defendants and the WSL Carriers also participated in a separate mediation on October 25, 2021 with the same mediator;

WHEREAS, in connection with the April 2022 mediation session, Emeryville presented a "cash-out" demand in excess of $101 million, which demand excluded for purposes of that mediation session approximately $13 million of incurred prejudgment interest and litigation fees and costs;

WHEREAS, there were follow-up negotiations with and without the mediator subsequent to each of the formal mediation sessions;

WHEREAS, prior to the execution of this Agreement there have/has been: (1) initial and supplemental disclosures required by the Federal Rules of Civil Procedure; (2) production of hundreds of thousands of pages of electronic files and documents; (3) extensive deposition testimony by witnesses associated with each party in the Action; (4) deposition testimony by DTSC; (5) voluminous written discovery; (6) disclosure of expert witness opinions and rebuttal opinions; and (7) motion practice;

WHEREAS, the terms reflected in this Agreement have been reached by the Emeryville Parties and the WSL Defendants after extensive, good faith, mediator-supervised negotiations over an approximately 18-month period beginning in December 2020, and with participation by the WSL Carriers;

WHEREAS, the WSL Defendants and the WSL carriers have negotiated an agreement among themselves that facilitates the execution and implementation of this Agreement (the **"WSL Defendants-WSL Carriers Agreement"**), which in redacted form

will be provided to Emeryville prior to the effective date of this Agreement, such that Emeryville can reasonably satisfy itself regarding the assignment of subrogation rights and claims provided for in Section II.D.1 and the terms of Section IV.B.3;

WHEREAS, without admitting any issues of fact or law regarding any of the allegations or affirmative defenses of the Parties, the Parties agree that the settlement memorialized in this Agreement reflects their shared desire to avoid further 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 investigation and remediation of the Hazardous Substances at and migrating from the FMW Site;

WHEREAS, the Parties anticipate that the United States District Court for the Northern District of California (**"Court"**) will review and approve this Agreement as a good faith settlement, and will accordingly enter an order substantially consistent with the pertinent terms anticipated in this Agreement (the **"Good Faith Settlement Order"**);

WHEREAS, the Successor Agency has advised the WSL Defendants that this Agreement must be approved by the County of Alameda Countywide Oversight Board (**"Oversight Board"**) and the California Department of Finance (such approvals being referred to below as the **"OB/DOF Approvals"**);

WHEREAS, entry of the Good Faith Settlement Order and confirmation of the OB/DOF Approvals are conditions precedent to this Agreement becoming effective;

NOW, THEREFORE, in consideration of the foregoing recitals, which are acknowledged by the Parties to be true and correct and material terms in this Agreement, the promises and commitments made herein, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

II. SETTLEMENT PAYMENT AND ASSIGNMENT OF CLAIMS

A. Settlement Consideration. Subject to and consistent with the terms and provisions of this Agreement, the WSL Defendants shall pay the Successor Agency Thirty-Three Million Dollars ($33,000,000.00) (the **"Settlement Payment"**). As further consideration, and subject to and consistent with the terms and provisions of this Agreement, the WSL Defendants are assigning certain claims as provided for in Section II.D.1, which assignment may allow the Successor Agency to obtain the **"Secondary Emeryville Recovery,"** as that term is defined in Section II.D.3, for a total of settlement consideration of $40 million (excluding any **"Litigation Expense Recovery"** as that term is defined in Section II.D.3).

B. Timing of the Settlement Payment. Provided that the Successor Agency has either received written confirmation of the OB/DOF Approvals, or has advised the WSL Defendants that the Successor Agency is, in its sole discretion, satisfied that sufficient OB/DOF Approvals are forthcoming, the WSL Defendants shall deliver the Settlement Payment to Emeryville's counsel at the address listed in Section VII for notices, within forty- five (45) days of the date on which the Court enters the Good Faith Settlement Order (the **"Order Date"**). The payment shall be in the form of one or more wire transfer(s) to an account to be identified in writing by Emeryville's counsel no later than thirty (30) days following the Order Date. Emeryville's counsel shall not disburse the Settlement Payment to the Successor Agency until the time for challenging the Good Faith Settlement Order has expired or the Parties agree (or the Court determines) that such disbursement may proceed. In the event the Good Faith Settlement Order is challenged, the Parties shall meet and confer in good faith and consistent with Section VII.C. If no mutually satisfactory agreement is reached on how to proceed, either Party may seek relief from the Court.

C. Use of the Settlement Payment. The Successor Agency shall deposit the Settlement Payment into an interest-bearing account with an FDIC-insured bank or in its Local Agency Investment Fund, and it shall account for the Settlement Payment as a

separate "fund" within the Successor Agency's accounting records. The Settlement Payment shall not be commingled with other funds held by the Successor Agency (or by the City). The Settlement Payment shall be used solely to pay for investigative and cleanup-related work consistent with (1) the scope of 42 U.S.C. § 9601(25) and Section 33459(g) of the California Health and Safety Code, (2) the objectives and requirements of the I&SE Order, including any modifications to the I&SE Order, and (3) any regulatory directives similar to the I&SE Order issued by a duly authorized county, state, or federal regulatory agency. The Settlement Payment shall not be transferred, in whole or in part, to any county- or state-level governmental entity(ies) to offset or reimburse property tax revenues allocated to the Successor Agency in the current (2022-2023) fiscal year or any prior fiscal years.

The WSL Defendants and WSL Carriers shall be entitled to an annual accounting of the funds spent from the Settlement Payment, rendered automatically without request, and shall have upon request and consistent with California public records procedures, access to all non-privileged records documenting payments made from the interest-bearing account identified in the preceding Paragraph.

Beginning with its Recognized Obligation Payment Schedule (**"ROPS"**) for the fiscal year July 1, 2023-June 30, 2024, and provided it continues to be obligated by California law to prepare a ROPS, the Successor Agency shall list this Agreement as an enforceable obligation on its ROPS until (1) DTSC determines that no further action is required under the I&SE Order and (2) any similar requirements of other regulatory agencies concerning the FMW Site have been satisfied according to those agencies.

D. Assignment of Claims Against HBML and Related Work Product.

1. Assignment. As further consideration for this Agreement, each of the WSL Defendants hereby assigns, conveys, and transfers to the Successor Agency any and all causes of action, claims, and rights to recovery they have or may have against HBML (or any other entities directly or indirectly related to HBML) relating to Hazardous Substances at, on,

under, or emanating from the FMW Site; environmental contamination at or near the FMW Site; or the FMW Site more generally (the **"WSL Assigned Claims"**). The WSL Assigned Claims include but are not limited to the contribution claims pursuant to CERCLA Sections 107 and 113(f) asserted by the WSL Defendants in the Action and the subrogation rights and claims assigned to the WSL Defendants by the WSL Carriers by virtue of the WSL Defendants-WSL Carriers Agreement. The WSL Defendants represent and warrant to the Successor Agency that the WSL Defendants have been fully and unconditionally authorized by the WSL Carriers to assign all such subrogation rights and claims via the WSL Defendants-WSL Carriers Agreement. Subject to the limitations stated in this Section II.D.1, the WSL Defendants also assign to the Successor Agency all non-attorney client privileged work product provided to the WSL Defendants by their experts and all work product developed by the WSL Defendants regarding HBML's successor and alter ego liability in the prosecution of claims against HBML. The WSL Defendants represent and warrant to the Successor Agency that they have been fully and unconditionally authorized by their counsel and the WSL Carriers to make such assignment. Neither the WSL Defendants, nor any of their counsel will seek any recovery on the WSL Assigned Claims or any related subrogation claims; nor will any of them make any use of the assigned work product without the Successor Agency's prior written consent, which may be given or withheld in the sole and absolute discretion of the Successor Agency and its counsel. The assignment of work product provided for herein shall not include work product developed by the WSL Defendants adverse to Emeryville's claims, but no such adverse-to-Emeryville work product shall be shared with or disclosed to HBML or any third parties. Notwithstanding the assignment of work product provided for in this Section II.D.1, (a) the WSL Carriers and their related entities may use the assigned work product, without Emeryville's prior approval, as reasonably needed for claim file administration, audits, regulatory compliance, reinsurance matters, and similar ordinary business activities; and (b) the WSL Defendants and their counsel may use the assigned work product, without Emeryville's prior approval, for purposes unrelated to HBML and/or its successor and alter ego liability.

The Parties acknowledge and agree that the WSL Assigned Claims are subject to numerous contingencies (e.g., the defenses asserted in the Action by HBML, the quality and quantity of evidence to support the WSL Assigned Claims, the cost to litigate the WSL Assigned Claims, and the potential for the WSL Assigned Claims to duplicate, in whole or in part, claims asserted by the Emeryville Parties). On account of such contingencies, each Party acknowledges that the WSL Assigned Claims may not yield the recoveries addressed in Section II.D.3, and that no Party is assured of securing any of those recoveries.

2. Prosecution. The Successor Agency agrees to litigate the WSL Assigned Claims in tandem with, and with a level of effort comparable to that devoted to, the Successor Agency's claims against HBML; provided, however, that the extent to which the Successor Agency prosecutes the combined set of claims (i.e., the WSL Assigned Claims and the Successor Agency's own claims) shall be in the Successor Agency's sole and absolute discretion. Consistent with that discretion, the Successor Agency shall have full and complete discretion to settle with HBML on any basis it deems acceptable, including but not limited to settlement terms that result in no recovery whatsoever on the WSL Assigned Claims. Nothing in this Agreement shall create any fiduciary-beneficiary, trustee-beneficiary, agent-principal, attorney-client, or other similar relationship between, on the one hand, Emeryville and/or its counsel and on the other hand any one or more of the WSL Defendants, or any one or more of the WSL Carriers, in connection with the prosecution of the WSL Assigned Claims. Subject to the allocations prescribed in Section II.D.3 and the cooperation provision in Section VII.C, the Successor Agency shall be responsible for the legal fees and litigation expenses incurred for the prosecution of claims contemplated in this Section II.D.2.

3. Distribution of Proceeds Recovered Via the WSL Assigned Claims.

The Parties agree that if their combined set of claims are successfully tried in the Action, and judgment is to be entered against HBML, or related entities, by the Court upon the WSL Assigned Claims (the **"WSL Contribution Recovery"**), the Successor Agency will seek a form of judgment confirming the amount of the WSL Contribution Recovery so as to

facilitate the distributions provided for in this Section II.D.3. All of the WSL Contribution Recovery paid by HBML shall first be allocated and paid to the Successor Agency until such payment(s) equal 50% of Emeryville's legal fees, expert witness costs, and related litigation expenses and disbursements incurred on and after June 1, 2022 (and through and including any appeal(s) in the Action, any proceedings in any foreign court(s) to enforce a judgment entered in the Action, and any related effort(s) to collect on the judgment(s) entered in the Action). The sums thus allocated and paid to Emeryville are hereafter referred to as the **"Litigation Expense Recovery."**

If there is any WSL Contribution Recovery in excess of the Litigation Expense Recovery, all such excess shall be allocated and paid to Emeryville until Emeryville has received Seven Million Dollars ($7,000,000.00) above and beyond the Settlement Payment provided for in Section II.A of this Agreement (the **"Secondary Emeryville Recovery"**).

Except as provided in the next sentence, if there is any WSL Contribution Recovery in excess of the Litigation Expense Recovery and the Secondary Emeryville Recovery, all such excess (the **"Net WSL Recovery"**) shall be allocated and paid to the WSL Defendants who shall be solely responsible for any subsequent reallocation among the WSL Defendants and one or more of the WSL Carriers. If the judgment entered in Emeryville's favor on Emeryville's claims, net of attorneys' fees, allowed costs and litigation expenses and interest, is less than the judgment on the WSL Assigned claims, the WSL Contribution Recovery, if any, shall be split 50:50 between Emeryville and the WSL Defendants.

Provided that HBML fully pays any and all sums due pursuant to a judgment entered in the Action, the Successor Agency shall make any payments to the WSL Defendants required under this Section II.D.3 within 60 days of the date on which the Emeryville Party receives final/full payment from HBML and has the requisite authorization under its ROPS. The Parties acknowledge that payment of Net WSL Recovery, if any, cannot be made until the final cost of complying with the I&SE Order is determined and all such costs have been paid. The Agency agrees to use commercially reasonable efforts to expedite the processing of any ROPS or

ROPS amendment(s) needed in order to disburse any Net WSL Recovery payable pursuant to this Agreement.

4. Acknowledgement of Potential Non-Recovery and Less than Expected Recovery on the WSL Assigned Claims.

The Parties expressly acknowledge, accept, and agree that: (a) there may be no WSL Contribution Recovery whatsoever, in which case there will be no Net WSL Recovery and the WSL Defendants and the WSL Carriers will recover nothing pursuant to this Section II.D; (b) the WSL Contribution Recovery, if any, may be insufficient to pay the Litigation Expense Recovery, in which case there will be no Net WSL Recovery and the WSL Defendants and the WSL Carriers will recover nothing pursuant to this Section II.D; (c) the WSL Contribution Recovery, if any, may be insufficient to pay both the Litigation Expense Recovery and the Secondary Emeryville Recovery, in which case there will be no Net WSL Recovery and the WSL Defendants and the WSL Carriers will recover nothing pursuant to this Section II.D; (d) any WSL Contribution Recovery remaining after payment of the Litigation Expense Recovery and the Secondary Emeryville Recovery may be substantially less than the WSL Defendants and the WSL Carriers hoped for and/or expected; (e) neither Emeryville Party has made any representation or warranty that there will be any WSL Contribution Recovery or any Net WSL Recovery; (f) no WSL Defendant or WSL Carrier will have any claim against either Emeryville Party on account of the WSL Contribution Recovery or the Net WSL Recovery being less than expected or hoped for; and (g) as of the date this Agreement was executed each WSL Defendant and each of the WSL Carriers understands that HBML has (i) consistently maintained that it has no liability whatsoever in connection with the cleanup of the FMW Site and (ii) consistently declined to make any settlement offer whatsoever to resolve the Action. Further, the WSL Defendants confirm that prior to executing this Agreement they specifically advised each of the WSL Carriers of the propositions enumerated in items (a)-(g)(ii) above, provided each WSL Carrier and it counsel with a copy of this Agreement; and received each

WSL Carrier's written approval for the terms of this Agreement including but not limited to the assignment of claims and work product provided in Section II.D.1.

III. COURT APPROVAL AND PROTECTION AGAINST CLAIMS

The Parties acknowledge and agree that the Settlement Payment and the other consideration, commitments, and obligations memorialized in this 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, on, under, and migrating from the FMW Site (including but not limited to migration of contamination to adjacent, cross-gradient, up-gradient and down-gradient properties such as Sites A and B and parcels to the north of the FMW Site as depicted on Exhibit A) and claims or liability arising from the release, spill, leak, transportation, hauling, disposal, storage, treatment, arrangement for disposal or terms of similar import of any Hazardous Substances that are removed, or relocated, from the FMW Site by the Emeryville Parties, their successors, or their contractors or agents, and (2) benefits the public interest by providing funds to support the cleanup of the FMW Site and its downgradient impacts while avoiding further litigation among the Parties. With regard to any claims for costs, damages, or other relief asserted, or which could have been asserted, against the WSL Defendants or the WSL Carriers by any person or entity that is not a signatory to this Agreement on account of the release(s) of Hazardous Substances at, on, under, or emanating from the FMW Site, the Parties agree that upon approval of this Agreement by the Court, the WSL Defendants and the WSL Carriers are, and each of them is, entitled to the full benefit of any and all applicable provisions of federal, state, and local law extinguishing or limiting the WSL Defendants' or the WSL Carriers' alleged liability to persons or entities that are not signatories to this Agreement (whether statutory, common law, decisional, or otherwise, including but not limited to 42 U.S.C. § 113(f) and California Code of Civil Procedure Sections 877 and 877.6).

The Parties further agree that the release(s) of Hazardous Substances at, on, under, and emanating from the FMW Site, the remediation of that contamination, and the claims made in the Action are "matters addressed" in this Agreement for purposes of the contribution protection afforded by 42 U.S.C § 9613(f)(2). The Parties acknowledge and agree that the dismissal of claims described in Section IV and elsewhere in this Agreement, the protection from contribution claims (no matter how they are plead or styled) under all applicable federal and state laws and authorities, and the termination of the WSL Defendants' involvement in the Action are integral and non-divisible aspects of this Agreement. As such they are necessary and material terms in the Good Faith Settlement Order. The Parties further agree that the dollar-for-dollar claim reduction rule set forth in 42 U.S.C. § 9613(f)(2) is an integral and non-divisible aspect of this Agreement. As such confirmation of the application of that rule to the Emeryville Parties' statutory claims is a necessary and material term in the Good Faith Settlement Order. Entry by the Court of the Good Faith Settlement Order is thus a condition precedent to the obligations of the Parties under this Agreement.

Accordingly, as promptly as reasonably practicable after this Agreement has been executed by the Parties, the Emeryville Parties shall file a motion with the Court to secure the Court's approval of this Agreement, the protection against contribution claims contemplated herein, the dismissal of all claims against the WSL Parties in the Action, and confirmation of the application of the claim reduction rule set forth in 42 U.S.C. § 9613(f)(2).

IV. DISMISSAL AND RELEASE

A. Dismissal. The Parties hereby agree to the Court's dismissal with prejudice (via the Good Faith Settlement Order) of any and all claims against the WSL Defendants in the Action, and any and all claims by the WSL Defendants against either of the Emeryville Parties.

B. Releases.

(1) By the Emeryville Parties. Save and except for claims arising from alleged breaches of this Agreement, and except for claims expressly created or preserved in this Agreement, the Successor Agency and the City (and each of their predecessors, successors, assignees, departments, divisions, designees, and affiliated entities) hereby release the WSL Defendants (and each of their past and present predecessors, successors, assignees, parents, subsidiaries, trusts, departments, divisions, designees, directors, managers, board members, officers, shareholders, partners, agents, employees, attorneys, and affiliated persons and entities, including but not limited to the WSL Carriers, including their related companies, and Swagelok's captive insurer(s)) 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, and other causes of action of any nature whatsoever arising from or relating to: (1) Hazardous Substances or contamination at, on, under, or emanating from the FMW Site; (2) WRTC's or any of the other WSL Defendants', or any of their owners' or affiliates', historic operations at the FMW Site; (3) any claims related to the Hazardous Substances at, on, under, or emanating from the FMW Site that were and could have been brought as part of the Action; (4) all claims arising from or related in any way to insurance coverage from the WSL Carriers for Hazardous Substances at, on, under, or emanating from the FMW Site; (5) Hazardous Substances or contamination at, on, under, or emanating from Site A, Site B, or the properties north of and adjacent to the FMW Site, including, but not limited to, the Hazardous Substances or contamination that is the subject of the October 5, 2009 Settlement Agreement by and between the City and the Emeryville Redevelopment Agency, and Union Oil Company of California, Chevron U.S.A. Inc. and Chevron Corporation, and the subject of the adopted February 14, 2020 tentative ruling of the Superior Court of California, County of Sacramento, in the matter entitled *Successor Agency to the Redevelopment Agency of the City of Emeryville v. California Department of Finance,*

et al., Case No. 34-2019-80003149 on Petition for Writ of Mandate, the corresponding appeal entitled *California Department of Finance, et al. v. Successor Agency to the Redevelopment Agency of the City of Emeryville*, Third District Court of Appeal, Case No. C091999 and the resulting August 3, 2021 settlement of such appeal; (6) any claims or liability arising from the release, spill, leak, transportation, hauling, disposal, storage, treatment, arrangement for disposal or terms of similar import of any Hazardous Substances that are removed, or relocated, from the FMW Site by the Emeryville Parties, their successors, or their contractors or agents; (7) any claims made by any Federal, State or local authorities related to the disposal by one of the Emeryville Parties, including their successors and successors in interest, or any of their agents or contractors of any hazardous waste at a landfill or other disposal facility under the RCRA Site ID number assigned to the FMW Site; (8) any claims related to objections by third parties pursuant to the California Environmental Quality Act to the proposed remedy for the FMW site; and (9) any claims or objections made by the State of California or its Department of Finance and the Oversight Board.

(2) By the WSL Defendants. Save and except for claims arising from alleged breaches of this Agreement, and except for claims expressly created or preserved in this Agreement, the WSL Defendants (and each of their past and present predecessors, successors, assignees, parents, subsidiaries, departments, divisions, designees, directors, managers, board members, officers, shareholders, partners, agents, employees, attorneys, and affiliated corporations and entities) hereby release the Successor Agency and the City (and each of their predecessors, successors, assignees, departments, divisions, designees, and affiliated persons and 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, and other causes of action of any nature whatsoever arising from or relating to any claims related to the contamination at, on, under, or emanating from the FMW Site that were and could have been brought as part of the Action.

(3) By the WSL Carriers. Consistent with the terms and provisions in the WSL Defendants-WSL Carriers Agreement, the WSL carriers are assigning all subrogation rights and claims they have against the Emeryville Parties arising from or related to the Action to the WSL Defendants. All such rights are, in turn, being assigned to the Successor Agency pursuant to this Agreement. With the WSL Carriers knowledge and concurrence, the Parties therefore agree the WSL Carriers have no claims against Emeryville that could be released.

C. Exclusions from Release. Nothing in this Agreement shall be deemed a release of any claims asserted by any of the Parties against HBML or any other persons or entities that are not parties to or releasees under this Agreement.

D. Enforcement Forbearance. The Successor Agency and the City agree not to request that DTSC or any other environmental regulatory agency institute any proceedings or issue any orders that would result in the WSL Defendants (or any other releasee herein) being required to institute environmental investigation or remediation activity or incur costs at the FMW Site or any downgradient location or any site where Hazardous Substances from the FMW Site are disposed of by one of the Emeryville Parties including their successors and successors in interest, or any of their agents or contractors.

E. Waiver of Unknown Claims. In giving these releases, 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 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.**

V. CONTINUING JURISDICTION

The Parties agree that the Court specifically retains jurisdiction over the subject matter of this Action and the Parties for the purpose of (1) resolving any disputes arising under

this Agreement, (2) issuing such further orders or directions as may be necessary or appropriate to construe, implement, or enforce the terms of this Agreement, and/or the Good Faith Settlement Order, and (3) for granting any further relief as the interests of justice may require. The Parties further agree that in the event there is a dispute over the terms of this Agreement or performance of the obligations arising from this 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 (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.

VI. NOTICE

All notices and all other communications, and payments, pertaining to this 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 THE SUCCESSOR AGENCY AND THE CITY:

City Attorney/Successor Agency General Counsel
Attention: John I. Kennedy, Esq.
1333 Park Avenue
Emeryville, CA 94608
Email: John.Kennedy@Emeryville.org

With Copy To:

Robert P. Doty
Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Email: rdoty@coxcastle.com

AS TO SWAGELOK COMPANY AND WHITNEY RESEARCH TOOL CO.

Swagelok Company
Attn: Philip J. Carino
Swagelok Company
29500 Solon Road
Solon, OH 44139
Email: Philip.carino@swagelok.com

With Copies To:

John D. Parker
Baker & Hostetler LLP
127 Public Square, Suite 2000
Cleveland, OH 44114
Email: jparker@bakerlaw.com

Joelle A. Berle
Baker & Hostetler LLP
11601 Wilshire Blvd., Suite. 1400
Los Angeles, CA 90025
Email: jberle@bakerlaw.com

AS TO CATHERINE LENNON LOZICK

Stren Inc.
Attn: Douglas Spicer
29425 Chagrin Blvd., Suite 201
Pepper Pike, OH 44122
Email: dspicer@streninc.com

With a Copy to:

Anthony J. Coyne, Esq
Mansour Gavin LPA
1001 Lakeside Avenue, Suite 1400
Cleveland, OH 44114

VII. ADDITIONAL TERMS AND PROVISIONS

A. Performance of Required Investigation and Cleanup. As between the Parties only, and without prejudice to either the Successor Agency's rights or the City's rights pursuant to this Agreement or pursuant to any claim(s) that the Successor Agency or the City has or may have against any person or entity that is not a signatory to or a releasee

under this Agreement, the Successor Agency shall, without cost to the WSL Defendants (or any of the entities released herein) other than the Settlement Payment, any Litigation Expense Recovery, and any Secondary Emeryville Recovery, perform or cause to be performed all environmental work required to comply with the I&SE Order or to otherwise study, investigate, evaluate, and remediate the Hazardous Substances at, on, under and/or emanating from the FMW Site to the satisfaction of DTSC and any other regulatory agency that may assert jurisdiction over the FMW Site. However, nothing in this Agreement shall constitute an indemnity, express or implied, against claims or demands asserted by third parties.

B. Notice and Recordation of Settlement. The Successor Agency and the City shall record, in a form reasonably acceptable to the WSL Defendants, a Memorandum of Settlement in the County Recorder's Office for Alameda County summarizing the terms of this Agreement and its release provisions with respect to the FMW Site. Upon receipt of a copy of the Memorandum of Settlement endorsed or stamped by the Recorder's Office, the Successor Agency shall send copies of the same to the WSL Defendants at the address set forth in Section VI above. In connection with the motion for good faith settlement approval provided for in Section III of this Agreement, the Successor Agency shall provide a notice of this Agreement using both DTSC's mailing list for the FMW Site and a newspaper of general circulation consistent with the Emeryville Parties standard practices for public notices.

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

The Parties acknowledge and agree that to the extent the Successor Agency's prosecution of the WSL Assigned Claims leads to a judgment against and recovery from HBML, the implementation of Section II.D.3 may necessitate an accounting process to determine what, if any, funds, qualify as Litigation Expense Recovery, Secondary Emeryville Recovery, and net WSL Recovery. If the Court determines that there is to be

recovery on the WSL Assigned Claims, the Parties will work together diligently and in good faith to request a form of judgment that facilitates recovery on the WSL Assigned Claims and implementation of Section II.D.3. Assuming HBML performs under the judgment, Emeryville will promptly provide commercially reasonable documentation for all sums needed for the Parties to quantify the Litigation Expense Recovery, Secondary Emeryville Recovery, and net WSL Recovery, if any. The Parties acknowledge that the accounting under Section II.D.3 may proceed in stages depending on, among other things, the exact provisions of the Court's judgment, how the WSL Assigned Claims are resolved, and timing of payments by HBML pursuant to a judgment.

The WSL Defendants specifically agree that in connection with the motion seeking entry of the Good Faith Settlement Order they shall coordinate with and make commercially reasonably efforts to assist the Emeryville Parties and their counsel by providing a declaration or declarations in support of the motion. All costs incurred by the WSL Defendants in connection with supporting the motion shall be paid by the WSL Defendants or WSL Carriers, as the case may be, and shall not be considered in connection with the litigation expenses addressed in the Litigation Expense Recovery mechanism provided in Section II.D.3. The WSL Defendants agree that in connection with the Successor Agency's prosecution of the WSL Assigned Claims they will coordinate with and make commercially reasonable efforts to assist the Successor Agency and its counsel by seeking cooperation from witnesses, including but not limited to the WSL Defendants' expert witnesses. All costs incurred by the WSL Defendants, or any WSL Carriers, in connection with supporting Emeryville's prosecution of the WSL Assigned Claims shall be paid by the WSL Defendants or WSL Carriers and shall not be considered in connection with the litigation expenses addressed in the Litigation Expense Recovery mechanism provided in Section II.D.3; with the exception, however, that expert witness fees and costs invoiced after June 1, 2022 and associated with the prosecution of the WSL Assigned Claims shall be paid by the Successor

Agency and shall be part of the litigation expenses covered by the Litigation Expense Recovery mechanism provided in Section II.D.3.

The Emeryville Parties specifically acknowledge that a principal objective of the WSL Defendants and the WSL Carriers is to curtail their legal fees and litigation costs. The Parties therefore agree and acknowledge that the Successor Agency will take the lead on, and use reasonable best efforts to minimize the WSL Defendants participation in, the motion to obtain the Good Faith Settlement Order, preparation and recordation of a memorandum of settlement, and all similar tasks.

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

E. No Admissions or Third-Party Rights. This 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 of the Parties. This Agreement shall not be construed to create any rights or entitlements by any entity not a Party to (or a releasee benefitted by) this Agreement except the WSL Carriers, who are intended third party beneficiaries of the Agreement. This 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 Settlement Order or to enforce or interpret the terms of this Agreement or as a defense to any third party claim against the WSL Parties.

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

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

H. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matters contained herein and supersedes any and all prior agreements, understandings, promises, and representations made by any Party to any other concerning this subject matter. For the avoidance of doubt, this provision does not supersede the WSL Defendants-WSL Carriers Agreement.

I. Mutual Drafting. It is hereby expressly understood and agreed that this Agreement was jointly drafted by counsel for the Parties. Accordingly, the Parties 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 Agreement.

J. Independent Legal Representation. Each Party agrees and confirms that it has been advised by separate legal counsel in connection with this Agreement and that they have made all such investigation into matters pertaining to this Agreement as they have deemed necessary or appropriate.

K. Fees and Costs. The Parties acknowledge and agree that solely as between themselves, and without prejudice to any claims they may have against

HBML and other non-signatories (other than releasees herein), they are bearing their own costs, expenses and attorneys' fees except as otherwise provided herein.

L. Settlement Agreement May be Executed in Counterparts. This 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. Signatures may be transmitted by facsimile or PDF files and such facsimile or PDF images shall be as effective as any other mode of signature.

FOR SUCCESSOR AGENCY:

By: _____
Executive Director

Date: July 6, 2022

Approved as to form:

By: _____
General Counsel

Date: 7/5/2022

FOR CITY:

By: _____
City Manager

Date: July 6, 2022

Approved as to form:

By: _____
City Attorney
Date: 7/5/2022

FOR SWAGELOK:

By: _____

Its: VP Legal, General Counsel, Secretary

Date: 6-30-2022

FOR WRTC:

By: _____

Its: Attorney

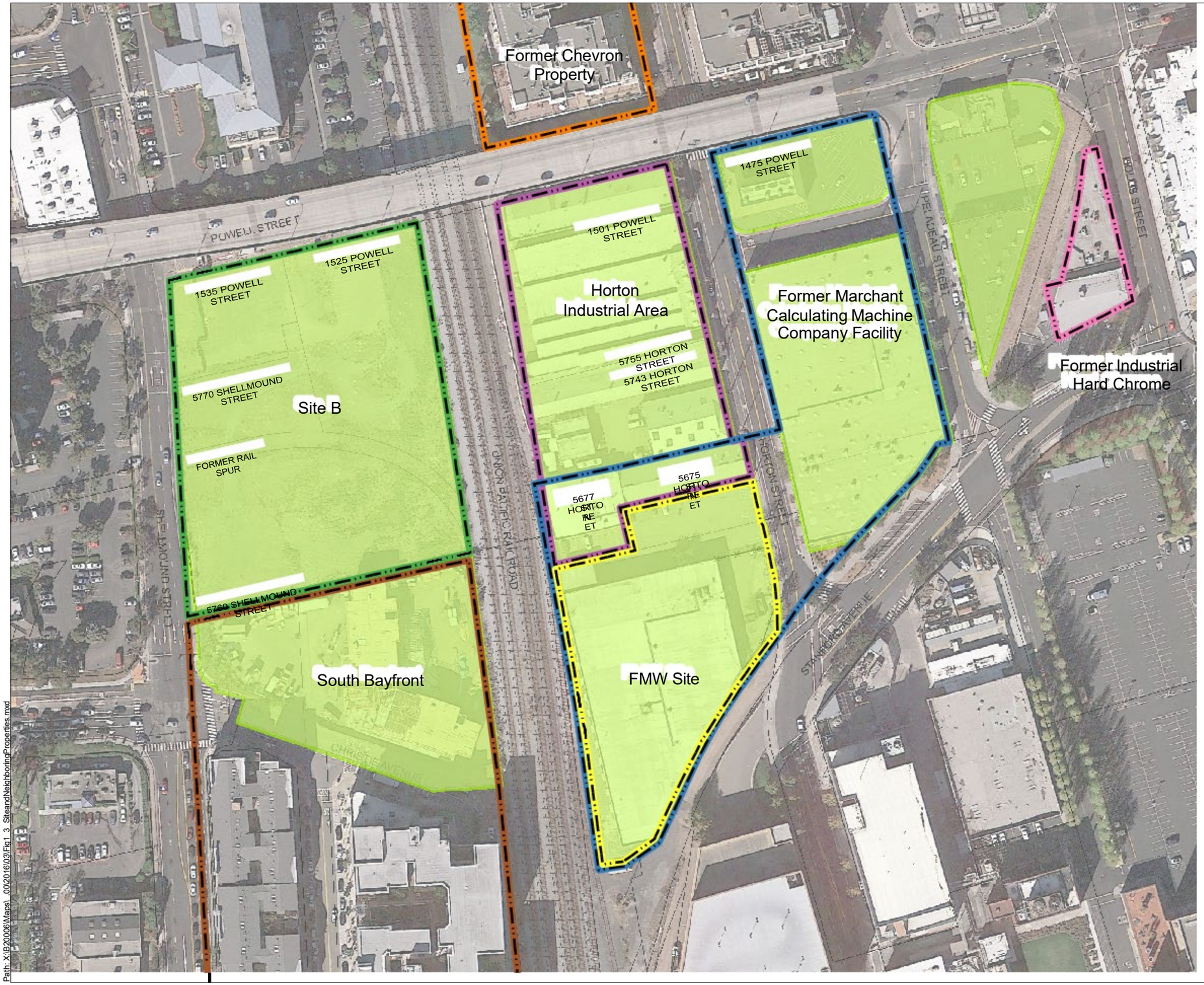
Date: June 30, 2022

FOR LOZICK:

By: _____

Date: June 30, 2022

EXHIBIT A



N

0 120 240

(Approximate Scale in Feet)

Legend

- FMW Site Property Boundary
- Site B Property Boundary
- South Bayfront Property Boundary
- Approximate Extent of Former Marchant Calculating Machine Company Facility
- Former Chevron Property
- Former Industrial Hard Chrome Facility
- Horton Industrial Area
- Horton District Boundary

Abbreviations
FMW = Former Marchant/Whitney

Notes
1. All property boundaries are approximate.

Source
Google Earth Pro, Date of Imagery, March 2016.

Erler & Kalinowski, Inc.

Site and Neighboring Properties

Former Marchant/Whitney Site
Emeryville, CA
March 2016
EKI B20006.00
Figure 1-3

Path: X:\B20006\Maps_00201603\Fig1_3_SiteandNeighboringProperties.mxd