

File No. 191208

Committee Item No. 14

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight

Date: January 16, 2020

Board of Supervisors Meeting:

Date: \_\_\_\_\_

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- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
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- MOU
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- Grant Budget
- Subcontract Budget
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- Application
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#### OTHER

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Prepared by: John Carroll

Date: January 10, 2020

Prepared by: John Carroll

Date: \_\_\_\_\_

1 [Amended Settlement of Unlitigated Claim - United States Environmental Protection Agency -  
2 Yosemite Slough Sediment Site - \$821,839; Related Appropriation - Wastewater Enterprise  
3 Fund Balance]

4 **Ordinance approving an amendment to the 2016 settlement of United States**  
5 **Environmental Protection Agency's ("EPA") unlitigated claim against the City and**  
6 **County of San Francisco approved by Resolution No. 350-16; no formal claim has been**  
7 **filed; the amendment resolves EPA's claims against the City to perform additional pre-**  
8 **design technical studies in support of cleanup of the Yosemite Slough Sediment Site;**  
9 **the amendment requires the City to perform two technical studies at an estimated cost**  
10 **of \$821,839; additional material terms of the amended settlement are that the City will**  
11 **contract with a third party environmental consultant to perform the studies, the City**  
12 **will assume responsibility for completion of the work pursuant to the amendment, the**  
13 **City will assume responsibility and indemnify EPA for any stipulated penalties or**  
14 **claims arising in connection with performance of the additional work under the**  
15 **amendment, and the City will reimburse EPA for its future response costs related to the**  
16 **additional work; and appropriating \$821,839 from the Public Utilities Commission**  
17 **Wastewater Enterprise fund balance for payment of the costs.**

18  
19 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. Background.

21 On December 15, 2008, the United States Environmental Protection Agency ("EPA")  
22 served notice on the City and County of San Francisco ("City") identifying the San Francisco  
23 Public Utilities Commission ("SFPUC"), along with other public and private entities, as a  
24 potentially responsible party ("PRP") under the Comprehensive Environmental Response,  
25 Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("CERCLA"), for the

1 cleanup of contaminated sediment at Yosemite Slough, a tidal channel flowing to the South  
2 Basin of the San Francisco Bay between Hunters Point and Candlestick Point (the "Site").

3 On January 27, 2015, EPA issued a demand, pursuant to 42 U.S.C. §9622(e) (the  
4 "Special Notice Letter"), that the City and other PRPs complete sixteen pre-design technical  
5 studies in support of EPA's chosen cleanup plan for the Site. In 2016 the City and PRPs  
6 California Department of Parks and Recreation ("State Parks"), California State Lands  
7 Commission ("State Lands"), and United States Defense Logistics Agency ("DLA") entered  
8 into a settlement with EPA, approved by the Board of Supervisors by Resolution No. 350-16,  
9 to perform four of the studies providing that (1) the four government entities would equally  
10 share the cost of the work up to a total of \$350,000 and all EPA future costs incurred in  
11 implementing, overseeing or enforcing the settlement ("EPA Response Costs") and (2) the  
12 City would be responsible for performing the work through a third party contractor and for any  
13 stipulated penalties or third party claims arising in connection with performance of the work  
14 under the settlement (the "EPA Interim Settlement").

15 The EPA Interim Settlement did not resolve EPA's claims against the City under the  
16 Superfund Law for performance of additional pre-design technical studies or the ultimate  
17 cleanup of the Site. EPA made a demand for the PRPs to perform two additional technical  
18 studies and the City agreed to perform the studies pursuant to an amendment to the EPA  
19 Interim Settlement ("Amendment"). The Amendment provides that the City will assume sole  
20 responsibility for performing the additional work at a cost of \$821,839 through a third party  
21 contractor, and will be solely responsible for EPA Response Costs associated with the  
22 additional work and any stipulated penalties or third party claims arising in connection with the  
23 work under the Amendment. The Amendment does not resolve EPA's claims against the City  
24 under the Superfund Law for the ultimate cleanup of the Site. Copies of the EPA Interim  
25

1 Settlement and the Amendment are on file with the Clerk of the Board of Supervisors in File  
2 No. 191208.

3 Section 2. Approval of Agreement. Pursuant to Administrative Code, Section 10.22,  
4 the Board of Supervisors hereby authorizes the City Attorney to further settle and compromise  
5 EPA's Special Notice Letter as described herein. Additionally, the Board of Supervisors  
6 hereby authorizes SFPUC's General Manager to enter into any amendments or modifications  
7 to the Settlement Agreement that the General Manager determines in consultation with the  
8 City Attorney: are in the best interest of the City; do not materially increase the obligations or  
9 liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the  
10 Settlement Agreement or this resolution; and are in compliance with all applicable laws.

11 Section 3. Appropriation of Funds. The source of funding herein appropriated for use  
12 by the SFPUC for purposes of expending costs under the Agreement is the SFPUC  
13 Wastewater Enterprise fund balance.

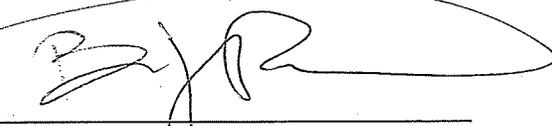
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APPROVED:

DENNIS J. HERRERA  
City Attorney

  
ELAINE M. O'NEIL  
Deputy City Attorney  
Construction and Public Contracting  
Team Leader

Funds Available

  
BEN ROSENFELD  
Controller

Future funding subject to approval of the FY  
20/21 Annual Appropriation Ordinance

RECOMMENDED:

SAN FRANCISCO PUBLIC UTILITIES  
COMMISSION

  
HARLAN L. KELLY, JR.  
General Manager of the San Francisco  
Public Utilities Commission

APPROVED:

  
DONNA HOOD  
Commission Secretary

