Committee Item	No.	14		
Board Item No.			10	

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

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Committee: Government Audit and Oversign	ht Date: January 16, 2020
Board of Supervisors Meeting:	Date: 2/4/2020
Cmte Board Motion	t Report ter and/or Report
OTHER	
Prepared by: John Carroll	Date: January 10, 2020
Prepared by: John Carroll	Date: January 16, 2020

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

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16.

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

Be it ordained by the People of the City and County of San Francisco: Section 1. Background.

Wastewater Enterprise fund balance for payment of the costs.

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

City Attorney
BOARD OF SUPERVISORS

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

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

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

> City Attorney BOARD OF SUPERVISORS

Settlement and the Amendment are on file with the Clerk of the Board of Supervisors in File	
No	
Section 2. Approval of Agreement. Pursuant to Administrative Code, Section 10.22,	: :
the Board of Supervisors hereby authorizes the City Attorney to further settle and compromis	se
EPA's Special Notice Letter as described herein. Additionally, the Board of Supervisors	
hereby authorizes SFPUC's General Manager to enter into any amendments or modification	S
to the Settlement Agreement that the General Manager determines in consultation with the	
City Attorney: are in the best interest of the City; do not materially increase the obligations of	r
liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the	
Settlement Agreement or this resolution; and are in compliance with all applicable laws.	
Section 3. Appropriation of Funds. The source of funding herein appropriated for use	.
by the SFPUC for purposes of expending costs under the Agreement is the SFPUC	
Wastewater Enterprise fund balance.	
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1	APPROVED:
2	DENNIS J. HERRERA
3	City Attorney
4	Festive M. Meil
5	ELAINE M. O'NEIL
6	Deputy City Attorney
7	Construction and Public Contracting Team Leader
8	
9	Funds Available
10	P2/12
11	
12	BEN ROSENFIELD Controller
13	
14	Future funding subject to approval of the FY 20/21 Annual Appropriation Ordinance
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RECOMMENDED:

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

HARLAN L. KELLY, JR/

General Manager of the San Francisco

Public Utilities Commission

APPROVED:

DÕNNA HOOD

Commission Secretary

City Attorney BOARD OF SUPERVISORS

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Clerk's Office/Forms/Legislation Received Checklist (1/2015) for more help go to: sfbos.org/about the board/general/legislative process handbook