



MINUTES

JOINT SPECIAL MEETING

CITY COUNCIL AND SUCCESSOR AGENCY
OF THE
CITY OF SOUTH SAN FRANCISCO

Meeting held at:
MUNICIPAL SERVICES BUILDING
COUNCIL CHAMBERS
33 ARROYO DRIVE
SOUTH SAN FRANCISCO, CA

WEDNESDAY, JULY 10, 2019
6:00 p.m.

CALL TO ORDER

6:02 p.m.

ROLL CALL

Present: Councilmembers Addiego, Nagales, and Nicolas,
Vice Mayor Garbarino, Mayor Matsumoto.*

Absent: None

*For purposes of these minutes Successor Agency Member titles are assumed in the reference to Councilmembers titles and all actions and discussions are on behalf of the Council and Successor Agency in a joint capacity.

AGENDA REVIEW

No changes.

PUBLIC COMMENTS – comments are limited to items on the Special Meeting Agenda.

None.

ADMINISTRATIVE BUSINESS

1. Report regarding Resolution No. 86-2019 authorizing the City Manager/Executive Director to purchase a Pollution Legal Liability policy with Beazley Group for the former landfill located at Oyster Point in an amount not to exceed \$256,087 and approving Budget Amendment No. 20.008. (Jason Rosenberg, City Attorney)

City Attorney Rosenberg presented the report and indicated that the March 23, 2011 Development and Disposition Agreement (DDA) between the City of South San Francisco, the former Redevelopment Agency and Kilroy Realty TRS, Inc. included provisions that required the developer to replace the clay cap on the city landfill located at Oyster Point. The developer secured a Contractor's Pollution Liability policy for the project, which covers a 10-year period after the clay cap repairs were completed. However, the policy only covers the completed work product/operations, and excludes claims resulting from pre-existing pollution conditions.

As such, staff worked with Alliant Insurance, the City's insurance broker, to identify insurance carriers that would provide the City and the South San Francisco Successor Agency (Agency) with a pollution legal liability policy to cover third-party claims against the City or Agency for existing

landfill conditions. Alliant transmitted the City's policy parameters to the following carriers that specialize in pollution liability policies: Aspen; Great American; Ironshore (a Liberty Mutual Company); XL/Catlin; Philadelphia (Tokio Marine) and Beazley (a Lloyd's of London Syndicate).

Of the carriers that were solicited, the City/Agency received quotes from Beazley and Ironshore. The other carriers declined to submit a quote as they were not interested in redevelopment projects involving closed landfills. After discussion and review by staff and the City Attorney's Office, staff identified Beazley as the preferred carrier, as their quote and coverage most closely met with the City's principal policy parameters. Beazley is a syndicate of Lloyd's of London, was established in 1986, managed \$2.7 billion in gross premiums in 2016, has an A.M. Best rating of A/XV, and has \$2 billion in reserves.

The policy covers the City and the Agency for claims related to pollution liabilities associated with Phases IC and IIC as agreed upon within the Kilroy Realty TRS, Inc. DDA that are not otherwise excluded under Section VI of the policy or under the Landfill and Development Cost Exclusion. Generally, the Section VI exclusions exclude: contractual obligations, property damage to City property, new pollution on divested property, and material changes in use. Generally, the Landfill and Development Cost Exclusion excludes cleanup costs and claims expenses related to and/or associated with: Landfill material, operation and maintenance of control costs, groundwater and surface water monitoring costs, closure plan or post-closure plan costs, dewatering, demolition costs, and vapor mitigation.

The exclusions in the policy are designed to exclude from coverage on-going, routine obligations that the City/Agency is undertaking to maintain the cap on the former landfill on City-owned property. The proposed policy covers: Clean-up Costs (except those itemized above), Damages and property damage to non-City property, and Claims Expenses (*i.e.*, attorney's and other fees) that the City is obligated to pay as a result of a claim or new discovery during the policy period. Coverage includes coverage for certain types of underground storage tanks, including USTs that are newly discovered after the policy commences.

The policy will not cover the City or Agency's (1st Party's) discovery of existing pollution because the City/Agency is undertaking those responsibilities for the former landfill. The policy will cover a claim from a third party, such as the developer, for clean up outside the City-owned parcels connected with Phases IC and IIC. The policy also will cover claims related to new pollution conditions as well as property damage and bodily injury claims that a third party, such as the developer, incurs. Property damage only covered for property owned, operated, and controlled by third parties. To secure the policy, Alliant has asked the City to provide an amended application that defines the City-owned parcels connected with Phases IC and IIC and the anticipated use of the parcels.

The cost of the proposed pollution legal liability policy of \$256,087 from Beazley includes the policy premium of \$248,146 and Surplus Lines Taxes/Fees of 3.2 percent, or \$7,941. The policy would cover a 10-year claims filing term, have a coverage amount of \$10 million for each pollution condition, and have a \$100,000 deductible.

The Fourth Amendment of the Franchise Agreement between the City of South San Francisco and the South San Francisco Scavenger Company (Scavenger) in 2013 added Section 4.3, which provides a Source Reduction and Recycling Element (SRRE) franchise fee that the City may use for "purposes related to, but not limited to, landfill monitoring, landfill remediation and/or reducing the City's stream of solid waste within the City of South San Francisco". The SRRE fees are accounted

for in the City's Solid Waste Fund. Based on the language contained in the Scavenger Franchise Agreement, the pollution liability policy premium would be an appropriate use of the equity within the City's Solid Waste Fund.

Budget Amendment No. 20.008 appropriates \$256,087 in funds from the Solid Waste Fund. The Fiscal Year (FY) 2018-19 projected year-end unassigned fund balance, which is equity that is available for various City Council actions, including being assigned, committed, or appropriated, is \$310,739. The FY 2019-20 Adopted Budget is anticipated to result in a net surplus of \$48,330. As such, with City Council approval of Budget Amendment No. 20.008, the FY 2019-20 projected year-end unassigned fund balance is \$102,982. The proposed pollution liability policy serves to mitigate the risks associated with the Oyster Point landfill specified in Phases IC, ID, and IIC of the Kilroy Realty TRS, Inc. DDA.

Mayor Matsumoto requested clarification on the land that Kilroy is developing. City Attorney Rosenberg indicated that there would be further modifications to the policy in order to identify the correct locations and stated that the property that the city holds is the area covered in the policy. The policy will not cover existing pollution on the insured property.

Councilmember Addiego inquired about the insurance coverage for the developers. City Attorney Rosenberg indicated that if pollution migrates and causes damage off the property that is covered, the policy would cover the damage.

Vice Mayor Garbarino inquired about coverage of pollution caused by the City's land. City Attorney Rosenberg stated that the covered locations are City held properties and existing pollution at these sites would not be covered however, if pollution extends to other properties it would be covered.

Mayor Matsumoto expressed her concern with the purchase of insurance and requested clarification. City Attorney Rosenberg explained the coverage and the yearly cost and indicated that the policy will cover both the Agency and the City.

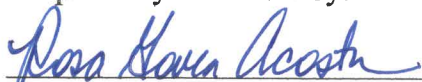
Councilmember Addiego expressed his satisfaction in having two firms willing to underwrite the policy. City Attorney Rosenberg stated that staff worked diligently with Beazley.

Motion – Vice Mayor Garbarino/Second - Councilmember Addiego: To approve Resolution No. 86-2019 authorizing the City Manager/Executive Director to purchase a Pollution Legal Liability policy with Beazley Group for the former landfill located at Oyster Point in an amount not to exceed \$256,087 and approving Budget Amendment No. 20.008. Unanimously approved by roll call vote.

ADJOURNMENT

Being no further business Mayor Matsumoto adjourned the meeting at 6:16 p.m.

Respectfully submitted by:

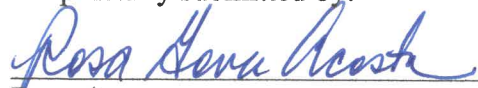


Rosa Govea Acosta, Clerk
Successor Agency

Approved by:

Karyl Matsumoto, Chair
Successor Agency

Respectfully submitted by:



Rosa Govea Acosta, CMC, CPMC
City Clerk

Approved by:

Karyl Matsumoto
Mayor

Approved: / ____ / ____