

RESOLUTION NO. SA02-22

Resolution Of The City Council Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Authorizing the Executive Director To Enter Into A Third Amendment to the Professional Services Agreement with EKI Environment and Water, Increasing The Contract Amount By \$100,000 To An Amount Not To Exceed \$957,000 For Implementation of The Groundwater Monitoring Program Required Pursuant To The Environmental Risk Management Plan For The South Bayfront Project (Bay Street Project – Site A) And Extending The Term To June 30, 2023

WHEREAS, in 1999 the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC), approved the final Remedial Action Plan (RAP) prepared by the Emeryville Redevelopment Agency (Agency) for that portion of the South Bayfront Project site comprised of properties known as McKinley, Sepulveda, Elementis, Portions of Shellmound I and II, and the old Shellmound Street right-of-way; and

WHEREAS, subsequent to the approval of the final RAP, the Agency prepared an Environmental Risk Management Plan (RMP) for the South Bayfront Project site described above, as well as for the property known as the Warburton (Myers Drum) site, consistent with the requirements of the final RAP. The RMP was approved by DTSC on July 26, 2000; and

WHEREAS, the approved final RAP and RMP required the implementation of a multi-year groundwater and surface water monitoring program (the "RMP Monitoring Program") on the area now known as the "Site A; and

WHEREAS, effective March 31, 2003, the Agency entered into a professional services agreement with the firm of Erlen & Kalinowski, Inc., (now known as EKI Environment & Water) in an amount not to exceed \$165,000.00, to provide said services and effective April 20, 2004 the Agency and EKI entered into a First Amendment to Professional Services Agreement increasing the total contract amount to \$300,000 to provide for additional testing and monitoring, and effective October 4, 2011 the Agency approved the Second Amendment to the Agreement increasing the total contract amount to \$857,000 and extending the term to December 31, 2022; and

WHEREAS, DTSC continues to require groundwater monitoring of Site A consistent the RMP requirements and the Successor Agency to the Emeryville Redevelopment Agency wishes to amend the agreement for amount and term in order to comply with DTSC's requirements; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency that the Executive Director is authorized to enter into a Third Amendment to Professional Services Agreement with EKI Environment & Water, in the form attached hereto as Exhibit A, in an additional amount of \$100,000, for a total amount not to exceed \$957,000 for implementation of the groundwater monitoring

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Third Amendment to EKI Professional Services Contract-Site A
Successor Agency Meeting | January 18, 2022
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program for the South Bayfront Project (Bay Street Project - Site A), subject to approval of this item on ROPS 22-23 by the Oversight Board and state Department of Finance.

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 18, 2022, by the following vote:

AYES:	<u>5</u>	Chair Bauters, Vice Chair Medina and Agency Members Donahue, Martinez and Welch
NOES:	<u>0</u>	_____
ABSTAIN:	<u>0</u>	_____
ABSENT:	<u>0</u>	_____

DocuSigned by:
John Bauters
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CHAIR

ATTEST:

DocuSigned by:
Sheri Hartz
FB7B5D8EAB6A4BE...

SECRETARY

APPROVED AS TO FORM:

DocuSigned by:
Andrea Visveshwara
962663BD5573494...

INTERIM GENERAL COUNSEL

ATTACHMENTS

- Exhibit A – Third Amendment to EKI Professional Services Agreement for Site A



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

THIRD AMENDMENT

THIS THIRD AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT (“Amendment”) is effective as of _____, by and between **THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY**, a municipal corporation, (“Successor Agency”) and **EKI ENVIRONMENT & WATER, INC.** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

WITNESSETH THAT

WHEREAS, the Successor Agency and Contractor entered into a Professional Services Contract dated March 31, 2003 (“Contract”) for the purpose of retaining the services of Contractor to provide a groundwater and surface water monitoring program for the South Bayfront Project (Bay Street Project - Site A), and amended that Contract on April 20, 2004 and again on October 4, 2011; and

WHEREAS, the Successor Agency and Contractor desire to amend the Contract; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 Exhibit A

Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-Three**;

OR

Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-Three**, attached hereto and incorporated herein by this reference.

FOR CITY USE ONLY

Contract No.		CIP No.	
Resolution No.		Project No.	

Successor Agency | Professional Services Contract Amendment

REV 08/2019

1.2 Termination Date

- The Parties desire to extend the termination date. Section I.C of the Contract is hereby amended to extend the termination date to **JUNE 30, 2023**.

1.3 Total Compensation Amount

- The Parties desire to increase the Total Compensation Amount as set forth in Section III.B of the Contract by **ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$100,000)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **NINE HUNDRED FIFTY SEVEN THOUSAND DOLLARS AND NO CENTS (\$957,000)**.

2. CONTINUING EFFECT OF CONTRACT

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Contract" appears in the Contract, it shall mean the Contract as amended by this Amendment.

3. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

4. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5. WAIVER

The Successor Agency's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

SIGNATURES ON FOLLOWING PAGE

Successor Agency | Professional Services Contract Amendment
REV 08/2019

**6. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT
THIRD AMENDMENT**

IN WITNESS WHEREOF the Successor Agency and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:
Andra Visveshwara
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Interim General Counsel

Dated:

**CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO
THE EMERYVILLE REDEVELOPMENT AGENCY**

Christine S. Daniel, Executive Director

Dated:

01/03/2022

EKI ENVIRONMENT & WATER

DocuSigned by:
[Signature]
13D4CDA10EC24A1...

Earl James, Vice President *(Signature)*



2001 Junipero Serra Boulevard, Suite 300
Daly City, California 94014
(650) 292-9100
ekiconsult.com

17 December 2021

Christine Daniel
City Manager
City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency
1333 Park Avenue
Emeryville, California 94608

Subject: Proposal for Environmental Consulting Services Associated with the
Site A Project for the Period July 2022 to June 2023
Emeryville, California
(EKI 990093.00)

Dear Ms. Daniel:

EKI Environment & Water (EKI or Consultant) is pleased to submit this proposal to the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency (Successor Agency; Client) for environmental consulting services associated with the Site A Project in Emeryville, California, (Site A, South Bayfront, Bay Street, or the Site). Funding for annual groundwater monitoring activities conducted at the Site is provided by the Successor Agency pursuant to its recognized obligation payments schedule (ROPS) process administered by the Oversight Board and State Department of Finance (DOF) after dissolution of redevelopment agencies effective on 1 February 2012. The Department of Toxic Substances Control (DTSC) is providing regulatory oversight for Site A. This proposal is for the ROPS period 1 July 2022 through 30 June 2023.

BACKGROUND

Soil remedial measures implemented at Site A included soil excavation. Ongoing groundwater monitoring requirements for on-site shallow groundwater and surface water is required at Site A in accordance with the DTSC-approved Risk Management Plan (RMP).

SCOPE OF SERVICES FOR 2022/2023 ROPS

EKI's proposed scope of services is described below. This proposed scope of work reflects anticipated tasks to be conducted during the 2022/2023 ROPS period. It should be noted that EKI will not charge markup for subcontractors other than those involved with sampling and

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laboratory analyses or other technical activities directly related to EKI conducting the required remedial investigation or remediation.

Task 1 – Conduct Annual Groundwater Monitoring

The existing Site A groundwater monitoring well network consists of 12 on-site groundwater monitoring wells (ESB1 to ESB11 and MD5A). In addition, water samples are collected from 2 storm drain locations (SD-2 and SD-3) and 3 locations within Temescal Creek (TC-W, TC-M, and TC-E).

This task includes budget for groundwater monitoring on an annual basis in accordance with the DTSC-approved RMP. Specific tasks include pre- and post- field preparation, water level monitoring, coordinating water level monitoring schedules with Arcadis such that Site A groundwater monitoring level measurements occurs at approximately the same time as Site B, Myers Drum, and Sherwin Williams wells, and collecting and analyzing groundwater and water samples for VOCs, arsenic, total sulfide, and management of investigation derived waste.

Task 2 – Prepare Annual Groundwater Monitoring Reports

This task includes budget for preparing one annual groundwater monitoring report. The report will include: (1) background information including Site geology and hydrogeology and a description of the Site A groundwater well network, (2) sampling methods and procedures used during the groundwater monitoring event, (3) a summary of the results of the annual groundwater monitoring event, and (4) conclusions and recommendations. A draft report will be submitted for review by the Successor Agency. After receipt of any comments, a draft report will be submitted to the DTSC for review. After receipt of any comments from DTSC, a final report will be submitted to the DTSC.

Task 3 – General Environmental Project Management Services

This task includes project management services and ongoing technical and legal support services.

- Responding to inquiries and information requests from the DTSC. These responses may include additional sampling or laboratory analyses or other data acquisition. Analysis of existing data may also be required.
- Support for activities necessary to be implemented as part of the Environmental Risk Management Plan for South Bayfront associated with work at the project area.

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- Prepare Tasks for ROPS Funding Cycle 2023/2024: EKI will prepare a proposal for the ROPS 2023/2024 funding cycle (July 2023 through June 2024) based upon the progress of the project in 2022.
- Ongoing Technical Support and Consultation to Legal Counsel: EKI will provide continued technical support and environmental engineering consultation services regarding coordination with regulatory agencies related to the Site, when requested by the Client. EKI representatives will attend meetings and participate in conference calls with Client, its staff, other consultants, and regulatory agencies, when requested.

PROJECT SCHEDULE

It is EKI's understanding that this proposal is for the period of approximately 1 July 2022 to June 2023 and is subject to funding approval by the DOF. We are prepared to begin work on this project upon receipt of authorization to proceed from Client.

COMPENSATION FOR CONSULTING SERVICES

Compensation for consulting services by EKI will be on a time and expense reimbursement basis in accordance with an updated Schedule of Charges, dated 3 January 2022, as discounted for the Successor Agency. On the basis of the proposed Scope of Work, we propose a budget of \$100,000 for completion of Tasks 1 through 3, which will not be exceeded without prior authorization from Client. In order to efficiently run the program, EKI will not charge markup for subcontractors other than those associated with sampling and laboratory analyses and other tasks directly related to technical or remedial activities.

A summary breakdown of the proposed project budget by key tasks is presented below.

<u>Proposed Task</u>	<u>Proposed Budget</u>
Task 1 Conduct Annual Groundwater Monitoring Event	\$40,000
Task 2 Prepare Semi-Annual Groundwater Monitoring Reports	\$20,000
Task 3 General Environmental Project Management Services	\$40,000
Total Proposed Budget	\$100,000

The budget may be reallocated among tasks as necessary to achieve the project goals. EKI will inform the Client in writing if work beyond the scope identified in this proposal will be required to achieve the objectives described herein or to comply with requirements of the designated regulatory agency. EKI will perform such additional services upon written authorization from the Client.

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AUTHORIZATION

We assume that the Client will provide an Amendment to EKI's Professional Services Agreement (PSA), as previously done in our Agreement dated 31 March 2003 and through Amendment No. 2, dated October 2011, that provides specific work authorization for the scope of work in this proposal. We assume that the terms of this Amendment will be consistent with the most recent PSA between EKI and the Client, with modifications appropriate to this specific scope of work.

We are pleased to have the opportunity to work with you on this project. Please call if you have any questions or wish to discuss this proposal in greater detail.

Very truly yours,

EKI ENVIRONMENT & WATER, INC.



Earl James, P.G.
Vice President