

RESOLUTION NO. 19-129

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute Amendment No. 1 To The Professional Services Agreement With EKI Water And Environment Inc. (EKI) For Soil Offhaul Services At APN 049-1041-026-16 Related To The Development of the Sherwin Williams Project; And Appropriating \$68,314 from the General Capital Fund (Fund 475)

WHEREAS, on June 19, 2018 City Council adopted Resolution No. 18-83 authorizing the City Manager to enter into a Professional Services Agreement with EKI Water and Environment Inc. (EKI) in an amount not to exceed \$66,000 for hazardous material investigation and mitigations services at APN 049-1041-026-16, known as former UPRR Parcel D, and appropriating General Capital Funds for the agreement; and

WHEREAS, the scope of this contract included preparation of the necessary Risk Management Plan (RMP) for activities which will disturb soils in the Soil Exceedance Areas and other optional tasks for field inspections to document compliance with the RMP; preparation of a Completion Report; preparation of site-specific plans for earthwork activities; and waste characterization and fill collection and analysis; and

WHEREAS, in order to determine the suitability of reusing stockpiled soils for project fill, sampling and analysis was performed and revealed that material within two on-site stockpiles was not suitable for incorporating into the project and will need to be disposed of at a legal disposal facility; and

WHEREAS, in order to coordinate with the Sherwin Williams project schedule it is necessary to remove this soil prior to the developer's grading operations which are slated for October 2019, and the removal of this soil was not included in the current Professional Services Agreement ; and

WHEREAS, EKI has prepared a proposed amendment to the existing Professional Services Agreement which provides for the loading, offhaul, and disposal of 1250 tons of material for the amount of \$68,314 and the work includes dust control, trucking management and disposal fees for Keller Canyon Landfill near Pittsburg, CA; and

WHEREAS, the City Council wishes to amend the Professional Services Agreement to incorporate the additional soil removal, offhaul, and disposal, as described in the EKI proposal; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville hereby authorizes the City Manager to execute Amendment No. 1 to the Professional Services Agreement with EKI, in the form attached hereto as Exhibit A; and, be it, further

RESOLVED, by the City Council of the City of Emeryville hereby appropriates \$68,314 from the General Capital Fund (Fund 475).

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 3, 2019, by the following vote:

AYES:	<u>5</u>	Mayor Medina, Vice Mayor Patz, and Council Members Bauters, Donahue, and Martinez
NOES:	<u>0</u>	_____
ABSTAIN:	<u>0</u>	_____
ABSENT:	<u>0</u>	_____



MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY



**PROFESSIONAL SERVICES CONTRACT
FIRST AMENDMENT**

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT ("Amendment") is effective as of this ____ day of _____, 2019, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **EKI ENVIRONMENT AND WATER, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Professional Services Contract dated August 13, 2018 ("Contract") for the purpose of retaining the services of Contractor to provide a Risk Management Plan for the Soil Exceedance Areas at the City owned Property commonly known as UPRR Parcel D (the "Property", in accordance with the Environmental Restriction recorded against said Property; and

WHEREAS, the City 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- _____ ;

OR

Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-1**, attached hereto and incorporated herein by this reference.

1.2 Termination Date

The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

1.3 Total Compensation Amount

- The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **SIXTY EIGHT THOUSAND THREE HUNDRED AND FOURTEEN DOLLARS AND NO CENTS (\$68,314)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED THIRTY FOUR THOUSAND THREE HUNDRED AND FOURTEEN DOLLARS AND NO CENTS (\$134,314)**.

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 City'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

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

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

Approved As To Form:


City Attorney

Dated: **CITY OF EMERYVILLE**

_____, 2019

Christine S. Daniel, City Manager

Dated: **EKI ENVIRONMENT AND WATER, INC.**

_____, 2019



Earl James, Vice President (Signature)



June 28, 2019

Mr. Logan Hansen
EKI Environment & Water, Inc.
577 airport Boulevard, Suite 500
Burlingame, CA 94010

RE: BID TO LOAD, TRANSPORT, AND DISPOSE OF STOCKPILED SOIL AT PARCEL D LOCATED AT 1540 SHERWIN AVENUE, EMERYVILLE, CALIFORNIA.

Dear Mr. Hansen:

Cornerstone Environmental Contractors, Inc., (Cornerstone) is pleased to submit this bid for the aforementioned project. This bid is based on information provided by EKI Environment & Water, Inc. (EKI).

Bid Schedule

Item	Description	Cost
1.	Mob/Demob, HASP and/or JSA's and Hydrant Water Meter/Water	2,609
2.	Loadout approximately 1,250 tons of stockpiled soil.	11,580
3.	Transport & disposal of 1,250 tons of soil as Class II waste at Keller Canyon Landfill @ \$43.30/ton	54,125
Total		\$ 68,314

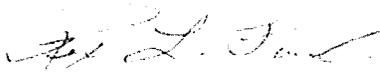
To assist in your evaluation of our proposal, Cornerstone has prepared the following exclusions, exceptions, clarifications and assumptions for your review;

1. Transport & disposal pricing is based on a minimum per load charge of 23 tons per truck and each truck hauling 3 loads per day.
2. Soil will be approved for Class II disposal at Cornerstone's selected disposal facility.
3. All work can be performed in Level D safety gear.

4. Cornerstone can start loading out soil at 7am.
5. Air monitoring, if necessary, is not provided for herein.
6. No permits are included herein.
7. All work can be performed during normal business hours.
8. Prices are valid for 30 days.

Cornerstone appreciates this opportunity and we look forward to working with EKI on this project. Please call me at (530) 241-0520 or email me at refowler@cornerstoneenv.com with any questions or should you require additional information.

Sincerely,
Cornerstone Environmental Contractors, Inc.



Rex L. Fowler
Estimator