



PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is effective as of this 13th day of August, 2018, by and between THE CITY OF EMERYVILLE, a municipal corporation, (“City”) and EKI ENVIRONMENT & WATER, INC., (“Consultant”), collectively referred to as the “Parties.”

WITNESSETH THAT

WHEREAS, the City desires to prepare 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 (Exhibit A) recorded against said Property; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and

WHEREAS, the City has determined that the Consultant is qualified by training and experience to render such services; and

WHEREAS, the Consultant desires to provide such services; and,

WHEREAS, the public interest will be served by this Agreement; and

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

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete Project Description is described in Consultant’s Proposal dated June 12, 2018, attached as Exhibit B.

1.2 Services

The services to be completed under this Agreement (“Services”) are described in Exhibit B.

1.3 Schedule and Completion Date

The services to be provided by Consultant under this Agreement shall commence upon execution of this Agreement and issuance by City of a Notice to Proceed; and terminate

FOR CITY USE ONLY			
Contract No.	18020-0000-CA01	CIP No.	N/A
Resolution No.	18-83	EPW No.	N/A

on completion of Task 1 and any Optional Tasks requested by City, as described in Consultant's Proposal.

2. RIGHT OF ENTRY AND RELEASE

This Agreement contemplates Consultant performing a portion of the Services on the Property. Each person entering upon the Property under this Agreement shall do so at his/her own risk. On behalf of itself and its agents, representatives, assigns, heirs, spouses, successors-in-interest, executors, administrators, employees, contractors, subcontractors, material suppliers and vendors ("Releasors"), Consultant assumes all risk of entering the Property and agrees that City is irrevocably and unconditionally released and shall not be liable in any manner for injury to or death of Releasors or their respective officers, employees or agents or for damage to property of Releasors arising from any cause. This release applies to all potential future claims and Consultant on behalf of itself and the Releasors agrees to waive any and all rights pursuant to Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

EJ Consultant Initials

3. WORK CHANGES

3.1 City Rights to Change

The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.

3.2 Additional Work Changes

Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.

3.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section 4f.2 below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

4. COMPENSATION AND METHOD OF PAYMENT

4.1 Compensation for Services Performed

City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.

4.2 Total Compensation Amount

The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **SIXTY SIX THOUSAND DOLLARS AND NO CENTS (\$66,000)**, except as outlined in Section 3.3 above. The compensation for Services performed shall be as set forth in Exhibit B. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

5. COVENANTS OF CONSULTANT

5.1 Assignment of Agreement

The Consultant covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the City. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and the City shall have no obligation to them.

5.2 Responsibility of Consultant and Indemnification of City

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

5.3 Independent Contractor

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the City. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

5.4 Insurance

5.4.1 REQUIREMENTS

The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These

requirements are subject to amendment or waiver if so approved in writing by the City Manager.

5.4.2 MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

- A. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
- B. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
- C. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.
- D. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

 EJ (Consultant's Initials)

- E. Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.
- F. Pollution Legal Liability insurance in amounts no less than \$5,000,000, providing coverage for all pollution conditions, which includes, but is not limited to, the remediation of soil, groundwater, or other contaminants.

5.4.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

5.4.4 OTHER INSURANCE PROVISIONS

The policy is to contain, or be endorsed to contain, the following provisions:

A. General Liability and Automobile Liability Coverage

1. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as additional insured and is not acceptable.

2. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.
4. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
6. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
7. All endorsements to policies shall be executed by an authorized representative of the insurer.

B. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

C. All Coverages

Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

5.4.5 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.

5.4.6 VERIFICATION OF COVERAGE

Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

5.4.7 SUBCONTRACTORS

Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

5.4.8 CLAIMS-MADE POLICIES

Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

5.5 Records, Reports and Audits

5.5.1 RECORDS

- A. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.

- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

5.5.2 REPORTS AND INFORMATION

Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

5.5.3 AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

5.6 Conflicts of Interest

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the City of Emeryville, nor business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Consultant will immediately notify the City of such holding, interest or agreement in writing.

5.7 Confidentiality

The Consultant agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news

media, without prior written approval of the City. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

5.8 Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability.

5.9 Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

5.10 Key Personnel

Earl James (Project Manager) is necessary for the successful prosecution of the work due to his unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

5.11 Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

5.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("Materials") shall be an are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant assumes all risk of loss,

damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

5.13 Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant shall comply with the requirements of the City's Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless (i) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Consultant who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. Consultant shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.83 per hour (as of July 1, 2016, subject to increase annually on July 1st to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

5.14 Prevailing Wages

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor

to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to ensure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

5.14.1 HOURS OF LABOR

Eight hours' labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.

5.14.2 LABOR NON-DISCRIMINATION

Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.

5.14.3 PREVAILING WAGES

Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained online at www.dir.ca.gov. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

5.14.4 PAYROLL RECORDS

Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.

- A. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- B. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.
- C. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.
- F. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

5.14.5 APPRENTICES

Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In

accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

5.14.6 WORKERS' COMPENSATION

Pursuant to the requirements of section 1860 of the California Labor Code, Consultant will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Agreement, Consultant certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

5.14.7 EVENT OF DEFAULT

Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

6. TERMINATION

- A. The City shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.

- E. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

7. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement.

8. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

9. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

10. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

11. SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

12. BUSINESS LICENSE

Prior to commencement of the services to be provided hereunder, Consultant shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

13. NOTICES

13.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work shall be exchanged between **Michael Guina, City Attorney** for the City and **Earl James** for the Consultant.

13.2 Official Notices

All other notices, writings or correspondence as required by this Agreement shall be directed to the City and the Consultant, respectively, as follows:

CITY

MICHAEL GUINA

1333 Park Avenue

Emeryville, California 94608

Phone No.: (510) 596-4380

Fax No.: (510) 596-3724

E-Mail: mguina@emeryville.org

CONSULTANT

EARL JAMES, VICE PRESIDENT

577 Airport Blvd., Suite 500

Burlingame, CA 94010

Phone No.: 650-292-9100

Fax No.: 650-552-9012

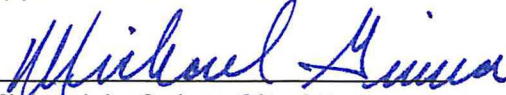
E-Mail: ejames@ekiconsult.com

14. WAIVER OF AGREEMENT

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


IN WITNESS WHEREOF the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved As To Form:


Michael A. Guina, City Attorney

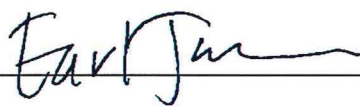
Dated: 06-13, 2018

CITY OF EMERYVILLE


~~Carolyn Lehr, City Manager~~
James Holgersson, Interim City Manager

CONSULTANT

Dated: June 12, 2018

BY: 

ITS: Vice President

12 June 2018

Michael Guina, Esq.
City Attorney
City of Emeryville
1333 Park Avenue
Emeryville, California 94608-3517

Subject: Proposal for Environmental Services Associated with Redevelopment of
the Former UPRR Parcel D Property
Former UPRR Parcel D
Emeryville, California
(EKI B8-079)

Dear Mr. Guina:

EKI Environment & Water, Inc. ("EKI") is pleased to submit this proposal for environmental services associated with the redevelopment of the former Union Pacific Railroad ("UPRR") Parcel D property (the "Site"), located north of the intersection of Sherwin Street and Halleck Street in Emeryville, California. The proposed environmental services include the preparation of a Risk Management Plan ("RMP"). EKI has also included Optional Tasks for the following, if necessary: (1) Field observation during redevelopment activities at the Site; (2) Preparation of a Completion Report after redevelopment is complete; (3) Preparation of Site-Specific Plans for earthwork activities; (4) Waste characterization and import fill sample collection and analysis; and (5) Attending up to two project planning meetings. EKI services are proposed to be provided on behalf of the City of Emeryville ("City"; "Client"), in accordance with the terms of a professional services agreement ("PSA") with the City dated 12 June 2018.

It is our understanding that the Site will be redeveloped as open space, including park areas, landscaping, and recreation areas, as part of the Sherwin Williams Redevelopment Project, as generally described in the Final Development Plan Package, dated 7 December 2017. The Final Development Plan Package does not include detailed drawings of excavation and/or grading limits, depths of excavation and grading, or landscaping installation depths.

Formerly known as Erler & Kalinowski, Inc.

The City is acting as the Lead Oversight Agency under a Memorandum of Understanding between the City, Successor Agency, the California Department of Toxic Substances Control (“DTSC”), and the San Francisco Bay Regional Water Quality Control Board (“SFRWQCB”). Ms. Susan G. Colman is acting as Brownfields Site Manager (“Site Manager”) who provides regulatory and technical support to the City.

As summarized in EKI’s *Final Remedial Action Completion Report, UPRR Parcel D, Emeryville, California*, dated 14 February 2017 (“RACR”), the former Redevelopment Agency conducted soil excavation activities at the Site to remove fill material that contained chemicals of concern (“COCs”) above the Site remedial goals. Excavated soil (containing arsenic, cadmium, lead, and petroleum hydrocarbons above remedial goals) was disposed off-Site. Locations where concentrations of COCs in soil exceeded the remedial goals but had to be left in place were at the property boundary. In these areas further excavation was not possible because temporary slopes were required to maintain the geotechnical integrity of above-ground structures, adjacent buildings, railroad tracks, sidewalks, etc. Because soil containing COCs that exceed Site remedial goals were left in place, an Environmental Restriction was recorded for those portions of the Site. DTSC concurred with the City’s determination that no further action other than the placement of an Environmental Restriction for the portions of the Site where COCs that exceed Site remedial goals were left in place (“Soil Exceedance Areas”) was needed for the Site in a letter dated 8 June 2017.

The Environmental Restriction for the Site was finalized on 30 June 2017 and was recorded in the official records of the Office of the Alameda County Recorder. In accordance with the Environmental Restriction, EKI’s scope of work includes the following tasks:

1. Preparation of an RMP for any activity that will disturb the soils in the Soil Exceedance Areas and any groundwater extracted during construction activities on the Site;
2. (OPTIONAL) Field inspection during construction activities to document compliance with the RMP;
3. (OPTIONAL) Preparation of a Completion Report following Site redevelopment;
4. (OPTIONAL) Preparation of Site-specific plans for earthwork activities (e.g., Dust Control, Waste Transportation, Perimeter Air Monitoring, etc.);
5. (OPTIONAL) Waste characterization and import fill sample collection and analysis; and

6. (OPTIONAL) Attend two (2) Project Planning Meetings with City and the developer of the adjacent Sherwin Williams Redevelopment Project.

Detailed descriptions and the proposed budgets for these tasks are summarized below.

PROPOSED SCOPE OF WORK

Task 1 – Preparation of a Risk Management Plan for Soil Exceedance Areas

EKI will prepare a Risk Management Plan (“RMP”) for use during construction activities conducted in the Soil Exceedance Areas. The purpose of the RMP is to identify mitigation measures that will be implemented during construction activities that encounter soils that remain in place to minimize the potential for exposure to COCs and to identify appropriate soil handling and disposal requirements in accordance with the Environmental Restriction and applicable state and federal laws.

The RMP will incorporate subsurface construction management protocols, if necessary, including the following: (a) management of excavated soil; (b) management of extracted groundwater; (c) excavation, sampling, and disposal procedures to follow if visibly contaminated or odorous soils are encountered during earthwork; (d) management of abandoned utilities or subsurface structures; and (e) waste characterization of soil or groundwater to be disposed off-Site.

The budget for this task assumes that one round of responses to City and Site Manager comments and one round of responses to DTSC comments will be performed and that only an electronic copy of the RMP will be finalized.

Prior to preparation of the RMP, EKI will complete a detailed review of the Site-specific construction drawings, when available, to determine the extent of the Soil Exceedance Areas that will be disturbed during redevelopment. Based upon the extent and/or location of construction activities, EKI and City will determine the need for Site-specific plans such as the following: (a) EKI Health and Safety Plan; (b) waste transportation plan; (c) decontamination plan; (d) dust control plan; and (e) perimeter air monitoring plan. Budget for EKI to prepare these plans is not included in Task 1, but is included as Optional Task 4, detailed below.

Task 2 – (OPTIONAL) Field Observation of Construction Activities

EKI personnel will conduct field observation of earthwork and construction activities to document compliance with the RMP. EKI field personnel will inspect soils encountered during earthwork for visual signs of contamination (such as staining or odor) and will screen soils with handheld instruments, if needed. EKI field personnel will also observe construction activities, as necessary, to document that soils in the Soil Exceedance Area will not be disturbed following redevelopment.

The proposed budget for this task includes the following specific assumptions:

- EKI project manager and field personnel will attend one (1) kick-off meeting; and
- Twenty (20) hours in the field for EKI personnel to observe earthwork activities; and
- Twenty (20) hours in the field for EKI personnel to observe construction and redevelopment activities.

Budget for the collection and analysis of If Budget for EKI to prepare these plans is not included in Task 1, but is included as Optional Task 4, detailed below.

Task 3 – (OPTIONAL) Preparation of Completion Report

Following the completion of redevelopment activities, EKI will prepare a brief completion report that summarizes the activities and compliance with the RMP. The completion report will include figures detailing the improvements constructed on the Soil Exceedance Areas in accordance with the Environmental Restriction.

The budget for this task assumes that one round of responses to City and Site Manager comments and one round of responses to DTSC comments will be performed and that only an electronic copy of the RMP will be finalized.

The budget for this task does not include additional time to summarize implementation of the Site-specific plans described in Optional Task 4, below. In the event that these plans are implemented during earthwork activities, EKI will request additional budget to include these plans in the completion report.

Task 4 (OPTIONAL) – Preparation of Site-Specific Plans

EKI has included Optional Task 4 in the event that EKI and City determine that Site-specific plans such as the following: (a) EKI Health and Safety Plan; (b) waste transportation plan; (c) decontamination plan; (d) dust control plan; and/or (e) perimeter air monitoring plan are needed during earthwork activities. These plans will be prepared by EKI for implementation during earthwork activities.

The budget for this task assumes that one round of responses to City and Site Manager comments and one round of responses to DTSC comments will be performed and that only electronic copies of the plans will be finalized.

The budget for this Optional Task 4 does not include additional time for EKI personnel to implement these plans. In the event that EKI personnel are needed to complete the field activities described in these plans, EKI will request additional budget to complete this task.

Task 5 (OPTIONAL) – Waste Characterization and Import Fill Sample Collection and Analysis

EKI has included Optional Task 5 in the event that waste characterization and import fill samples need to be collected and analyzed during construction activities. Excess soil may be generated during earthwork activities and these soils will need to be characterized for off-Site disposal. In addition, the City may request that samples of potential import fill materials be sampled and analyzed prior to approving the fill material for use at the Site.

Therefore, budget for this task includes the following:

Collection of two (2) samples for waste characterization that will be analyzed for the following:

- Volatile organic compounds (“VOCs”) using EPA Method 8260B;
- Total extractable petroleum hydrocarbons (“TEPH”) as diesel and motor oil using U.S. EPA Method 8015m with silica gel cleanup;
- Total petroleum hydrocarbons (“TPH”) as gasoline using U.S. EPA Method 8015m; and

- California Code of Regulations (“CCR”) Title 22 metals¹ using U.S. EPA Methods 6020 and 7471 (“metals”).

Collection of two (2) samples of potential import fill material that will be analyzed for the following:

- Volatile organic compounds (“VOCs”) using EPA Method 8260B;
- Total extractable petroleum hydrocarbons (“TEPH”) as diesel and motor oil using U.S. EPA Method 8015m with silica gel cleanup;
- Total petroleum hydrocarbons (“TPH”) as gasoline using U.S. EPA Method 8015m;
- Metals using U.S. EPA Methods 6020 and 7471;
- Asbestos using OSHA Method ID-191;
- pH by U.S. EPA Method 9045C; and
- Moisture content using ASTM Method D-2216.

All samples will be analyzed by a State of California-certified analytical laboratory. Samples will be analyzed on a standard, 10-working-day turnaround time.

Budget for this Optional Task 5 does not include collection and analysis of any extracted groundwater samples.

Task 6 (OPTIONAL) – Attend Two (2) Project Planning Meetings

EKI has included Optional Task 6 for preparing for and attending two (2) project planning meetings with City staff and the developer of the adjacent Sherwin Williams Redevelopment Project. It is our understanding that these meetings will be held to: (a) review the details and schedule of the proposed work and (b) coordinate use of the Site by the developer of the adjacent Sherwin Williams Redevelopment Project.

The budget for this task assumes that EKI will prepare for and attend two (2) meetings at the City offices or the Site.

The budget for this Optional Task 6 does not include additional time for EKI personnel to prepare additional figures, procedures, plans, or memoranda that are not included in the RMP. If EKI is requested to prepare any of these additional items, EKI will request additional budget to complete this task.

¹ Title 22 metals include antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, selenium, silver, thallium, vanadium, and zinc.

PROJECT SCHEDULE

We are prepared to begin work immediately on this project upon execution of a PSA with the City and receipt of authorization to proceed. Upon notice to proceed from the Client and receiving the detailed construction drawings, EKI anticipates that it will take approximately three weeks to prepare a draft RMP for Client review.

COMPENSATION FOR CONSULTING SERVICES

Inasmuch as the exact level of effort to complete the proposed Scope of Work cannot be identified at this time, compensation for consulting services by EKI Environment & Water, Inc. will be on a time and expense reimbursement basis in accordance with our current Schedule of Charges, dated 1 January 2018, attached. We propose a total budget of \$66,000, which includes \$15,000 for the performance of Task 1 and a budget of \$51,000 for Optional Tasks 2 through 6, as described above. This budget will not be exceeded without additional authorization. A breakdown of the budget is provided below:

Task	Estimated Budget
1 Preparation of a Risk Management Plan for Soil Exceedance Areas	\$15,000
TOTAL PROPOSED BUDGET	\$15,000
2 (OPTIONAL) – Field Observation of Construction Activities	\$16,000
3 (OPTIONAL) – Preparation of Completion Report	\$10,000
4 (OPTIONAL) – Preparation of Site-Specific Plans	\$15,000
5 (OPTIONAL) – Waste Characterization and Import Fill Sample Collection and Analysis	\$ 5,000
6 (OPTIONAL) – Attend Two Project Planning Meetings	\$ 5,000
TOTAL PROPOSED BUDGET WITH OPTIONAL TASKS	\$66,000

Michael Guina, Esq., City of Emeryville
Budget Augmentation Proposal – UPRR Parcel D
12 June 2018
Page 8



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 these matters in greater detail.

Very truly yours,

EKI ENVIRONMENT & WATER, INC.

A handwritten signature in black ink, appearing to read 'Logan Hansen'.

Logan Hansen, P.G.
Project Manager

A handwritten signature in black ink, appearing to read 'Earl James'.

Earl James, P.G.
Vice President

Attachments: Schedule of Charges, dated 1 January 2018

Client/Address: City of Emeryville as Successor Agency
1333 Park Avenue
Emeryville, CA 94608-3517



Proposal/Agreement Date: 12 June 2018

EKI Project #s 990093; A40028; B20006

SCHEDULE OF CHARGES FOR EKI ENVIRONMENT & WATER, INC.¹

(Modified)

1 January 2018

<u>Personnel Classification</u>	<u>Hourly Rate</u>
Officer and Chief Engineer-Scientist	266
Principal Engineer-Scientist	257
Supervising I, Engineer-Scientist	247
Supervising II, Engineer-Scientist	238
Senior I, Engineer-Scientist	226
Senior II, Engineer-Scientist	214
Associate I, Engineer-Scientist	202
Associate II, Engineer-Scientist	189
Engineer-Scientist, Grade 1	176
Engineer-Scientist, Grade 2	166
Engineer-Scientist, Grade 3	152
Engineer-Scientist, Grade 4	133
Engineer-Scientist, Grade 5	118
Engineer-Scientist, Grade 6	104
Technician	95
Senior GIS Analyst	122
CADD Operator / GIS Analyst	107
Senior Administrative Assistant	119
Administrative Assistant	94
Secretary	78

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work will be at cost plus ten percent (10%) for items such as:

- a. Maps, photographs, reproductions, printing, equipment rental, and special supplies related to the work.
- b. Consultants, soils engineers, surveyors, drillers, laboratories, and contractors.
- c. Rented vehicles, local public transportation and taxis, travel and subsistence.
- d. Special fees, insurance, permits, and licenses applicable to the work.
- e. Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for company-owned automobiles, except trucks and four-wheel drive vehicles, used in connection with the work will be at the rate of sixty cents (\$0.60) per mile. The rate for company-owned trucks and four-wheel drive vehicles will be seventy-five cents (\$0.75) per mile. There will be an additional charge of thirty dollars (\$30.00) per day for vehicles used for field work. Reimbursement for use of personal vehicles will be at the federally allowed rate plus ten percent (10%).

CADD Computer time will be charged at twenty dollars (\$20.00) per hour. In-house material and equipment charges will be in accordance with the current rate schedule or special quotation. Excise taxes, if any, will be added as a direct expense.

Rate for professional staff for legal proceedings or as expert witnesses will be at a rate of one and one-half times the Hourly Rates specified above.

The foregoing Schedule of Charges is incorporated into the Agreement for the Services of EKI Environment & Water, Inc. and may be updated annually.

¹ Formerly known as Erler & Kalinowski, Inc.