

**RESOLUTION NO. \_\_\_\_\_**

**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 An Eighteenth Amendment To The Professional Services Contract With EKI Environment And Water To Increase The Contract Amount By \$1,145,000, For An Amount Not To Exceed \$18,228,000, For Implementation Of The Groundwater Monitoring Program Required Pursuant To The Environmental Risk Management Plan For The South Bayfront Project (Bay Street Project – Site B) And Extend The Term To June 30, 2026**

**WHEREAS**, commencing in 2004 the Emeryville Redevelopment Agency (“Agency”) undertook actions to redevelop those certain parcels located between the Bay Street development and the Powell Street overpass for highest and best uses; and

**WHEREAS**, the development area is made up of five parcels; namely, Assessor Parcel Nos. 049-1321-001-02, 049-1321-001-04, 049-1321-003-02, 049-1321-004-04, and 049-1321-005-00 (collectively referred to as South Bayfront Site B (“Site B”)); and

**WHEREAS**, the Agency retained Erler & Kalinowski, Inc. (the “Consultant”) to complete a Phase I Environmental Site Assessment of Site B, and such work was completed and summarized in a report dated July 14, 2004 which determined a further Phase II Environmental Site Assessment was required; and

**WHEREAS**, thereafter the Agency approved a Professional Services Agreement with the Consultant to complete a Phase II Environmental Site Assessment of Site B including soil and groundwater sampling and development of a remediation cost estimate and after said work was completed the Agency approved a First Amendment to Professional Services Agreement for further investigative work to fill in data gaps; and

**WHEREAS**, thereafter the Agency approved a Second Amendment to Professional Services Agreement for additional data gap investigations, preparation of a human health risk assessment (“HHRA”) and a remedial investigation (“RI”) report for submittal to the California Environmental Protection Agency, Department of Toxic Substances Control (“DTSC”); and

**WHEREAS**, the Consultant completed a draft RI/HHRA report in June 2006 and submitted said report to DTSC, who identified certain additional data gaps; and

**WHEREAS**, the Agency approved a Third Amendment to Professional Services Agreement to address these additional data gaps as part of the revision of the RI/HHRA and to prepare a draft Feasibility Study/Remedial Action Plan (“Draft FS/RAP”) and draft Remedial Design and Implementation Plan (“Draft RDIP”); and

**WHEREAS**, the Consultant submitted a revised RI/HHRA to DTSC in May 31, 2007; completed the Draft FS/RAP, which was approved by the Agency on March 3, 2008 after a duly noticed public comment period; submitted a Draft RDIP for review by DTSC; and

Resolution No. \_\_\_\_\_  
EKI Site B Eighteenth Amendment to PSC  
Successor Agency Meeting | January 21, 2025  
Page 2 of 6

prepared draft plans and specifications for use in soliciting bids from contractors to implement the remedial plan; and

**WHEREAS**, the Agency approved a Fourth Amendment to Professional Services Agreement for ongoing environmental consulting services that would be needed to continue the development of the remedial activities on Site B; and

**WHEREAS**, upon approval of the RDIP by DTSC the Agency publicly bid and thereafter awarded a contract to Pacific States Environmental Contractors, Inc. to undertake the remediation excavation activities and also approved a Fifth Amendment to Professional Services Agreement to provide environmental consulting services for initial implementation of the remedial plan for Site B; and

**WHEREAS**, on December 16, 2008, the Agency approved a Sixth Amendment to Professional Services Agreement for the completion of the RDIP and ongoing services related to the initial evaluation of potential additional groundwater remediation measures once the excavations are completed; and

**WHEREAS**, on April 21, 2009, the Agency approved a Seventh Amendment to Professional Services Agreement for ongoing and additional work related to the implementation of the soil remedial plan through June 2009 and initial work regarding the implementation of post-soil remediation activities; and

**WHEREAS**, on July 21, 2009, the Agency approved an Eighth Amendment to Professional Services Agreement for ongoing and additional work related to the implementation of the soil remedial plan through August 2009 and development of a post-soil remediation groundwater monitoring plan in accordance with the FS/RAP; and

**WHEREAS**, on March 2, 2010, the Agency approved a Ninth Amendment to Professional Services Agreement for work related to the post-soil remediation groundwater activities in accordance with the FS/RAP; and

**WHEREAS**, on September 21, 2010, the Agency approved a Tenth Amendment to Professional Services Agreement for additional environmental consulting services related to continuing field implementation of post-soil remediation groundwater activities and an on-site groundwater pilot study; and

**WHEREAS**, the results of the on-site groundwater pilot study were favorable in terms of addressing groundwater impacts and additional environmental consulting services were identified and authorized on April 5, 2011 pursuant to an Eleventh Amendment to Professional Services Agreement which provided for: (1) project management including processing of an amendment to the FS/RAP in order to designate in-situ remediation as the primary groundwater remedial approach; (2) ongoing groundwater monitoring for the period of April 2011 through April 2013; (3) Implementation of in-situ on-site groundwater

Resolution No. \_\_\_\_\_  
EKI Site B Eighteenth Amendment to PSC  
Successor Agency Meeting | January 21, 2025  
Page 3 of 6

remediation on Site B in the upper/shallow zone; (4) Implementation of in-situ groundwater remediation in the east Powell Street area in the upper/shallow zone; (5) Investigation of additional potential off site sources of VOCs to Site B Groundwater; and (6) Preparation of Environmental Risk Management Plan and provide support during Site B redevelopment; and

**WHEREAS**, in accordance with the services authorized pursuant to the Eleventh Amendment, the amendment to the FS/RAP for the Site B groundwater remedial approach was prepared and approved by DTSC for dissemination for public comment for the period of May 15, 2013 through June 14, 2013; ongoing groundwater monitoring has been conducted; implementation of in-situ groundwater remediation in the east Powell Street area has been conducted and completed; and investigation of additional off-site sources of VOCs to Site B has also been undertaken; and

**WHEREAS**, subsequent to the authorization and execution of the Eleventh Amendment on April 5, 2011, the Agency was dissolved pursuant to AB X1 26 (the "Dissolution Act") effective as of February 1, 2012; and

**WHEREAS**, in accordance with the Dissolution Act the City Council of the City of Emeryville elected to have the City of Emeryville serve as the Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency"); and

**WHEREAS**, pursuant to the Dissolution Act the Successor Agency succeeded to all contracts of the Agency, including the Professional Services Agreement with Consultant as amended and noted herein, as well as to the responsibility to carry out obligations to third parties; and

**WHEREAS**, the remediation of groundwater at Site B is an obligation of the former Agency pursuant to the terms of settlement agreements it entered into with Chevron USA, Union Oil, Union Pacific Railroad, the Adam Parties, the Koeckritz Parties and the Robinson Parties in the matter of Emeryville Redevelopment Agency v. Robinson, et.al., Case No. RG-06-267594 [Consolidated with RG-06-267600 and RG-07-332012]; accordingly, implementation of groundwater remedial measures is an enforceable obligation of the Successor Agency as defined in the Dissolution Act and the services of the Consultant are necessary to fulfill that obligation; and

**WHEREAS**, on June 18, 2013, a Twelfth Amendment to Professional Services Agreement was approved by the Successor Agency to provide additional time through June 30, 2015 to undertake the task of implementation of in-situ on-site groundwater remediation of the upper/shallow zone on Site B pursuant to the amendment to the FS/RAP and RDIP approved by DTSC on June 24, 2013; and

**WHEREAS**, the remediation of the upper/shallow groundwater zone was conducted in late summer/early fall 2013 and after two rounds of post remedial groundwater sampling

Resolution No. \_\_\_\_\_  
EKI Site B Eighteenth Amendment to PSC  
Successor Agency Meeting | January 21, 2025  
Page 4 of 6

events in early 2014, the Final Shallow Groundwater Remediation Completion Report was approved on November 25, 2014, finding no need for supplemental remedial injections necessary at this time; and

**WHEREAS**, based on the data available, the Successor Agency has maintained that impacts to the lower/deeper groundwater zone on Site B were from an off-site source and thus remedial efforts to address the contamination was the responsibility of another party; and

**WHEREAS**, notwithstanding the favorable results of the remedial activities pertaining to the upper/shallow groundwater zone, the sampling data following the on-site injections to the upper/shallow groundwater zone has shown an effect to the lower/deeper zone, and hence the possibility that the impacts to the lower/deeper groundwater zone on Site B emanate from Site B; and

**WHEREAS**, the Successor Agency was directed by DTSC in September 2014 to undertake activities to address the lower/deeper groundwater zone on Site B and/or provide DTSC with more definitive proof that the impacts to the lower/deeper groundwater zone on Site B are from an off-site source; and

**WHEREAS**, on January 20, 2015, a Thirteenth Amendment to Professional Services Agreement was approved by the Successor Agency to provide additional time through June 30, 2017 to commence activities to further characterize contamination in the lower/deeper groundwater zone and investigate the origins thereof, and to thereafter prepare and process an amendment to the FS/RAP to address said contamination in the lower/deeper groundwater zone and implement said remedy, if necessary; and

**WHEREAS**, at the time the Thirteenth Amendment was presented there remained approximately \$520,000 of budget under EKI's contract to commence the work of characterizing the deeper zone groundwater impacts at Site B and investigating potential off-site sources of that contamination as required by DTSC; and

**WHEREAS**, in April 2015, DTSC approved the work plan for the required characterization/investigative work needed to be undertaken for Site B and pursuant to additional funding provided by a Fourteenth Amendment approved June 16, 2015, the Consultant has moved forward with the characterization/investigative work in concert with similar work required for the corporation yard site and completed its field activities during the summer/early fall of 2015; and

**WHEREAS**, at the time there was sufficient funds to complete the preparation of the required investigation report, prepare an amendment to the FS/RAP to address deeper groundwater as required by DTSC; however, additional funds are required to undertake unanticipated additional injections of amendment and microbes to aid the degradation of vinyl chloride in shallow groundwater, as well as the full scale injections to deeper

Resolution No. \_\_\_\_\_  
EKI Site B Eighteenth Amendment to PSC  
Successor Agency Meeting | January 21, 2025  
Page 5 of 6

groundwater now being required by DTSC; thereafter there will be the need to prepare the environmental risk management plan to be implemented during future development, the land use covenant, as well as the costs of long-term groundwater monitoring activities; and

**WHEREAS**, the intent of the Fifteenth Amendment was to augment the contract budget such that there is sufficient money available to cover the costs of the preparation of the investigation report, an amendment to the FS/RAP to address impacts to the deeper groundwater zone, supplemental injections to shallow groundwater, full scale injections to the deeper groundwater zone, installation of permanent wells along the southern and easterly boundaries of the Site to aid with future supplemental injections to both shallow and deep groundwater zones, and then three biennial rounds of injections to the shallow and deep groundwater zones in future years, if warranted, the costs to prepare the Environmental Risk Management Plan to be implemented during future Site B development, the land use covenant, as well as the costs of long-term groundwater monitoring activities through June 30, 2023; and

**WHEREAS**, the intent of the Sixteenth Amendment was to augment the contract budget such that there is sufficient money available to cover the costs of the semi-annual groundwater monitoring, preparing semiannual groundwater reports, and general environmental project management services for Site B through June 30, 2024; and

**WHEREAS**, the intent of the Seventeenth Amendment was to augment the contract budget such that there is sufficient money available to cover the costs of the semi-annual groundwater monitoring, preparing semi-annual reports, conducting supplemental ERD injections, providing on-going project management services, and covering the costs for long-term groundwater monitoring through June 30, 2025; and

**WHEREAS**, the intent of the Eighteenth Amendment is to augment the contract budget such that there is sufficient money available to cover the costs of the semi-annual groundwater monitoring, preparing semi-annual reports, conducting supplemental ERD injections, providing on-going project management services, and covering the costs for long-term groundwater monitoring through June 30, 2026; and

**WHEREAS**, the Successor Agency finds that specialized knowledge, skills, and training are necessary to render the environmental consulting services required for the continued implementation of post-soil remediation of groundwater on Site B; and

**WHEREAS**, the Successor Agency determined that the Consultant is qualified by training and experience to render such services and has prepared an Eighteenth Amendment to the Professional Services Agreement to increase the compensation by \$1,145,000 for a total contract amount not to exceed \$18,228,000; and

Resolution No. \_\_\_\_\_  
EKI Site B Eighteenth Amendment to PSC  
Successor Agency Meeting | January 21, 2025  
Page 6 of 6

**WHEREAS**, the public interest will be served by the Eighteenth Amendment; now, therefore, be it

**RESOLVED**, by the City Council of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency hereby approves and authorizes the City Manager to execute and enter into an Eighteenth Amendment to the Professional Services Agreement with Erler & Kalinowski, Inc. relating to the South Bayfront Site B Remediation Project as set forth in Exhibit A attached hereto; and, be it, further

**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 21, 2025, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

\_\_\_\_\_  
CHAIR

ATTEST:  
  
\_\_\_\_\_  
SECRETARY

APPROVED AS TO FORM:  
  
DocuSigned by:  
*John Kennedy*  
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\_\_\_\_\_  
LEGAL COUNSEL

**ATTACHMENTS**

- Exhibit A – Professional Services Contract – 18th Amendment