



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: January 18, 2022

TO: Christine Daniel, Executive Director

FROM: Andrea Visveshwara, Interim General Counsel

SUBJECT: Resolution Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Authorizing The Executive Director To Enter Into A First Amendment To The Professional Services Agreement With EKI Environment & Water, Inc., In An Amount Of \$1,035,000 For Environmental Engineering Services During The ROPS 22-23 Cycle For Soil And Groundwater Remediation At The Corporation Yard Site, 5679 Horton Street, Emeryville, CA, Pursuant To That Certain Imminent And Substantial Endangerment Order Issued To The Successor Agency By The California Department Of Toxic Substances Control, For A Total Contract Amount of \$3,745,000

RECOMMENDATION

Staff recommends the Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") approve the above-entitled resolution authorizing the Executive Director to enter into a First Amendment to the Professional Services Contract ("PSC") with EKI Environment & Water, Inc. ("EKI") for an amount not to exceed \$1,035,000, for the ROPS 22-23 period, to provide environmental engineering services at the Corporation Yard Site, 5679 Horton Street, in response to the Imminent and Substantial Endangerment Order Issued by the California Department of Toxic Substances Control.

BACKGROUND

On August 13, 2020, the California Environmental Protection Agency, Department Of Toxic Substances Control ("DTSC") issued an Imminent and Substantial Endangerment Determination Order and Remedial Action Order ("Order") to the Successor Agency to remediate hazardous substances contamination in soil and groundwater at the Corporation Yard Site, also known as the Former Marchant/Whitney Site, 5679 Horton Street, Emeryville, California ("FMW Site"), which is owned by the Successor Agency. The Order is an enforceable obligation pursuant to Health and Safety Code Section 34171(d)(1)(C).

The Order requires the Successor Agency to undertake environmental remediation activities at the Corporation Yard¹. The Successor Agency is to prepare a Feasibility Study/Remedial Action Plan (“FS/RAP”), which is the proposed cleanup plan for the site. After approval of the FS/RAP by DTSC, the Order requires the Successor Agency to then undertake actions to implement the cleanup plan and remediate the site. The Order requires the Successor Agency to prepare and submit other implementing reports as well as data of soil and groundwater conditions to DTSC. Based on those reporting requirements, DTSC may direct the Successor Agency to undertake soil and groundwater investigation and testing at the FMW Site and any off-site locations to which contamination from the FMW Site may have migrated.

DISCUSSION

As noted above, the Order is an enforceable obligation pursuant to Health and Safety Code Section 34171(d)(1)(C). The Successor Agency may not normally enter into new enforceable obligations after June 2011. However, the Successor Agency may create a new enforceable obligation after June 2011 if the new enforceable obligation is in furtherance of another recognized enforceable obligation (Health and Safety Code Section 34177.3(b)). Thus, the Successor Agency entered into a PSC with EKI, effective July 1, 2021, in order to implement the DTSC Order, which is an enforceable obligation.

Commencing July 1, 2021, EKI began work required to respond to the Order. That work will continue for several years. Accordingly, EKI has provided a scope of environmental engineering services for work to be undertaken in the ROPS 22-23 period to respond to the Order. EKI is familiar with the history of the environmental conditions at the FMW Site and had previously provided engineering services for site remediation, including prior soils and groundwater testing of the site and preparation of initial drafts of the FS/RAP and other related reports.

For the ROPS 22-23 period, EKI proposes to undertake the following tasks in response to the Order, under direction of the Successor Agency:

1. Monthly Reports to DTSC – As required by the Order, prepare monthly reports to DTSC of remediation activities at the site.
2. MPE Pilot Test – Multi-phase extraction (“MPE”) was a component of the remediation alternatives previously proposed by the Successor Agency to DTSC. The MPE system was previously installed by the Successor Agency and EKI in 2016, and then subsequently mothballed when DOF funding was denied beginning in 2017. As part of the proposals for the FS/RAP, EKI will update a draft Work Plan for Multi-Phase Extraction Pilot Tests for DTSC review and approval. EKI will obtain permits required by regulatory bodies such as the Bay Area Quality

¹ The 2010 Chevron USA/Union Oil Settlement Agreement relating to Site B also obligates the Successor Agency to remediate the offsite source of contamination onto Site B, namely the FMW Site.

Management District, EBMUD, and the City of Emeryville to conduct the MPE pilot testing. Thereafter EKI will oversee installation and operation of the MPE pilot testing and prepare and submit reports to DTSC.

3. Site Control and Preparatory Activities for Remediation – The Order requires the Successor Agency to prepare a site control plan pursuant to DTSC specifications. Site control includes installing and maintaining signage and notification advising the public the site is subject to DTSC jurisdiction. In addition, once the draft FS/RAP is approved by DTSC, EKI will undertake steps to implement the remedy, including preparation of plans and specifications to undertake work identified in the approved FS/RAP.
4. Public Outreach Assistance – The Order requires the Successor Agency to undertake public outreach, consistent with DTSC's Public Participation Policy and Guidance Manual. The purpose of the public outreach is to keep the neighboring community informed of remedial activities at the site and how the Successor Agency will respond to inquiries from the public. EKI will prepare documents required by the Order and DTSC and coordinate required public outreach activities.
5. General Project Management Services – EKI will also undertake project management services, including monthly progress and billing reports, preparation of tasks for the ROPS 22-23 cycle, and technical support and consultation with Successor Agency legal counsel.
6. Additional Activities to Address DTSC Concerns (Contingent Task) – The Order requires that environmental conditions at the site be documented as part of the approval for the FS/RAP and remediation implementation documents. Since no significant study of subsurface chemicals has taken place since 2016, DTSC may require the Successor Agency to undertake testing of sub-slab vapor, soil vapor, and groundwater sampling. In addition, if chemicals from the FMW site have migrated to off-site sources, DTSC may require additional testing to confirm if migration has occurred and if the FMW site is the source. This item is listed as a contingent task based on direction provided by DTSC during the ROPS 21-22 cycle.

FISCAL IMPACT

EKI has proposed a budget of \$1,035,000 for the above activities during the ROPS 22-23 period, inclusive of contingent task #7. This EKI PSC amendment will be funded by RPTTF from ROPS 22-23, which is subject to approval by the Oversight Board and the DOF.

STAFF COMMUNICATION WITH THE PUBLIC None.

CONCLUSION

Staff recommends the Successor Agency approve the First Amendment to the PSC with EKI for environmental engineering services at the FMW site for the period of July 1, 2022 – June 30, 2023, and subject to approval of this item on ROPS 22-23 by the Oversight Board and DOF.

PREPARED BY: Andrea Visveshwara, Interim General Counsel

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE
EMERYVILLE REDEVELOPMENT AGENCY:**



Christine Daniel, Executive Director

ATTACHMENTS

- Professional Services Contract
- Draft Resolution
 - Exhibit A – First Amendment to PSA with EKI & EKI Proposal (December 8, 2021)