



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

FIRST AMENDMENT

THIS FIRST 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** ("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 July 1, 2021 ("Contract") for the purpose of retaining the services of Contractor to provide environmental remediation and consulting services associated with the Former Marchant/Whitney Site (the "FMW Site"), also known as the Corporation Yard Site, 5679 Horton Street, Emeryville; 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-***Revision Number*;

OR

- ☒ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-ONE**, 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 1.3 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 3.2 of the Contract by **ONE MILLION, THIRTY FIVE THOUSAND DOLLARS AND NO CENTS (\$1,035,000)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **THREE MILLION, SEVEN HUNDRED FORTY FIVE THOUSAND DOLLARS AND NO CENTS (\$3,745,000)**.

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
FIRST 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:

9620635D3373494...
Interim Legal Counsel

Dated:

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

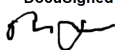
Christine S. Daniel, Executive Director

Dated:

01/03/2022

EKI ENVIRONMENT & WATER

DocuSigned by:



13D4CDA10EC24A1...
Earl James, Vice President

(Signature)



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

8 December 2021

DRAFT

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
Former Marchant/Whitney Site for the Period July 2022 to June 2023
5679 Horton Street, Emeryville, California
(EKI C10060.00)

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 Former Marchant/Whitney Site, located at 5679 Horton Street in Emeryville, California, (the Subject Property or Site). Funding for Site investigations and remediation 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. An Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order (ISE Order) prepared by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) was issued on 13 August 2020. DOF funded initial work to respond to the ISE Order for the ROPS period 1 July 2021 through 30 June 2022. This proposal is for the ROPS period 1 July 2022 through 30 June 2023.

The Site is currently owned by the Successor Agency. The Site is approximately 1.75 acres and contains one large warehouse building plus an exterior paved parking lot. The Public Works Department vacated the building in 2012 to allow for environmental investigation/remediation activities to be conducted.

BACKGROUND

ROPS funding for the investigation and remediation of the Site was approved by DOF in 2021. The Successor Agency contracted with EKI to begin implementation of tasks necessary to respond to

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the ISE Order. The primary initial task is to complete a revised Draft Feasibility Study/Remedial Action Plan (FS/RAP) and support the Agency through the public comment process to obtain an approved remedial plan for the Site. The following tasks are expected to be completed during the 2021/2022 ROPS funding cycle:

- 1) In accordance with Tasks 5.6, 5.7, 5.8, 5.9, and 5.11 of the ISE Order, EKI is updating and finalizing the FS/RAP and initial study and mitigated negative declaration (IS/MND). The following scope of work is expected to be completed subject to consultation with DTSC:
 - a. Draft FS/RAP and Human Health Risk Assessment (HHRA): Review and update of the Draft FS/RAP, as needed based on current site conditions and estimated remediation costs and submit to DTSC for review. Fairly extensive revisions that were required by DTSC including an update of the previously approved 2016 HHRA (EKI, 2016). The updated 2021 HHRA was submitted on 6 December 2021. The budget for this task in the 2021/2022 funding was a conservative estimate and significant work was requested by DTSC to update these documents. The updated FS/RAP is expected to be submitted to DTSC in December 2021. Approval of the revised FS/RAP is expected in April 2022 after completion of DTSC review and conducting the public comment process.
 - b. Draft IS/MND: Review and update the Draft IS/MND, as needed based on current site conditions, updates to the FS/RAP, and updated California Environmental Quality Act (CEQA) guidance, and submit to DTSC's CEQA Unit for review. It is assumed that DTSC's CEQA Unit's comments will be minimal based on prior review of the draft document. Assembly Bill 52 Consultation Notification is currently being performed by DTSC again. The budget for this task in the 2021/2022 funding was a conservative estimate and some significant work may be required subject to the determination of DTSC's CEQA Unit. In addition, it is possible that the document will be upgraded to an Environmental Impact Report (EIR) for the project. EKI is being assisted by a subconsultant for this work. EKI does not charge markup for this subconsultant. It is expected that the revised CEQA document will be submitted in the first quarter of 2022.
 - c. Public Participation Plan, Fact Sheet and Public Notice, and Public Meeting: When the Draft FSRAP is approved by DTSC, EKI will assist in reviewing and updating the Draft Fact Sheet and Public Notice. EKI, in coordination with DTSC's public participation specialist, will prepare a public participation plan and compile a mailing list. It is assumed that DTSC will provide the publication requirements for the public comment period. EKI will distribute the mailing list and coordinate

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publication in required media outlets. The Successor Agency will coordinate publication of these documents on the City of Emeryville's website. A public meeting to review the FS/RAP and take comments will be conducted as part of this process. Comments received at the meeting and submitted during the public comment period will also be addressed in the final FS/RAP. It is assumed that comments could be extensive given the ongoing litigation regarding the Site. EKI will be assisted by a public communications subconsultant for this work. EKI will not charge markup for the subconsultant. It is assumed that the public meeting for the project will take place in the first quarter of 2022.

- d. Final FS/RAP and IS/MND: EKI will assist DTSC with preparation of responses to public comments and in finalizing FS/RAP and IS/MND (or EIR). It is assumed that public comments could be extensive, especially from potential responsible parties identified by the Successor Agency.
- 2) In accordance with requirement 5.12.e of the ISE Order, additional data are needed to support the determination of the parameters of groundwater extraction and treatment. Multi-phase extraction (MPE) was a component of each remedial alternative in the 2016 Draft FS/RAP; accordingly, no assumption is being made regarding which remedial alternative will be implemented through steps to set up the MPE system and commence with pilot testing activities. MPE pilot test activities will be conducted in accordance with a DTSC approved work plan once the FS/RAP is approved in order to qualify for an exemption from obtaining a federal Treatment, Storage, and Disposal (TSD) permit for the MPE System. It is anticipated that the test will be conducted in May/June 2022. EKI previously obtained a Bay Area Air Quality Management District (BAAQMD) permit for the MPE system in 2017, and BAAQMD approved a 2-year extension in 2019 that expired earlier in 2021. EKI requested a second extension of the BAAQMD permit in 2021 and provided additional information to justify the extension as requested by BAAQMD. BAAQMD is still reviewing the second extension request but typically only grants one permit extension request. It was previously assumed that the MPE pilot test could be conducted using the previously approved BAAQMD permit. However, it is likely that EKI will need to obtain a new BAAQMD permit for the MPE system, which would be conducted during the 2021/2022 ROPS period.
- 3) In accordance with Task 5.1.3(a) of the ISE Order, a plan to address site control was developed for review and concurrence by DTSC. Additional signage providing notice that the Site is under the jurisdiction of DTSC was installed.
- 4) During the initial phases of review of the status of the FMW project pursuant to the ISE Order, DTSC determined that additional offsite investigations were required to more fully understand the potential impacts of vapor intrusion due to the plume of volatile organic

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compounds (VOCs) in groundwater. DTSC directed the Successor Agency to prepare workplans for investigation of the northern portion of South Bayfront and the properties to the north of the FMW Site (the Northern Properties). EKI submitted a workplan for the investigations of the northern portion of South Bayfront in November 2021. It is anticipated that these investigations will be conducted in early 2022 after approval of the workplan by DTSC. EKI supported the Successor Agency in conversations with the Northern Property owners regarding the DTSC directive. At this time the Northern Property owners have not granted the Successor Agency access to conduct investigations and it is not known when, or if, such investigations will be conducted.

SCOPE OF SERVICES FOR 2022/2023 ROPS

EKI's proposed scope of services is described below. The attached Table 1 provides details on the proposed budget to implement the proposed scope of work over the 2022/2023 ROPS period. This proposed scope of work reflects anticipated tasks to be conducted during the 2022/2023 ROPS period based the updated scope of work expected to be completed during the 2021/2022 ROPS period, as described above. It should be noted that EKI will not charge markup for subcontractors other than those involved with sampling and laboratory analyses or other technical activities directly related to EKI conducting the required remedial investigation or remediation.

Task 1 – Monthly Summary Reports Per ISE Order

Section VI. Item 6.3 of the ISE Order requires reports regarding the project activities be submitted to the DTSC by the 15th of each month. The reports are required to describe:

- 1) Specific actions undertaken during the current calendar month;
- 2) Actions expected to be undertaken during the current calendar month;
- 3) All planned activities for the next month;
- 4) Any requirements under the Order that were not completed;
- 5) Any problems or anticipated problems in complying with the Order; and,
- 6) All results of sample analyses, tests, and other data generated under the Order during the previous calendar month.

This proposal is for budget to prepare a draft monthly report in accordance with the requirements of the ISE Order for review by the Successor Agency. After receipt of any comments, a final report will be submitted to the DTSC by the 15th of each month.

Task 2 – MPE Pilot Test Report and Hydraulic Evaluation

The MPE pilot test activities will be conducted in accordance with a DTSC approved work plan in May/June 2022 as part of the 2021/2022 ROPS funding cycle. Subsequently, EKI will prepare and

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submit any reports required by applicable permits. EKI will also prepare a report summarizing the results of the MPE Pilot Tests, which is anticipated to be included as an appendix to the remedial design document. The MPE Pilot Test report will include: (1) a description of the methods used for data collection; (2) field logs; (3) an evaluation of pilot test-specific data collected including an assessment of hydraulic and vapor connections within and between stratigraphic units. Such an assessment may require hydraulic modeling that incorporates historical lithological and chemistry data collected at the FMW Site from the larger vicinity within the Horton District and potentially beyond if data are available; (4) treatment system monitoring data; (5) estimate of mass of separate phase liquid (SPL) removed; and (6) and an overall discussion of the conclusions of the pilot test.

Task 3 – Design and Preparatory Activities Prior to Remedy Implementation

In accordance with Task 5.12 of the ISE Order, once the recommended remedy in the revised Draft FS/RAP is internally approved by DTSC, EKI will begin steps necessary to implement the remedy. The previous draft of the FS/RAP included demolition of the existing warehouse building, sitewide excavation of soils (including an excavation to a depth of ten feet below ground surface in the area of the northeast corner of the existing warehouse building that will require work to be conducted in a tent structure), the use of MPE during and after in-situ thermal treatment (ISTT). Although it is not known at this time what the exact remedy will be, it is likely that it will include some or all of those elements. In order to efficiently implement the remedy beginning potentially in the latter part of the 2022/2023 ROPS cycle, the following activities are anticipated.

- Collect any additional field data needed to assist with design of the selected remedy. Depending on the range of remedial alternatives proposed in the previous draft FS/RAP, additional field data may include pre-characterization of wastes to be generated during remedy implementation, testing of mitigation measure options to protect health and safety of the public and environment during remedy implementation, etc.
- Prepare Remedial Design (RD) document for first phase of remedy implementation consistent with the selected remedy in the DTSC approved revised FS/RAP and submit to DTSC after Successor Agency review. Respond to DTSC comments and submit final RD. The selected remedy is likely to implement multiple remedial technologies, and an RD document will likely be required for each remedial technology due to the unique requirements of each technology. The results of the MPE pilot test (see Task 2) will be incorporated into one of the RD documents;
- Prepare plans and specifications for the first phase of remedy implementation;
- Pre-qualify potential remediation contractors; and
- Begin conducting preparatory tasks for active remediation tasks such as permitting and securing necessary utility connections.

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Task 4 – Public Outreach Assistance

In accordance with section 5.8 and 5.11 of the ISE Order, the process of completing and implementing the ISE Order includes extensive public outreach efforts including development of a contact/ mailing list of nearby and interested parties, communication of ongoing activities, and conducting public meetings. Based on recent interactions with neighboring property owners as part of off-site investigations requested by DTSC, it is anticipated that additional public outreach efforts, such as ongoing coordination and meetings with individual or groups of property owners and tenants, will likely be needed during the 2022/2023 ROPS period to facilitate future implementation of the selected remedy. EKI will subcontract with a public communications subconsultant experienced in organizing these public outreach activities. EKI will not charge a markup for this subconsultant.

Task 5 – General Environmental Project Management Services

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

- Monthly Progress Reports and Budget Updates: EKI will prepare monthly progress reports for the Client. The progress reports will summarize tasks completed in the previous month and planned for the coming month. These progress reports and a budget summary table will accompany EKI invoices to Client.
- Prepare Tasks for ROPS Funding Cycle 2023/2024: EKI will prepare a proposal for the ROPS 2022/2023 funding cycle (July 2022 through June 2023) based upon the progress of the project in 2021.
- Ongoing Technical Support and Consultation to Legal Counsel: EKI will provide continued technical support and environmental engineering consultation services regarding coordination with regulatory agencies and litigation over environmental issues related to the Site, when requested by the Client and its legal counsel. EKI representatives will attend meetings and participate in conference calls with Client, its staff, other consultants, regulatory agencies, and legal counsel, when requested.

CONTINGENT Task 6 – Additional Activities to Address DTSC Concerns

Sections 5.5, 5.6, 5.11, and 5.12 of the ISE Order specify that the physical and chemical conditions at the Site be well documented and that the RAP and RD provide sufficient information to recommend a remedy and prepare a detailed plan for implementation. No significant data regarding the concentrations of chemicals of concern in sub-slab vapor, soil vapor, and groundwater has been collected since the project shutdown. As described above during the

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2021/2022 ROPS period, DTSC requested additional offsite investigations on the Northern Properties and the northern portion of South Bayfront to assess potential vapor intrusion due to the plume of VOCs) in groundwater. During this 2022/2023 ROPS period, it is anticipated that DTSC may request the following additional investigation activities based on comments provided during their recent review of the 2017 draft FS/RAP.

- Preferential pathways investigation for off-site migration of chemicals of concern from the FMW Site; and /or
- Resumption of groundwater and soil vapor monitoring (one event).

The process to conduct additional investigation activities generally includes:

- Preparing a draft workplan describing the proposed sampling for Successor Agency review and approval;
- Incorporating Success Agency comments and submitting a final workplan for DTSC approval;
- Implementing additional investigation activities in accordance with the DTSC approved workplan;
- Preparing report to provide the results of the testing to DTSC;
- Incorporating investigation results, as applicable, into appropriate design and implementation documents.

Since it is unknown at this time exactly what may be required to fill data gaps or respond to requests from DTSC for additional data and information, this is considered a contingent task. The work will be conducted on a time and materials basis. No charges will be incurred related to this task unless additional investigations are required by DTSC.

PENDING SCOPE OF SERVICES FOR 2022/2023 ROPS IF FS/RAP APPROVED IN EARLY 2022

Although budget is not requested at this time, it is likely that the approval of the FSRAP in the first half of 2022 would allow for implementation of the approved remedy to begin in the first half of 2023. It may be possible for the Successor Agency to request funds for the following tasks in October 2022:

- Bidding for pre-qualified contractors for active remediation tasks;
- Continue conducting preparatory tasks for active remediation tasks such as permitting and securing necessary utility connections; and
- Beginning active remediation tasks, potentially including building demolition, soil excavation and offsite disposal, and/or MPE installation depending on the selected remedy in the final FS/RAP.

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The budget for these tasks could range from approximately \$3,000,000 to \$6,000,000 depending upon the scope of activities that is approved and ready for implementation.

PROJECT SCHEDULE

It is EKI's understanding that this proposal is for the period of approximately 1 July 2021 to June 2022 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 our current Schedule of Charges, dated 1 January 2022, as discounted for the Successor Agency. On the basis of the proposed Scope of Work, we propose a budget of \$1,035,000 for completion of Tasks 1 through 6, which will not be exceeded without prior authorization from Client. Again, it should be noted that Task 6 is a contingent task. 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 Monthly Summary Reports per ISE Order	\$40,000
Task 2 MPE Pilot Test Report and Hydraulic Evaluation	\$175,000
Task 3 Design and Preparatory Activities Prior to Remedy Implementation	\$350,000
Task 4 Public Outreach Assistance	\$60,000
Task 5 General Environmental Project Management Services	\$40,000
Task 6 Contingent Additional Activities to Address DTSC Concerns	\$370,000
Total Proposed Budget	\$1,035,000

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 Contract (PSA), dated 1 July 2021 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 1 July 2021 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

Attachments:

Attachment 1: Detailed Budget for FMW ROPs 2022/2023

DRAFT
2022/2023 ROPS PERIOD
FORMER MARCHANT/WHITNEY (FMW) SITE

Task	Task Description	Total Estimated ROPs Cost
1	Monthly Summary Reports per ISE Order	\$ 40,000
2	MPE Pilot Test Report and Hydraulic Evaluation	
	- Hydraulic Evaluation	\$ 100,000
	- MPE Pilot Test Report	\$ 75,000
3	Design and Preparatory Activities Prior to Remedy Implementation	
	- Collect additional field data needed to assist with design of the selected remedy.	\$ 125,000
	- Prepare RD document	\$ 100,000
	- Prepare plans and specifications	\$ 75,000
	- Pre-qualify potential remediation contractors	\$ 20,000
	- Begin conducting preparatory tasks for active remediation tasks	\$ 30,000
4	Public Outreach Assistance	\$ 60,000
5	General Environmental Project Management Services	\$ 40,000
6	Contingent Additional Activities to Address DTSC Concerns	
	- Contingent preferential pathways investigation for off-site migration of COCs from the FMW Site	\$ 210,000
	- Contingent resumption of groundwater and soil vapor monitoring (one event)	\$ 160,000
TOTAL ROPs July 2022 to June 2023		\$ 1,035,000

Abbreviations:

COCs = chemicals of concern

DTSC = Department of Toxic Substances Control

EBMUD = East Bay Municipal Utility District

FMW = Former Marchant/Whitney

FS/RAP = Feasibility Study/Remedial Action Plan

ISE Order = Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order

MPE = Multi-phase extraction

RD = remedial design

ROPS = recognized obligation payment schedule

SA = Successor Agency