

City of Emeryville
CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is effective as of this _____ day of 07/01/2021, 2021 (the "Effective Date"), by and between **THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY**, a municipal corporation, ("Successor Agency") and **EKI ENVIRONMENT & WATER, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the Successor Agency desires to engage Contractor for 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 finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

WHEREAS, the Successor Agency has determined that the Contractor is qualified by training and experience to render such services; and

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

WHEREAS, the public interest will be served by this Contract; 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 set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2 *Services*

The services to be completed under this Contract ("Services") are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

FOR CITY USE ONLY			
Contract No.	20136E-0000-PW01	CIP No.	N/A
Resolution No.	N/A	Project No.	N/A

Successor Agency | Professional Services Contract
REV 06/2020

1.3 Schedule and Completion Date

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **JUNE 30, 2022**. The Parties may, by mutual, written consent, extend the term of this Contract.

2. WORK CHANGES

2.1 Successor Agency Rights to Change

The Successor Agency reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the Successor Agency. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

2.2 Additional Work Changes

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the Successor Agency and the Contractor.

2.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 Compensation for Services Performed

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

3.2 Total Compensation Amount

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **TWO MILLION, SEVEN HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$2,710,000)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long

Successor Agency | Professional Services Contract
REV 06/2020

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.

4. COVENANTS OF CONTRACTOR

4.1 Assignment of Contract

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

4.2 Responsibility of Contractor and Indemnification of Successor Agency

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Successor Agency and Successor Agency'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 Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the Successor Agency, 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 contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. 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 Contractor. This obligation to indemnify and defend the Successor Agency, its members, officers, agents, employees and volunteers shall survive termination of this Contract.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

4.3 Independent Contractor

The Contractor 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 Successor Agency. The Contractor 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 contractors, 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 Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

4.4 Insurance

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the Successor Agency that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Successor Agency that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the Successor Agency to terminate this Contract for cause.

4.5 Records, Reports and Audits

4.5.1 Records

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. 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 Contract. 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 Contract shall be clearly identified and readily accessible.

4.5.2 Reports and Information

Upon request, the Contractor shall furnish to the Successor Agency any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the Successor Agency.

4.5.3 Audits and Inspections

At any time during normal business hours and as often as the Successor Agency may deem necessary, there shall be made available to the Successor Agency for examination all records with respect to all matters covered by this Contract. The Contractor will permit the Successor Agency 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 Contract.

4.6 *Conflicts of Interest*

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

4.7 *Confidentiality*

The Contractor 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 Successor Agency. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of Successor Agency information whether deemed confidential or not.

4.8 *Discrimination Prohibited*

The Contractor covenants and agrees that in performing the Services required under this Contract, the Contractor 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, except as provided in section 12940 of the Government Code.

4.9 *Licenses, Certifications and Permits*

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor 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 Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 *Key Personnel*

The Project Manager is necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change

Successor Agency | Professional Services Contract
REV 06/2020

in Contractor's Project Manager or members of the project team without the Successor Agency's approval. Contractor recognizes that the composition of this team was instrumental in the Successor Agency's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the Successor Agency'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 Contractor's obligations under this Contract and shall be grounds for termination.

4.11 Authority to Contract

The Contractor 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 Contractor to the terms of this Contract, if applicable.

4.12 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 Contractor ("Materials") shall be and are the property of the Successor Agency and the Successor Agency shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the Successor Agency. The Contractor 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 Successor Agency, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the Successor Agency and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 City Labor Requirements**4.13.1 Compliance**

At the Effective Date, compliance with the City's living wage ordinance is ☒ **required** / ☐ **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing Services to the City, then Contractor 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) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.

4.13.2 Applicability

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five

Successor Agency | Professional Services Contract
REV 06/2020

percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Contractor 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.

4.13.3 Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor 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 Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

4.13.4 Living Wage

Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$16.69 PER HOUR** (which is [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.

4.13.5 Minimum Wage and Paid Sick Leave

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

4.14 California Labor Requirements

4.14.1 Prevailing Wage Requirements

Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the Successor Agency, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and

Successor Agency | Professional Services Contract
REV 06/2020

all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

4.14.2 Registration

If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

4.14.3 Labor Compliance Oversight

This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the Successor Agency. Contractor shall defend, indemnify and hold the Successor Agency, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

4.14.4 Workers’ Compensation

Pursuant to the requirements of section 1860 of the [California Labor Code](#), Contractor 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 Contract, Contractor 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.”

Successor Agency | Professional Services Contract
REV 06/2020

4.14.5 Event of Default

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

5. TERMINATION

- A. The Successor Agency shall have the right to terminate this Contract 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, Successor Agency shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the Successor Agency all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the Successor Agency.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the Successor Agency and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

6. NO PERSONAL LIABILITY

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

7. ENTIRE AGREEMENT

This Contract 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 Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

9. 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 Contract, 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 Contract 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.

10. SEVERABILITY

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. 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 Contract shall remain in full force and effect to the extent possible.

11. BUSINESS TAX CERTIFICATE

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

12. NOTICES

12.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Mary Grace Houlihan** for the Successor Agency and **Earl James** for the Contractor:

SUCCESSOR AGENCY	CONTRACTOR
Mary Grace Houlihan, Public Works Director Phone No: 510-596-5341 E-Mail : mghoulihan@emeryville.org	Earl James, Vice President Phone No: 415-385-2326 E-Mail : ejames@ekiconsult.com

Successor Agency | Professional Services Contract
REV 06/2020

12.2 Official Notices

All other notices, writings or correspondence as required by this Contract shall be directed to the Successor Agency and the Contractor, respectively, as follows:

SUCCESSOR AGENCY	CONTRACTOR
Mary Grace Houlihan, Public Works Director 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-5341 E-Mail : mghoulihan@emeryville.org	Earl James, Vice President EKI Environment & Water, Inc. 2001 Junipero Serra Blvd., Suite 300 Daly City, CCA 94014 Phone No: 415-385-2326 E-Mail : ejames@ekiconsult.com
<i>with a copy to:</i> Michael Guina, Agency General Counsel 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4380 510-596-4381 E-Mail : mguina@emeryville.org	Andrea Visveshwara, Interim Agency General Counsel avisveshwara@emeryville.org

13. COUNTERPARTS

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

14. NO THIRD-PARTY BENEFICIARIES

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

15. NON-EXCLUSIVITY

Successor Agency reserves right to employ other contractors in connection with the Services covered under this Contract.

16. ASSIGNMENT OR TRANSFER

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the Successor Agency. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

Successor Agency | Professional Services Contract
REV 06/2020

17. WAIVER

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

18. OTHER REQUIREMENTS

Compliance with terms and conditions set forth in **Exhibit C** is ☐ **required** /

☒ **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") when attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, **Exhibit C** shall control.


SIGNATURES ON FOLLOWING PAGE

Successor Agency | Professional Services Contract
REV 06/2020

19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT

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:

2B4E69000803409...

City Attorney

Dated:

6/15/2021 , 2021

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

DocuSigned by:

B023B6A190D268E2

Christine S. Daniel, City Manager

Dated:

3 January , 2021

EKI ENVIRONMENT & WATER, INC.



Earl James, Vice President (Signature)



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

31 December 2020

Michael A. Guina, Esq.
Successor Agency Counsel
Mary Grace Houlihan
Public Works Director
City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency
Office of the City Attorney
1333 Park Avenue
Emeryville, California 94608

Subject: Proposal for Environmental Consulting Services Associated with the
Former Marchant/Whitney Site for the Period July 2021 to June 2022
5679 Horton Street, Emeryville, California
(EKI CO-194)

Dear Mr. Guina and Ms. Houlihan:

EKI Environment & Water (formerly known as Erler & Kalinowski, Inc.) ("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. This proposal is for the ROPS period 1 July 2021 through 30 June 2022.

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 suspended by DOF in 2017. The Agency has prepared and presented budget requests to the DOF for each of the ROPS cycles since that time. This funding was not approved. Consequently, no work has been conducted at

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 2 of 11



the Site since that time. Previous proposals were modeled on the 2017 proposal that requested funding to continue the project from the point it was suspended. As described in greater detail below, the tasks in this proposal differ from those in the 2017 through 2019 ROPS proposals for the following reasons:

- 1) The California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") issued an Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order ("Order") for the Site in accordance with DTSC's authority set forth in the California Health and Safety Code on 13 August 2020. The Order requires implementation of cleanup and mitigation measures, as necessary, at the Site to be protective of human health and the environment as determined by DTSC within a reasonable timeframe. The Order specifies certain new tasks to be conducted that are addressed in this proposal.
- 2) DTSC personnel have changed since the last period of active work at the Site in 2017. The new staff will need to revisit the project status and may identify, based on their professional judgment, additional concerns to address the requirements of the Order.
- 3) There has been no investigative work conducted since funding was denied in 2017. Environmental contamination of soil, soil vapor, and groundwater is impacted by ongoing natural physical and biological processes. It is not known how the current site conditions compare to those last measured over three years ago. Additional data may be required by DTSC to confirm that the previous evaluation of contamination in regard to human health impacts and approaches to remediation are still valid.
- 4) Some limited investigations have been conducted by others as part of the ongoing litigation regarding responsibility for the contamination at the site. These data will need to be incorporated into the data base for the site and considered as part of the evaluation of current site conditions.

Oversight of previous environmental investigations at the Site conducted between 2011 and 2016 was provided by DTSC in accordance with a Voluntary Cleanup Agreement ("VCA") entered between DTSC and the Successor Agency on 14 May 2012. DTSC approved the Remedial Investigation ("RI") Report on 8 July 2016, and DTSC determined that the RI Report was sufficient to proceed with a feasibility study ("FS") and remedial action plan ("RAP") for the Site. Alternative approaches to the remediation were developed and analyzed as part of the FS in consultation with Client and DTSC. This proposal assumes that DTSC will continue to rely upon the previously approved RI as the basis for development of the FS/RAP.

On 14 April 2017, following an extensive meet and confer process between the Successor Agency and DOF, the DOF advised the Successor Agency that the investigation, monitoring, and remediation of the Site were not "enforceable obligations" of the Successor Agency and that funding for these activities at the Site was disallowed (herein referred to as "DOF's determination").

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 3 of 11



In a letter to DTSC, dated 13 June 2017, the Successor Agency notified DTSC of DOF's determination and provided notice of termination of the VCA. The Successor Agency and DTSC also met on 13 June 2017 to discuss the Site status, and DTSC expressed concern regarding the ongoing impacts of the Site on neighboring properties. In an email dated 25 October 2018, DTSC confirmed that it was in the process of preparing an Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order ("Order") for the Site in accordance with DTSC's authority set forth in the California Health and Safety Code. This Order was issued 13 August 2020. The Order requires implementation of cleanup and mitigation measures, as necessary, at the Site to be protective of human health and the environment as determined by DTSC within a reasonable timeframe.

Prior to termination of the VCA, a Draft Initial Study/Mitigated Negative Declaration ("IS/MND") was prepared in accordance with the California Environmental Quality Act ("CEQA") to analyze the impacts of implementing the Draft FS/RAP on the environment. The IS/MND was reviewed by DTSC's project managers for the Site and were in the process of being finalized for public review pending final review comments from DTSC's CEQA group. DTSC's Office of Environmental Justice and Tribal Affairs also performed Assembly Bill 52 Consultation outreach with potentially affected tribes in November 2016 and no response was received from these tribes. It is EKI's understanding that DTSC was in the final review process for the Draft IS/MND and anticipated filing a Notice of Intent to Adopt ("NOI") indicating its intent to adopt the IS/MND with the State Clearinghouse and County Clerk prior to releasing the Draft FS/RAP and IS/MND for the public comment period. An updated revised FS/RAP will be prepared pursuant to the ISE Order.

It is EKI's understanding that the Successor Agency requested this proposal for continuation of the process of finalizing a publicly reviewed and DTSC approved IS/MND, FS/RAP, and beginning the initial tasks of implementing the approved remedy. It should be noted that the DTSC Project Manager and Supervisor have changed since DOF's determination and termination of the VCA. Therefore, additional work will be required to meet the requirements of the Order and integrate the work previously completed.

SCOPE OF SERVICES

EKI's proposed scope of services is described below. The attached Table 1 provides details on the estimated hourly effort and other direct costs to implement the proposed scope of work over the 2021-2022 ROPS period. It should be noted that EKI will not charge markup for subcontractors other than those involved with sampling and laboratory analyses.

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 4 of 11



Task 1 – Monthly Summary Reports Per Order

Section VI. Item 6.3 of the 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 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 – Update and Finalize FS/RAP and IS/MND

In accordance with Tasks 5.7, 5.8, 5.9, and 5.11 of the ISE Order, EKI will update and finalize the FS/RAP and IS/MND. The following scope of work will need to be completed subject to consultation with DTSC:

- 1) Draft FS/RAP: Review and update the Draft FS/RAP, as needed based on current site conditions and estimated remediation costs, and submit to DTSC for review. The full scope of the revisions that will be required is not known at this time, so to be conservative from a budgeting perspective, fairly extensive revisions that will be required by DTSC are assumed. The work will be conducted on a time and materials basis and billings will only reflect what is required by DTSC to complete the FS/RAP.
- 2) Draft IS/MND: Review and update the Draft IS/MND, as needed based on current site conditions, 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. It is assumed that Assembly Bill 52 Consultation Notification will not need to be performed again. However, the proposed budget is a conservative estimate and some significant work may be required subject to the determination of DTSC's CEQA Unit. EKI will be assisted by a subcontractor for this work. EKI will not charge markup for this subcontractor.
- 3) Fact Sheet and Public Notice and Public Meeting: Review and update the Draft Fact Sheet and Public Notice. It is assumed that DTSC's public participation specialist will provide the mailing list and publication requirements for the public comment period. EKI will

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 5 of 11



distribute the mailing list and coordinate 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 may be assisted by a subcontractor for this work. EKI will not charge markup for the subcontractor.

- 4) Final FS/RAP and IS/MND: Assist DTSC with preparation of response to public comments and finalize FS/RAP and IS/MND. It is assumed that public comments could be extensive, especially from potential responsible parties identified by the Successor Agency.

Task 3 – MPE Pilot Test

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. It is EKI's understanding that the MPE Pilot Test may require a DTSC approved FS/RAP to qualify for an exemption from obtaining a federal Treatment, Storage, and Disposal ("TSD") permit for the MPE System. The costs for this task have increased as compared to previous proposals because additional monitoring, higher carbon costs, higher "de-mothballing" system costs, and additional contingencies have been added given the new requirements of the ISE Order.

The anticipated steps for completing the MPE Pilot Tests are as follows:

- Finalize Work Plan: EKI previously submitted a draft Work Plan for Multi-Phase Extraction Pilot Tests ("MPE Work Plan"), dated February 2017, for DTSC review and received comments back from DTSC on 29 March 2017. EKI was in the process of responding to DTSC comments on the MPE Work Plan when DOF's determination was received and the VCA terminated. This scope of work is for updating and re-submitting the draft MPE Pilot Tests Work Plan ("PTWP") for DTSC review. This proposal includes responding to DTSC comments on the PTWP and finalizing the PTWP. It is assumed that DTSC review comments of the revised draft PWTP will be minimal prior to finalizing this document.
- Permitting/Notification:

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 6 of 11



- Bay Area Air Quality Management District (“BAAQMD”) Permit: EKI previously submitted a permit application to the BAAQMD on behalf of the Successor Agency and received authority to construct the MPE system for the MPE pilot tests. For the purposes of this proposal, the term “MPE System” shall refer collectively to the multi-phase extraction and treatment components of the system. The permit application approval process took approximately 7 months. The BAAQMD authority to construct permit was issued in July 2017 and was initially set to expire in July 2019. EKI requested an extension of the permit, and BAAQMD granted a 2-year extension with an expiration date of 17 July 2021. EKI will request another extension, but BAAQMD may not grant another extension and may require submittal of a new permit application and fee as construction of the MPE system will not have started prior to the expiration date of the existing permit extension. BAAQMD will issue a Permit to Operate after MPE system startup documentation is submitted that demonstrates compliance with permit conditions (Subtask 5b).
- Treated Water Discharge Permit: Treated water will be discharged to the sanitary sewer in accordance with an East Bay Municipal Utility District (“EBMUD”) permit. EKI will prepare and submit an EBMUD Special Discharge permit application on behalf of the Successor Agency. The EBMUD Special Discharge permit does not allow for sanitary sewer discharges during rain events. Therefore, it is assumed that the MPE pilot tests will be conducted during the dry season. It is also assumed that sufficient groundwater data are available to obtain an EBMUD permit and that additional analyses are not needed.
- Building Permit: Prior to receiving DOF’s determination, EKI was in the process of completing a building permit application for the MPE system based on previous discussions with the City on building permit requirements. EKI will review and update the draft permit application package, as needed, and submit to the City for review. It is assumed that one round of City comments and EKI response to comments will be sufficient to receive a building permit based on the City’s prior review of the previous building permit application.
- Onsite Hazardous Waste Treatment Notification form: This notification form will be submitted to the Certified Unified Program Agency (“CUPA”) for Emeryville, the Alameda County Department of Environmental Health (“ACDEH”), including the basis for federal hazardous waste permit exemption. It is EKI’s understanding that DTSC has the authority to exempt an owner/operator from obtaining a TSD permit if the treatment of hazardous waste is part of remedial actions conducted pursuant to a RAP. After DTSC approval of the RAP, it is expected that a TSD

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 7 of 11



permit will not be required, but the remediation system still must comply with all rules, regulations, standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of a Resource Conservation and Recovery Act ("RCRA") hazardous waste treatment facility.

- MPE System Installation and Operation During MPE Pilot Tests: EKI previously subcontracted with a Contractor to provide design build services for the MPE system. Based on an evaluation of statement of qualifications ("SOQs") provided by 7 potential contractors, EKI in consultation with the Successor Agency sent requests for proposal ("RFPs") to 3 contractors for bids before selecting a preferred Contractor for such services. Prior to receiving DOF's determination, the MPE system design was substantially complete enough to purchase and build the main components and controls of the MPE system, to obtain a BAAQMD authority to construct permit, and to prepare a building permit application. The purchased and built components of the MPE system are currently temporarily stored inside the building at the Site. EKI will work with the selected contractor and handle all billing without markup.

The MPE System will be installed and operated in accordance with applicable permits and a DTSC approved PTWP for up to 2 months based on field observations. The following activities are anticipated in order to complete this task:

- Review and update design of MPE System for MPE Pilot Test operations;
 - Installation of MPE system by Contractor with oversight by EKI and inspection by City;
 - Startup of MPE system by Contractor with oversight by EKI;
 - Conduct operation, monitoring, and sampling activities during MPE Pilot Tests;
 - Coordinate waste characterization and disposal of spent treatment media on behalf of the Successor Agency. The Successor Agency will sign manifests for disposal of the hazardous wastes; and
 - Perform data management and data quality control and review.
- Reporting: EKI will prepare and 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 and implementation plan ("RDIP"). 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; (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. Preparation of this MPE Pilot Test report is not included in this proposal and will be conducted during the subsequent 2022/2023 ROPs cycle.

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 8 of 11



Task 4 – Site Control and Preparatory Activities for Remediation

In accordance with Task 5.1.3(a) of the ISE Order, a plan to address site control will be developed for review and concurrence by DTSC. It is anticipated that additional signage providing notice that the Site is under the jurisdiction of DTSC will be required. Ongoing maintenance of the signage will be required for the duration of this contract period.

In accordance with Task 5.12 of the ISE, 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 2022/2023 ROPS cycle, a preliminary draft Remedial Design (“RD”) document consistent with the updated revised FS/RAP will be prepared for submittal to DTSC; plans and specifications will be initiated to assist in consulting with contractors to evaluate implementing the initial tasks in the approved RAP; and various permitting and other preparatory steps will be completed as appropriate that will need to be undertaken to facilitate future implementation of the final DTSC approved RAP.

Task 5 – Public Outreach Assistance

In accordance with section 5.8 and 5.11 of the ISE Order, the process of completing and implementing the Order includes extensive public outreach efforts including development of a contact/mailling list of nearby and interested parties, communication of ongoing activities, and conducting public meetings. EKI will subcontract with a consultant experienced in organizing these public outreach activities. EKI will not charge a markup for this subconsultant.

Task 6 – 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 DTSC and Client per the Order. The progress reports will summarize tasks

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 9 of 11



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 2022/2023: 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 7 – Additional Investigation Activities

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. DTSC may modify the ISE Order to include additional tasks including sub-slab vapor, soil vapor, and groundwater sampling and to have laboratory analyses performed on the samples from potential on-site and/or off-site sources. As part of final data gathering as the FS/RAP is being finalized, EKI may need to conduct additional investigations to fill data gaps or address these additional tasks that may be added to the ISE Order by DTSC. A draft workplan describing the proposed sampling will be prepared for Successor Agency review and approval. After receipt of comments, a final workplan will be submitted to the DTSC for approval. Reports will be prepared to provide the results of the testing to DTSC. 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.

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.

Michael A. Guina, Esq.
 Mary Grace Houlihan
 Successor Agency
 31 December 2020
 Page 10 of 11



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 2020, as discounted for the Successor Agency. On the basis of the proposed Scope of Work, we propose a budget of \$2,710,000 for completion of Tasks 1 through 7, which will not be exceeded without prior authorization from Client. Again, it should be noted that Task 7 is a contingent task. In order to efficiently run the program, EKI will not charge any markup for subcontractors other than those associated with sampling and laboratory analyses.

A detailed budget proposal is presented In Attachment 1. 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 Order	\$40,000
Task 2 Update and Finalize FS/RAP and IS/MND	\$174,000
Task 3 MPE Pilot Test	\$1,980,000
Task 4 Site Control and Preparatory Activities for Site Remediation	\$142,000
Task 5 Public Outreach Assistance	\$64,000
Task 6 General Environmental Project Management Services	\$21,000
Task 7 Contingent Additional Investigations	\$290,000
Total Proposed Budget	\$2,710,000

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.

AUTHORIZATION

We assume that the Client will provide a written Agreement providing specific work authorization for this project. We assume that the terms of this Agreement will be consistent with the previous agreements between EKI and the Client, with modifications appropriate to this specific scope of work.

Michael A. Guina, Esq.
Mary Grace Houlihan
Successor Agency
31 December 2020
Page 11 of 11



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,

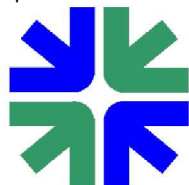
EKI ENVIRONMENT & WATER, INC.

A handwritten signature in black ink that reads 'Earl James'.

Earl James, P.G.
Vice President

Attachments:

Attachment 1: Detailed Budget for FMW ROPs 2021/2022



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **EKI ENVIRONMENT & WATER, INC.**

1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

1.1 *Minimum Scope of Insurance*

Coverage shall be at least as broad as the latest version of the following:

- ☒ **General Liability**
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- ☒ **Automobile Liability**
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- ☒ **Professional Liability / Errors and Omissions**
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- ☒ **Workers' Compensation and Employer's Liability**
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- ☒ **Pollution Liability Insurance**
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall

City of Emeryville | Contract Insurance Requirements (Exhibit B)
REV 08/2020

include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

1.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

☒ **General Liability**

☒ **All Contract Types**

\$1,000,000.00 per occurrence and **\$2,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

OR

☐ **Construction Specific**

\$2,000,000.00 per occurrence and **\$4,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

☒ **Automobile Liability**

\$2,000,000.00 per accident for bodily injury and property damage.

☒ **Professional Liability / Errors and Omissions**

\$2,000,000.00 per claim and aggregate.

☒ **Workers' Compensation and Employer's Liability**

Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000.00** each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

☒ **Pollution Liability Insurance**

\$2,000,000.00 per occurrence and **\$2,000,000.00** aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

2. INSURANCE ENDORSEMENTS

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

City of Emeryville | Contract Insurance Requirements (Exhibit B)
REV 08/2020☒ **General Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it; and (4) the insurance coverage shall contain standard separation of insureds provisions.

☒ **Automobile Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

☒ **Professional Liability Coverage**

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

City of Emeryville | Contract Insurance Requirements (Exhibit B)
REV 08/2020

☒ **Workers' Compensation and Employer's Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

☒ **Pollution Liability Coverage**

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

ALL COVERAGES

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3. NO SPECIAL LIMITATIONS

The required insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

5. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

6. VERIFICATION OF COVERAGE

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

7. SUBCONTRACTORS

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

8. REPORTING OF CLAIMS

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.