

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

("Second Amendment") is entered into this 5th day of October, 2011, by and between the **EMERYVILLE REDEVELOPMENT AGENCY**, a public body, corporate and politic, ("Agency") and **ERLER & KALINOWSKI**, ("Consultant"), collectively referred to as the "Parties".

WITNESSETH THAT:

WHEREAS, the Agency is required to implement the groundwater and surface water monitoring program described in the *Environmental Risk Management Plan, South Bayfront Project - Site A, McKinley, Sepulveda, Elementis, Warburton, Portions of Shellmound I/II, and Old Shellmound Street, 12 July 2000* (the "RMP Monitoring Program"); and

WHEREAS, the Agency finds that specialized knowledge, skills, and training are necessary to render the services necessary to perform the RMP Monitoring Program; and

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

WHEREAS, effective March 31, 2003, the Agency and Consultant entered into that certain Professional Services Agreement to provide the services necessary to implement the RMP Monitoring (the "Agreement"), as amended by the First Amendment to Professional Services Agreement dated April 20, 2004 (the "First Amendment"); and

WHEREAS, the Agency has determined that additional services are needed of Consultant relative to ongoing groundwater sampling, testing and reporting activities as set forth in the RMP Monitoring Program; and

WHEREAS, the public interest will be served by this First Amendment;

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

1. Section I of the Agreement is hereby revised to read as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Project Description

The Consultant will assist the Agency with implementation of the groundwater and surface water monitoring program described in the *Environmental Risk Management Plan, South Bayfront Project - Site A, McKinley, Sepulveda, Elementis, Warburton, Portions of Shellmound I/II, and Old Shellmound Street, 12 July 2000* (the "RMP Monitoring Program").

Consultant and Agency understand and agree that Consultant shall be responsible only for the services expressly specified by the Agreement, First Amendment and Second Amendment. Consultant and Agency understand and agree that it is Consultant's responsibility to provide services solely to the Agency and that Consultant's accountability under this Agreement, First Amendment and Second Amendment shall likewise be solely to the Agency and not to any applicants or any other third party.

Consultant and Agency understand and agree that Consultant has assumed responsibility only for making the investigations, and report, to the Agency included within the Scope of Work attached as Exhibit A to the Agreement, the Scope of Work attached as Exhibit A to the First Amendment and the Scope of Work attached as Exhibit A to the Second Amendment. The responsibility for making any disclosures or reports to any third party and for the taking of corrective, remedial or mitigative action shall be solely that of the Agency or the property owner.

B. Services

The services to be completed under the Agreement, First Amendment and Second Amendment ("services") are specifically set forth in Exhibit A to the Agreement, Exhibit A to the First Amendment and Exhibit A to the Second Amendment.

Any statements of estimated constructions costs or future operations and maintenance costs furnished by Consultant are predicted costs and are based on professional opinions and judgment. Consultant cannot be held responsible for fluctuations in constructions costs due to bidding conditions and other factors which could not be anticipated at the time of preparation of the particular estimate.

Agency shall provide access to the site of work; obtain all permits as identified by Consultant, with the exception of a Business License and any other permits or licenses that Consultant needs to conduct its business; and provide environmental impact reports or any other reports or filings required, unless specifically included in Consultant's scope of work.

Consultant shall have no responsibility as a generator, operator, treater, storer, transporter or disposer of hazardous or toxic substances found or identified at the site. Ultimate responsibility regarding treatment and/or disposal of hazardous materials shall be the Agency's, with Consultant's responsibility limited to providing recommendations and assistance to the Agency with appropriate arrangements.

C. Schedule and Completion Date

The services required under the Agreement, First Amendment and Second Amendment will be completed by December 31, 2022.

2. Section III of the Agreement is hereby revised to read as follows:

III COMPENSATION AND METHOD OF PAYMENT

- A.** Agency agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the Agency that the services were actually performed and costs actually incurred in accordance with the Agreement, First Amendment and Second Amendment. Compensation for services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the Agency of invoices setting forth in detail the services performed and costs incurred. The Agency shall pay the Consultant within forty-five (45) days after approval of the invoice by Agency staff. Failure of the Agency to make payment on an undisputed invoice within forty-five (45) days of receipt may subject the Agency to an interest rate of one and a half percent (1.5%) per month, compounded monthly. Consultant shall notify Agency in writing before the imposition of such interest. Failure of Agency to submit full payment of an invoice within forty-five (45) days of receipt also subjects this Agreement, First Amendment and Second Amendment and the work herein contemplated to suspension or termination at Consultant's discretion and after providing thirty (30) days notice to Agency in writing.
- B.** The total amount paid under this Agreement, First Amendment and Second Amendment as compensation for services performed and reimbursement for costs incurred shall not, in any case, exceed **EIGHT HUNDRED FIFTY SEVEN THOUSAND AND NO/100 DOLLARS (\$857,000.00)** except as outlined in Section 2.C above. The compensation for services performed shall be computed based upon the hourly rates found in Exhibit "A" to the Agreement. These rates may be increased no more than once in a year in accordance with a published and generally applicable schedule of rates for the Consultant, but in no event more than 5% each year.

Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, in-house 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.

3. All other terms and conditions set forth in the Agreement and First Amendment shall remain unchanged by this Second Amendment, except that the services to be provided by Consultant pursuant to this Second Amendment shall be done in accordance with all of the terms, conditions and covenants set forth in the Agreement, First Amendment and this Second Amendment.

IN WITNESS WHEREOF the Agency and the Consultant have executed this Second Amendment effective as of the date the Executive Director executes this Second Amendment on behalf of the Agency.

APPROVED AS TO FORM:


Agency General Counsel

Dated: 10/05, 2011

**EMERYVILLE
REDEVELOPMENT AGENCY**


Patrick O'Keeffe, Executive Director

CONSULTANT

Dated: 6 October, 2011

By: 
Its: Vice President

EXHIBIT "A"

SCOPE OF SERVICES

Additional tasks necessary to carry out the terms and conditions of the South Bayfront Project RMP Monitoring Program include the following:

- a) Conducting the 1st and 2nd semi-annual ground water sampling activities in 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022.
- b) Preparation of report for submittal to DTSC regarding results of 1st and 2nd semi-annual ground water sampling results conducted in 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022.
- c) Preparation of report for submittal to DTSC summarizing the years monitoring results and preparation of Five Year Report in 2012, 2017 and 2022.