

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of this 3 day of August, 2017, by and between THE CITY OF EMERYVILLE, a municipal corporation, ("City") and ERLER AND KALINOWSKI, INC. ("Consultant"), collectively referred to as the "Parties."

WITNESSETH THAT:

WHEREAS, the City desires Environmental Engineering Assistance during Cultural Resource Investigations for the South Bayfront Bridge project; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and,

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

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

WHEREAS, the public interest will be served by this Agreement; and,

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

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Project Description

A complete Project Description is described in the Consultants letter proposal dated January 11, 2017, attached as Exhibit A.

B. Services

The services to be completed under this Agreement ("Services") are: as described in **Exhibit A**.

C. Schedule and Completion Date:

The services to be provided by Consultant under this Agreement shall commence on upon execution of this agreement with a Notice to Proceed by the City and terminate on September 30, 2017.

FOR CITY USE ONLY			
Contract #:	17020-0000-PW01	CIP #:	16475003
Reso. #:		EPW #:	

D. Right of Entry Agreement and Release:

1. This Agreement contemplates Consultant performing a portion of the Services as a contractor of the City on property that is owned by 5616 Bay Street Investors, LLC, which is more particularly described in Exhibit B. Consultant shall perform such Services subject to and consistent with the Right of Entry Agreement between 5616 Bay Street Investors, LLC and the City, of which a true and correct copy is attached hereto as Exhibit B ("Right of Entry Agreement"). Consultant agrees to comply with all terms and conditions required by the Right of Entry Agreement that apply to the Services, including but not limited to, paragraphs 3 and 6 of the Right of Entry Agreement.
2. Each person entering upon the property owned by 5616 Bay Street Investors LLC, under this Agreement shall do so at its own risk. On behalf of itself and its agents, representatives, assigns, heirs, spouses, successors-in-interest, executors, administrators, employees, contractors, subcontractors, material suppliers and vendors ("Releasors"), Consultant assumes all risk of entering the property owned by 5616 Bay Street Investors LLC and agrees that 5616 Bay Street Investors LLC and City are irrevocably and unconditionally released and shall not be liable in any manner for injury to or death of Releasors or their respective officers, employees or agents or for damage to property of Releasors arising from any cause. This release applies to all potential future claims and Consultant on behalf of itself and the Releasors agrees to waive any and all rights pursuant to Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

EKI Initials 

II. WORK CHANGES

- A. The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City

shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.

- B. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.
- C. The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section III.B below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

III. COMPENSATION AND METHOD OF PAYMENT

- A. City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.
- B. The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **THIRTY-SEVEN THOUSAND DOLLARS (\$37,000)** except as outlined in Section II.C., above. The compensation for Services performed shall be computed based upon a Time and Materials Basis at the rates as described in Exhibit A. Reimbursement for costs incurred shall be limited as follows. Long 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.

IV. COVENANTS OF CONSULTANT

A. Assignment of Agreement

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

B. Responsibility of Consultant and Indemnification of City

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code as enacted by AB 573. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and 5616 Bay Street Investors, LLC and their respective 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 Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, 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 consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City and/or 5616 Bay Street Investors, LLC, but, to the extent required by law, excluding liability caused by the conduct of the City. 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 Consultant. This obligation to indemnify and defend the City, 5616 Bay Street Investors, LLC, and their its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

C. Independent Contractor

The Consultant 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 City. The Consultant 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 consultants, 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 Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

D. Insurance

1. Requirements: The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.
2. Minimum Limits of Insurance: Consultant shall maintain limits no less than:
 - a. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than Five Million Dollars (\$5,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
 - b. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than Three Million Dollars (\$3,000,000).
 - c. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must

be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- d. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

_____ (Consultant's initials)

- e. Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.
- f. Umbrella/Excess Liability insurance written in amount of \$5,000,000 per occurrence and in the annual aggregate, written on a per location basis. Such insurance shall be written on a follow-form basis and shall be no more restrictive than the commercial general liability, automobile liability, and employers liability policies referenced above in Sections D.2.(a), D.2.(b), and D.2.(e) of this Agreement. Consultant shall by specific endorsement or otherwise cause the umbrella/excess policy to be first tier umbrella coverage and sit in excess of the primary coverage afforded within Sections D.2.(a), D.2.(b), and D.2.(e) (employers liability only) above. It is the specific intent of the parties that Consultant procure the excess carrier's agreement to waive and/or forego any viable "horizontal exhaustion" rights such excess carriers might have in regard to any insurance carrier by City might carry for its own benefit or on behalf of others.
- g. Pollution Legal Liability insurance in amounts no less than \$5,000,000, providing coverage for all pollution conditions, which includes, but is not limited to, the remediation of soil, groundwater, or other contaminants.

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- 3. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

4. Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverage.

- i. Consultant shall name the City of Emeryville, 5616 Bay Street Investors, LLC, and their respective officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as *additional insured* and is not acceptable.

- ii. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.
- iv. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

vi. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

vii. All endorsements to policies shall be executed by an authorized representative of the insurer.

b. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

c. All Coverages

i. Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

5. Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Best's rating of no less than A minus VIII.

6. Verification of Coverage: Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

7. Subcontractors: Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

8. Claims-Made Policies. Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

E. Records, Reports and Audits

1. Records

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

2. Reports and Information: Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

3. Audits and Inspections: At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City 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 Agreement.

F. Conflicts of Interest

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

G. Confidentiality

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

H. Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant 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.

I. Licenses, Certifications and Permits

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

J. Key Personnel

Earl James, Vice President is necessary for the successful prosecution of the work due to his unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant and

that compelling reasons for substituting these individuals must be demonstrated for the City'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 Consultant's obligations under this Agreement and shall be grounds for termination.

K. Authority to Contract

The Consultant 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 Consultant to the terms of this Agreement, if applicable.

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

M. Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant 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) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Consultant who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08.

Consultant 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.

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

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.83 per hour (as of July 1, 2016, 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 March to February, 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.

N. Prevailing Wages

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to insure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

1. Hours of Labor: Eight hours labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for

each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.

2. Labor Non-Discrimination: Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.
3. Prevailing Wages: Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained on-line at <http://www.dir.ca.gov>. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor

Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

4. Payroll Records: Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.

a. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:

i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

ii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

iii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the

records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.

- c. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- d. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- e. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.
- f. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

5. Apprentices: Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.
6. Workers' Compensation: Pursuant to the requirements of section 1860 of the California Labor Code, Consultant 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 Agreement, Consultant 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."
7. Event of Default: Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

V. TERMINATION

- A. The City shall have the right to terminate this Agreement 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, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used

by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.

- E. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VI. NO PERSONAL LIABILITY

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

VII. ENTIRE AGREEMENT

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

VIII. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

IX. 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 Agreement, 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 Agreement 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.

X. SEVERABILITY

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

XI. BUSINESS LICENSE

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

XII. NOTICES

A. Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work shall be exchanged between **Todd Teachout** for the City and **Earl James** for the Consultant.

B. Official Notices

All other notices, writings or correspondence as required by this Agreement shall be directed to the City and the Consultant, respectively, as follows:

CITY

**Andrew Clough,
Acting Public Works Director
City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Phone No. (510) 510-596-4334
Fax No. (510) 596-4389
E-Mail: aclough@emeryville.org**

CONSULTANT

**Earl James, Vice President
Erler and Kalinowski, Inc.
1870 Ogden Drive
Burlingame, CA 94010
Phone No. (650) 292-9100
Fax (650) 552-9012**

XIII. WAIVER OF AGREEMENT

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

IN WITNESS WHEREOF the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

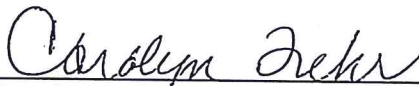
Approved as to form:



Michael A. Guina, City Attorney


CITY OF EMERYVILLE

Dated: 8-3, 2017


Carolyn Lehr, City Manager

CONSULTANT

Dated: 11 July, 2017

By: 
Its: Vice President



**Erler &
Kalinowski,
Inc.**

Consulting Engineers and Scientists

1870 Ogden Drive
Burlingame, CA 94010
(650) 292-9100
Fax: (650) 552-9012

11 January 2017

Michael Guina, Esq.
City Attorney
City of Emeryville
1333 Park Avenue
Emeryville, California 94608-3517

Subject: Work Authorization for Environmental Engineering Assistance During
Cultural Resource Investigations
South Bayfront Bicycle/Pedestrian Overcrossing Project
Bay Street, Emeryville, California
(EKI B70013.00)

Dear Mr. Guina:

Erler & Kalinowski, Inc. ("EKI") is pleased to submit this proposal to City of Emeryville ("City") for environmental engineering tasks related to the implementation of cultural resource investigation activities for the South Bayfront Bicycle/Pedestrian Overcrossing Project ("Project") at the Bay Street development in Emeryville, California ("Bay Street") to be undertaken by City's consultant, AECOM. It is EKI's understanding that the Project will involve soil coring at 9 locations (5 south of Temescal Creek and 4 north of Temescal Creek) in connection with investigation for the presence of cultural resources in planned locations of the Project foundations. If the soil coring activities to be undertaken by AECOM reveal the presence of cultural resources, then the Project will further involve mechanical and manual soil excavation in the 15 separate foundation footing locations by AECOM; EKI will be tasked with possible soil testing and disposal activities. The soil excavation, testing and disposal work will need to be conducted in accordance with the Environmental Risk Management Plan dated July 2000 and prepared by EKI (the "ERMP") for the Bay Street site. Oversight of soil excavation, testing and disposal activities is being provided by the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC").

EKI's proposed scope of work for on-going environmental consulting services for the Project is described below.

PROPOSED SCOPE OF WORK

The proposed scope of work for EKI consists of the following tasks:

Task 1 – General Consulting

EKI will perform general environmental consulting and engineering services associated with implementation of the cultural resource investigation tasks on an as-needed basis. EKI will provide continued technical support and environmental engineering consultation services, when requested by the Client, regarding the environmental issues related to the Project. EKI representatives will attend meetings and participate in conference calls with Client, its staff, other consultants (AECOM), regulatory agencies, and legal counsel, when requested and as necessary to facilitate completion of the scope of work identified herein or to assist in the planning process for future actions.

EKI will review plans prepared by others to evaluate the consistency with the requirements of the ERMP. EKI will assist with notifying DTSC of the Project activities at Bay Street and provide any information and prepare any work plans or soil testing/management plans requested by DTSC.

Task 2 – Provide Field Observation Services

EKI field personnel will be available to provide observation services during any subsurface investigation activities undertaken by AECOM. EKI field personnel will inspect soil cores recovered by AECOM and any excavated soils for visual signs of contamination (such as staining or odor) and will screen soils with handheld instruments, as necessary, to attempt to identify the presence of chemicals of concern in such soils. EKI will keep a log of observations made during the Project.

The proposed budget for this task includes the following specific assumptions:

- Three (3) ten (10) hour days in the field for EKI personnel to observe cultural resource core drilling activities;
- Two (2) days in the field for EKI personnel to observe cultural resource excavation activities, if necessary; and
- One (1) day in the field for EKI personnel to observe contaminated soil excavation activities, if necessary.

Task 3 – Soil Sampling for Disposal Characterization

EKI shall coordinate with AECOM during its soil coring activities in order to obtain samples for purposes of characterizing soil that will be excavated for bridge footings for off-site disposal. Samples for disposal characterization testing purposes will likely be collected from each core at depths of approximately 1, 3 and 6 feet below ground surface (“ft/bgs”), then

combined into four-point composite samples, prior to analysis. Composite soil samples for off-site disposal characterization will be analyzed for the chemicals of concern (“COCs”) described in the ERMP for the Bay Street site, which includes the following:

- Volatile organic compounds (“VOCs”) using EPA Method 8260B;
- Semi-volatile organic compounds (“SVOCs”) by EPA Method 8270;
- Total extractable petroleum hydrocarbons (“TEPH”) as diesel using U.S. EPA Method 8015m with silica gel cleanup;
- Total petroleum hydrocarbons (“TPH”) as gasoline using U.S. EPA Method 8015m;
- California Code of Regulation (“CCR”) Title 22 metals¹ using U.S. EPA Methods 6020 and 7471 (“metals”);
- Polychlorinated biphenyls (“PCBs”) using U.S. EPA Method 8082;
- Organochlorine pesticides using U.S. EPA Method 8081;
- Waste Extraction Test (“WET”) and Toxicity Characteristic Leaching Procedure (“TCLP”) leachate extractions (to be performed on all samples); and
- Analysis of WET and TCLP leachate extractions for selected metals (if required - see text below).

Total metal concentrations detected in the composite soil samples will be evaluated on the basis of applicable State of California and Federal hazardous waste criteria to determine if additional leachate testing for waste classification is appropriate or likely to be requested by appropriately permitted landfills, i.e., analysis of WET or TCLP leachate extractions. The proposed budget includes costs to perform WET and TCLP extractions concurrently with other analyses because prior soil samples collected at the Bay Street site required such testing to allow for disposal at permitted off-site facilities. The actual analysis of WET and TCLP leachates that are conducted will be dependent upon total metal concentrations detected in the composite soil samples.

If the soil coring activities to be undertaken by AECOM reveal the presence of cultural resources in one or more of the 15 excavation areas, then the Project will further involve soil excavation, testing and possibly disposal activities associated with the impacted excavation areas. It is anticipated that the excavation areas will be backfilled with native soils, even if evidence of contamination is present because these same excavation areas will be re-excavated once the Project is actually constructed and all excavated soils will be disposed of at that time. However, if excavated soils in any of the foundation footing locations show visual signs of contamination (such as staining or odor) or chemicals of concern in soils are identified with handheld instruments or pursuant to EKI’s testing of soil core samples, EKI will collect representative soil samples from each stockpile of contaminated soil and obtain chemical analyses to provide information for determining off-site disposal options. The exact suite of analyses will be conducted pursuant to Section 4.7.2 of the ERMP and the off-site disposal methods listed above.

¹ Title 22 metals include antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, selenium, silver, thallium, vanadium, and zinc.

The proposed budget for this task includes the following specific assumptions:

- Soil samples collected for the purposes of characterizing soil that will be excavated for bridge footings for off-site disposal will be composited by the laboratory into two (2) composite samples prior to analysis. These composite samples will be analyzed on a standard, 10-day turnaround basis.
- Based upon EKI's initial review of plans for the Project, we have estimated that approximately 500 cubic yards of soil will be excavated for the construction of the bridge footings. Prior to drilling activities, EKI will review the final plans for the Project to confirm this estimated volume.
- Soil samples collected of potentially contaminated soil for the purposes of characterizing the soil for off-site disposal will be composited by the laboratory into two (2) composite samples prior to analysis. These composite samples will be analyzed on a standard, 10-day turnaround basis.
- Excavations for cultural resources investigations will be backfilled with native soil.

Task 4 – Summary of Disposal Characterization Sampling for Footings

Upon receipt of the analytical reports for samples collected for the purposes of characterizing soil that will be excavated for bridge footings for off-site disposal, EKI will prepare a brief letter report that summarizes the analytical results. The letter report will include summary tables of the chemical analytical data and a figure showing sample locations. This task also includes budget for EKI to discuss potential soil disposal options with the City.

PROJECT SCHEDULE

EKI is prepared to begin work on this project as directed by City.

PROPOSED BUDGET

Inasmuch as the exact level of effort to complete the proposed Scope of Work in this Work Authorization cannot be identified at this time, we propose that compensation for consulting services by Erler & Kalinowski, Inc. be on a time and expense reimbursement basis in accordance with the attached EKI Schedule of Charges, dated 2 January 2017. On the basis of the Scope of Work described above, the proposed budget for the performance of Tasks 1 through 4 is \$37,000. As the project progresses, additional budget may be necessary. The proposed budget for EKI's services may be allocated amongst the tasks described herein as needed to fulfill the obligations under this Agreement.

EKI will inform the Client in writing if work beyond the scope identified in this Work Authorization will be required to achieve the objectives described herein or to comply with

Michael Guina, Esq.
South Bayfront Bicycle/Pedestrian Bridge Project
Bay Street Environmental Engineering Assistance
11 January 2017
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requirements of the DTSC. EKI will perform such additional services upon written authorization from the Client.

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 City, 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 these matters in greater detail.

Very truly yours,

ERLER & KALINOWSKI, INC.

A handwritten signature in black ink, appearing to read 'Earl James'.

Earl James, P.G.
Vice President

Attachment: EKI Schedule of Charges, dated 2 January 2017, Modified

Client/Address: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608-3517



Proposal/Agreement Date: 11 January 2017

EKI Project # B70013.00
(Modified)

SCHEDULE OF CHARGES FOR ERLER & KALINOWSKI, INC.

2 JANUARY 2017

<u>Personnel Classification</u>	<u>Hourly Rate</u>	<u>5% Discounted</u>
Officer and Chief Engineer-Scientist	275	261
Principal Engineer-Scientist	265	252
Supervising Engineer-Scientist	255	242
Senior I, Engineer-Scientist	233	221
Senior II, Engineer-Scientist	217	206
Associate I, Engineer-Scientist	207	197
Associate II, Engineer-Scientist	193	183
Engineer-Scientist, Grade 1	181	172
Engineer-Scientist, Grade 2	171	162
Engineer-Scientist, Grade 3	158	150
Engineer-Scientist, Grade 4	136	129
Engineer-Scientist, Grade 5	119	113
Engineer-Scientist, Grade 6	106	101
Technician	98	93
Senior GIS Analyst	125	119
CADD Operator / GIS Analyst	110	105
Administrative Assistant	97	92
Secretary	80	76

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work will be at cost plus ten percent (10%) for items such as:

- a. Maps, photographs, reproductions, printing, equipment rental, and special supplies related to the work.
- b. Consultants, soils engineers, surveyors, drillers, laboratories, and contractors.
- c. Rented vehicles, local public transportation and taxis, travel and subsistence.
- d. Special fees, insurance, permits, and licenses applicable to the work.
- e. Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for company-owned automobiles, except trucks and four-wheel drive vehicles, used in connection with the work will be at the rate of sixty cents (\$0.60) per mile. The rate for company-owned trucks and four-wheel drive vehicles will be seventy-five cents (\$0.75) per mile. There will be an additional charge of thirty dollars (\$30.00) per day for vehicles used for field work. Reimbursement for use of personal vehicles will be at the federally allowed rate plus ten percent (10%).

CADD Computer time will be charged at twenty dollars (\$20.00) per hour. In-house material and equipment charges will be in accordance with the current rate schedule or special quotation. Excise taxes, if any, will be added as a direct expense.

Rate for professional staff for legal proceedings or as expert witnesses will be at a rate of one and one-half times the Hourly Rates specified above.

The foregoing Schedule of Charges is incorporated into the Agreement for the Services of Erler & Kalinowski, Inc. and may be updated annually.