

RESOLUTION NO. SA03-19

Resolution Of The City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency Approving And Authorizing The City Manager To Enter Into And Execute A Professional Services Agreement With EKI Environment & Water, Inc., In An Amount Of \$2,995,000 For Environmental Engineering Services During The ROPS 19-20 Cycle Required For Soil And Groundwater Remediation At The Corporation Yard Site, 5679 Horton Street, Emeryville, CA, Pursuant To The Terms Of An Imminent And/Or Substantial Endangerment Order And Remedial Action Order Anticipated To Be Issued To The Successor Agency By DTSC

WHEREAS, the former Redevelopment Agency acquired the property located at 5679 Horton Street, Emeryville, California in July 1999 from the Lozick Trust in order to facilitate the connection of Horton Street with former Landregan Street, and the remainder, which includes a large warehouse structure and surface parking, was utilized by the City as a temporary location for the Public Works Department's corporation yard (hereinafter, the "Corporation Yard" or "FMW"); and

WHEREAS, the Dissolution Act was enacted on June 28, 2011, and in accordance with the terms of the Act, fee title to the Corporation Yard remains vested in the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency"); and

WHEREAS, as the owner of the Corporation Yard site, the Successor Agency is a responsible party under state and federal law for the remediation of hazardous materials on the site; and

WHEREAS, under the terms of the Chevron USA/Union Oil Settlement Agreement related to South Bayfront Site B, the Successor Agency is obligated to "*perform or cause to be performed all environmental work reasonably required to study, investigate, evaluate, and remediate the Hazardous Substances or contamination within, on, under, at, or emanating from and/or migrating to or from Site B*"; and

WHEREAS, investigative work undertaken in relation to South Bayfront Site B under the oversight of the California Environmental Protection Agency, Department Of Toxic Substances Control ("DTSC") has conclusively revealed that "*investigations conducted since the time that the Feasibility Study/Remedial Action Plan was approved [for South Bayfront Site B] have revealed the presence of CVOCs in deeper groundwater on the southeastern portion of Site B, and that these CVOCs are the result of releases from the Former Marchant Whitney (FMW) and/or potentially other upgradient sources*"; and

WHEREAS, in accordance with its obligations as an owner of property severely contaminated with hazardous materials as well as its contractual obligation under the Chevron USA/Union Oil Settlement Agreement to "*study, investigate, evaluate, and remediate*" hazardous substances or contamination migrating to South Bayfront Site B, the former Redevelopment Agency entered into contracts with DTSC and the environmental engineering firm now known as EKI Environment & Water, Inc. ("EKI"), in January 2012, to remediate the contamination at the Corporation Yard; and

WHEREAS, after approving approximately \$7,000,000 in funding over the previous five (5) years to address the contamination at the Corporation Yard, in April 2017, the State of California, Department of Finance (“DOF”), disapproved further funding for remediation of the Corporation Yard site based on the premise that the Chevron USA/Union Oil Settlement Agreement did not specifically require remediation of the Corporation Yard site; and

WHEREAS, as a result of the lack of funding to move forward with implementing the Feasibility Study/Remedial Action Plan (“FS/RAP”) for the Corporation Yard, the Successor Agency met with DTSC representatives in June 2017 to advise them of the situation and subsequently terminated the voluntary cleanup agreement pertaining to the Corporation Yard site; and

WHEREAS, given the severity of the contamination at the Corporation Yard site, DTSC advised that they would subsequently issue an Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order (“Order”), and in October 2017, issued a Request For Information And Documents to the Successor Agency which is a precursor to preparation and issuance of the Order; and

WHEREAS, in recent communications with DTSC’s newly assigned project manager, Successor Agency staff have been advised that a draft Order was prepared and submitted to DTSC’s office of legal counsel in November 2018, and thus issuance of the Order to the Successor Agency by DTSC is imminent; and

WHEREAS, in anticipation of receipt of the Order from DTSC, and in order to be able to promptly restart the final stages of the FS/RAP approval process for the Corporation Yard and begin implementation of remedial activities during the ROPS 19-20 cycle, pursuant to authority provided by Section 34177.3, it is recommended that the Successor Agency authorize approval of a Professional Services Agreement (“PSA”) with the firm of EKI in an amount of \$2,995,000 for environmental engineering services commencing July 1, 2019, in the form attached hereto as Exhibit A; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency, that in anticipation of receipt of the Order from DTSC and pursuant to authority provided by Section 34177.3, the PSA with the firm of EKI in an amount of \$2,995,000 for environmental engineering services commencing July 1, 2019, in the form attached hereto as Exhibit A, is hereby approved and the City Manager is hereby authorized to enter into, execute and implement said PSA on behalf of the Successor Agency.

ADOPTED, by the City Council of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency at a regular meeting held Tuesday, January 15, 2019, by the following vote:

AYES:	<u>5</u>	Mayor Medina, Vice Mayor Patz, and Council Members Bauters, Donahue, and Martinez
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

ATTACHMENTS

- Exhibit A - PSA with EKI Environment & Water, Inc.



PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is effective as of this _____ day of _____, 2019 (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**, ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the Successor Agency desires to engage Contractor for environmental consulting services associated with the Former Marchant/Whitney Site located at 5679 Horton Street; 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.		CIP No.	
Resolution No.		Project No.	

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, 2020**. 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, NINE HUNDRED NINETY-FIVE THOUSAND DOLLARS AND NO CENTS (\$2,995,000)**, 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 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

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 Successor Agency, 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. In the event that compliance with the Living Wage Ordinance is not required, the Contractor may still 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.

4.13.2 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 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 Successor Agency 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 Successor Agency.

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 Successor Agency may terminate the Contract and pursue any other remedies available to the Successor Agency, 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 **\$15.73 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 Successor Agency the hourly value of such benefits in order to receive credit for such payments to covered employees.

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 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.”

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 **Earl James** for the Successor Agency and **Michael Guina** for the Contractor:

SUCCESSOR AGENCY	CONTRACTOR
Michael Guina, City Attorney Phone No.: 510-596-4380 E-Mail : mguina@emeryville.org	Earl James, Vice President Phone No.: 415-385-2326 E-Mail : ejames@ekiconsult.com

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
Michael Guina, City Attorney 1333 Park Avenue Emeryville, California 94608 Phone No.: 510-596-4380 E-Mail: mguina@emeryville.org <i>with a copy to:</i> <i>Project Manager, Title</i> <i>Street Address</i> Emeryville, California 94608 Phone No.: 510-596-4300 E-Mail: <i>email</i> @emeryville.org	Earl James, Vice President 577 Airport Blvd., Suite 500 Burlingame, CA 94010 Phone No.: 650-292-9100 E-Mail: ejames@ekiconsult.com

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 or scanned signature and shall accept the telecopied or scanned 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.

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** /

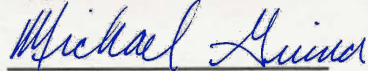
☒ **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") when attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and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

SIGNATURES ON FOLLOWING PAGE

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:


City Attorney

Dated:

_____, 2019

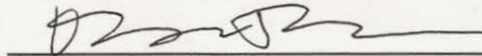
**CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO
THE EMERYVILLE REDEVELOPMENT AGENCY**

Christine S. Daniel, City Manager

Dated:

3 January, 2019

EKI ENVIRONMENT & WATER



Earl James, Vice President (Signature)

13 December 2018

Michael A. Guina, Esq.
City Attorney/Successor Agency Counsel
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
5679 Horton Street, Emeryville, California
(B8-206)

Dear Mr. Guina:

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”). 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

Oversight of previous environmental investigations at the Site conducted between 2011 and 2016 was provided by the California Environmental Protection Agency, Department of Toxic Substances Control (“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.

In accordance with State law, the Client provided the responsible parties an opportunity to propose and undertake necessary remediation activities. The responsible parties did not provide

a timely and adequate response to the notices provided to them to remedy the Site. Therefore, EKI submitted a Draft FS/RAP to DTSC for review on 21 October 2016, on behalf of the Client, to propose the necessary remediation required for the Site. The Draft FS/RAP is consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (US-EPA, 1993). The Draft FS/RAP recommended a remedy that included:

- i. Above grade building demolition,
- ii. Shallow site-wide soil excavation and limited deeper excavation,
- iii. In-situ thermal treatment ("ISTT") in conjunction with multi-phase extraction ("MPE") for shallower groundwater in areas of the Site with elevated concentrations of volatile organic compounds ("VOCs"),
- iv. Following completion of ISTT,
 - a. In-situ polishing within the ISTT treatment area to further reduce concentrations of VOCs in groundwater, and
 - b. Continued MPE and to control off-site migration of impacted groundwater from the Site and to control on-site migration of upgradient impacted groundwater and to address impacted groundwater remaining between the thermal treatment and in-situ polishing area and the property boundary.
- v. Monitored natural attenuation ("MNA") for deeper groundwater, and
- vi. Institutional controls.

Funding for Site investigations and remediation activities conducted under DTSC oversight was 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. 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").

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 is 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 would require 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, the Draft FS/RAP and Draft Initial Study/Mitigated Negative Declaration (“IS/MND”) prepared in accordance with the California Environmental Quality Act (“CEQA”) were reviewed by DTSC and were in the process of being finalized for public review. 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 process of preparing to file a Notice of Completion (“NOC”) indicating its intent to adopt the IS/MND with the State Clearinghouse and County Clerk prior to releasing the Draft FS/RAP for the public comment period. It is EKI’s understanding that the Successor Agency intends to proceed with implementation of the recommended remedy in the Draft FS/RAP subject to funding from the DOF and/or responsible parties after an Order is issued for the Site by DTSC. It is EKI’s understanding that the Successor Agency requested this proposal to conduct preparatory activities for continuation of the process of finalizing a publicly reviewed and DTSC approved IS/MND, FS/RAP and 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, but nevertheless, this proposal assumes that substantial changes to documents previously reviewed and commented on by DTSC will not be needed.

SCOPE OF SERVICES

EKI’s proposed scope of services is described below.

Task 1 – Finalize FS/RAP and IS/MND

To finalize the FS/RAP and IS/MND, the following scope of work would need to be completed:

- 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. It is EKI’s understanding that the Successor Agency intends to proceed with implementation of the recommended remedy in the Draft FS/RAP as required by the Order subject to funding from the DOF and/or responsible parties after an Order is issued for the Site by DTSC.
- 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 approval of the draft document. It is assumed that Assembly Bill 52 Consultation Notification will not need to be performed again.
- 3) Fact Sheet and Public Notice and Pubic 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

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 will also be addressed in the final FS/RAP.

- 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 will be extensive, especially from potential responsible parties identified by the Successor Agency.

Task 2 – MPE Pilot Tests

The recommended remedy in the Draft FS/RAP included the use of MPE during and after in-situ thermal treatment ("ISTT") to control groundwater and soil vapor plume migration. MPE Pilot Tests will be conducted to better understand the hydrogeology of the area and to assist with designing the hydraulic and vapor control requirements during ISTT and long-term plume remediation. It is EKI's understanding that: (1) the MPE Pilot Tests 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 and (2) the MPE Pilot Test will be conducted prior to well abandonment activities described below in Task 4. The anticipated steps for completing the MPE Pilot Tests are as follows:

- 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. EKI will review and update the draft MPE Work Plan based on current Site conditions, finish incorporating DTSC comments, and submit the revised draft MPE Work Plan for DTSC review. It is assumed that DTSC review comments of the revised draft MPE Work Plan will be minimal prior to finalizing this document.
- Permitting/Notification:
 - 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 expires in July 2019. It is assumed that BAAQMD will 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. 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 sampling is 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.
- 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 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.

The MPE System will be installed and operated in accordance with applicable permits and a DTSC approved work plan for up to 3 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") for ISTT. 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.

Task 3 – Above Grade Building Demolition

The recommended remedy in the Draft FS/RAP included above grade building demolition as a preparatory activity for conducting shallow soil excavation and ISTT at the Site. EKI will prepare plans and specifications for above grade building demolition activities, subcontract with a contractor to perform the demolition activities, obtain necessary permits for the demolition activities, and coordinate the recycling or disposal of the building materials in accordance with applicable laws and regulations, including the City's Construction and Demolition Waste Ordinance. EKI will also coordinate with Pacific Gas & Electric ("PG&E") for termination of utility services to the building, which will likely be performed in conjunction with PG&E coordination efforts to conduct shallow soil excavation (Task 4) and ISTT (Task 5).

Client will sign manifests for the offsite disposition of wastes. Visual inspections and appropriate sampling and analysis of building materials were previously conducted by RGA Environmental

("RGA") between 2009 and 2017. To the extent that asbestos, lead based paint, or other hazardous wastes as part of the building materials were identified in the RGA reports or are identified during demolition activities, the Client will sign manifests for disposal of the hazardous wastes. It is assumed that historical sampling results of building materials is sufficient for acceptance of these hazardous wastes at permitted offsite disposal facilities and that additional sampling and analysis will not be required. It is assumed that above grade building demolition will occur after approval of the Final FS/RAP.

Task 4 – Well Abandonment

The recommended remedy in the Draft FS/RAP included ISTT with MPE for shallower groundwater in area of Site with elevated concentrations VOCs. Groundwater wells located within the ISTT area will be abandoned by overdrilling in accordance with Alameda County Public Works Agency ("ACPWA") requirements and permits because the stainless steel well casing would interfere with the effectiveness of ISTT. The majority of the wells to be abandoned are located inside the building on the Site and/or are needed for the MPE Pilot Tests. Therefore, well abandonment will be conducted after above grade building demolition for easy access to wells by a drilling rig and after completion of the MPE Pilot Tests. It is assumed that well abandonment work will occur after approval of the Final FS/RAP. Procedures for well abandonment will be submitted to DTSC for review and approval either as a stand-alone work plan or as an appendix to the RDIP for soil excavation.

Task 5 – Preparatory Activities for Shallow Soil Excavation

The recommended remedy in the Draft FS/RAP included shallow soil excavation (~5 ft. bgs) across the entire Site to address non-volatile chemicals of concern ("COCs") in shallow soil and limited deeper excavation (~10-15 ft. bgs) of VOC-impacted soil where SPL was encountered at shallow depths. Based on the likely concentrations of VOCs to be encountered in subsurface media, a portion of the soil excavation will be conducted in a ventilated tent structure with air treatment. Preparatory activities for shallow soil excavation include:

- Subtask 5a - Remedial Design and Implementation Plan ("RDIP") for Soil Excavation: Prior to DOF's determination, EKI was in the process of preparing a draft RDIP for Soil Excavation. The RDIP describes procedures to implement soil excavation activities, to provide guidance for health and safety measures to be employed during soil excavation activities, and will incorporate required mitigation measures specified in the approved IS/MND. The RDIP will include the following plans: (1) EKI's Health and Safety Plan, (2) Traffic Control and Waste Transportation Plan, (3) Decontamination Plan, (4) Dust, Vapor, and Odor Control Plan, (5) Perimeter Air Monitoring Plan, (6) Storm Water Plan, (7) Sampling and Analysis Plan, and (8) Quality Assurance Project Plan. The draft RDIP will be completed and submitted to the Successor Agency for review. Successor Agency

review comments will be incorporated into the draft RDIP, which will then be submitted to DTSC for review. It is assumed that multiple rounds of comments and response to comments will be needed prior to finalizing the RDIP for DTSC approval. It is EKI's understanding that the RDIP will not require a public comment period.

- Subtask 5b – Permitting, Coordination, and Evaluations: Permits and evaluations that are necessary to be obtained or conducted prior to selection of a remedial Contractor are described below.
 - BAAQMD Permit: Prior to DOF's determination, EKI was in the process of preparing a BAAQMD permit application for the proposed extraction and treatment system of ventilated air from the tent structure during shallow soil excavation. EKI will review and update the draft permit application package and submit the application and fee to BAAQMD on behalf of the Successor Agency. EKI will respond to BAAQMD comments on the permit application. It is assumed that responses to multiple rounds of BAAQMD comments may be required based on previous experience. Once approved, BAAQMD will issue an authority to construct permit. Based on EKI's previous experience, application approval may take approximately 6 to 7 months but will likely be longer given the nature of the work. BAAQMD will issue a Permit to Operate after startup documentation is submitted that demonstrates compliance with permit conditions.
 - Building and Fire Department Permit: It is EKI's understanding that the tent structure will require a building permit from the City and a fire department permit from the Alameda County Fire Department ("ACFD"). The driveway for the Site is the only way to access buildings, located immediately north of Site, from Horton Street. ACFD will also review the proximity of these buildings to the anticipated footprint of the tent structure and the need to maintain a fire lane. EKI will submit a building and fire department permit application. It is assumed that one meeting with City building department representatives will be conducted and one round of City comments and EKI response to comments will be sufficient to receive a building permit. This proposal assumes that the building and fire department will allow the use of a tent structure to conduct soil excavation on the portion of the Site with the highest concentrations of VOCs detected on the Site and where SPL was encountered in shallow soil on the Site.
 - Planning Department Permit: Based on EKI's previous discussions with a City planning department representative, it is EKI's understanding that a permit will likely be required if Site trees located adjacent to the sidewalk along Horton Street need to be removed for purposes of accessing the Site during soil excavation activities. The schedule for remediation and construction on the adjacent Horton

Landing Park to the south of the Site is unknown and may not be able to be used to facilitate access to the Site during soil excavation activities. EKI will submit a planning department permit application. It is assumed that one meeting with City planning department representatives will be conducted and one round of City comments and EKI response to comments will be sufficient to receive a permit.

- PG&E Coordination: Prior to soil excavation, EKI will coordinate with PG&E to terminate utility service at the Site, remove any PG&E utility infrastructure remaining on the Site, and install interim service to provide power during soil excavation activities. Based on preliminary discussions with PG&E, it is EKI's understanding that PG&E would remove an underground transformer located on the southwest portion of the Site and would remove onsite gas lines from access points located within Horton Street. This subtask will be performed in conjunction with PG&E coordination efforts to conduct above grade building demolition (Task 3) and ISTT (Task 6). The budget for combined PG&E coordination efforts are included in Task 6.
- Geotechnical Evaluation: Complete a geotechnical evaluation to evaluate required structural support criteria to excavate alongside the Union Pacific Railroad tracks to the west of the Site, neighboring buildings to the north, and Horton Street to the east in accordance with mitigation measures to be specified in the IS/MND.
- Subtask 5c – Pre-Excavation Evaluations: Prior to soil excavation, pre-excavation evaluations will be conducted to facilitate full-scale soil excavation activities. These evaluations are described below. It is EKI's understanding that these evaluations will be performed after a final RAP is approved by DTSC, based on previous discussions with DTSC.
 - Pre-Excavation Waste Characterization and Potential Vapor Emission Evaluation: Soil and vapor sampling will be conducted prior to soil excavation for: (1) waste characterization for pre-approval of waste disposal classification which will allow for direct soil loading and off-haul and (2) evaluation of potential vapor emissions to assist in the design of vapor mitigation measures during soil excavation. EKI previously submitted a draft Work Plan for Pre-Excavation Waste Characterization and Potential Vapor Emission Evaluation, ("Pre-Excavation Work Plan"), dated February 2017, for DTSC review and received review comments back from DTSC on 7 March 2017. EKI was in the process of responding to DTSC comments on the Pre-Excavation Work Plan when DOF's determination was received. EKI will review and update the draft Pre-Excavation Work Plan based on current Site conditions, finish incorporating DTSC comments, and submit the revised draft Pre-Excavation Work Plan for DTSC review. It is anticipated that an additional round of DTSC

comments and response to comments will be needed prior to finalizing this work plan. EKI will conduct waste characterization sampling and analysis and vapor emissions evaluations in accordance with the final work plan approved by DTSC.

- Pre-Excavation Exploratory Trenches: Exploratory trenches will be excavated to obtain field data to test vapor emission mitigation measures for VOC emissions during full-scale excavation activities. EKI previously submitted a draft Work Plan for Pre-Excavation Exploratory Trenches, (“Trench Work Plan”), dated February 2017, for DTSC review and received review comments back from DTSC on 7 March 2017. EKI was in the process of responding to DTSC comments on the Trench Work Plan when DOF’s determination was received. EKI will review and update the draft Trench Work Plan based on current Site conditions, finish incorporating DTSC comments, and submit the revised draft Trench Work Plan for DTSC review. It is anticipated that an additional round of DTSC comments and response to comments will be needed prior to finalizing this work plan. EKI will conduct exploratory trenching in accordance with the final work plan approved by DTSC.
- Subtask 5d – Remedial Technical Plans and Specifications and Bid Assistance: This subtask includes:
 - (1) Preparation of draft remedial technical plans and specifications for soil excavation;
 - (2) Incorporating Successor Agency comments and finalizing plans and specifications for bid;
 - (3) Preparation of a bid sheet, description of bid items, and engineer’s estimate; and
 - (4) Assisting the Successor Agency with pre-qualification of potential remedial Contractors, the pre-bid walk, and evaluation of bids.

It is EKI’s understanding that the remedial technical plans and specifications will be appended to the contract specifications provided by the Successor Agency. Contract documents will incorporate mitigation measures described in the final RDIP and IS/MND approved by DTSC.

Prior to DOF’s determination, it was anticipated that the adjacent City-owned parcel located to the south of the Site, a portion of the future Horton Landing Park, would be used to facilitate access during implementation of the proposed remedy due to the Site’s unique configuration and shared driveway as the only means of access for neighbors located immediately to the north of the Site. Previous preliminary planning and public outreach to neighbors to the north incorporated this use of Horton Landing Park. It is EKI’s understanding that the remediation of Horton Landing Park will likely be conducted in 2019, and the portion of Horton Landing Park to the south of the Site will likely not be

available for use during Site remediation, which will increase the challenges of Site access and public outreach.

In order to identify the low bidder and secure funding during the ROPS 20-21 cycle (i.e. July 1, 2020 – June 30, 2021) to implement shallow soil excavation described above commencing July 1, 2020, the Successor Agency will need to receive bids no later than December 20, 2019. Thereafter the Successor Agency will need to award a contract to the low bidder concurrently with its approval of ROPS 20-21 in January 2020, conditioned on approval of ROPS 20-21 by the Alameda County Oversight Board and DOF.

Task 6 – Planning for In-Situ Thermal Treatment (“ISTT”)

The recommended remedy in the Draft FS/RAP included ISTT with MPE. Long-term planning activities for ISTT that are covered in this include:

- PG&E Coordination: It is EKI’s understanding ISTT will require a temporary 12 kilovolt (“kV”) service at 5 megawatts (“MW”). Prior to soil excavation, EKI will coordinate with PG&E to terminate utility service at the Site and remove any PG&E utility infrastructure remaining on the Site. Based on previous conversation with PG&E, it is EKI’s understanding that ISTT power requirements could be met by installation of a dedicated high power overhead line on the east of the Site, which would be abandoned after ISTT is completed. PG&E will require a single-line diagram, a three-line diagram, loading descriptions if motors exceed 50 horsepower, and other documents deemed necessary by PG&E to conduct an engineering evaluation to supply the necessary power. It is EKI’s understanding that this 12 kV temporary service would only be utilized for ISTT. It is EKI’s understanding that the MPE system, operating in conjunction with ISTT and after completion of ISTT, would be powered by a new 480 V service that would also be the same service to power the future corporation yard redevelopment at the Site. It is EKI’s understanding that a 480 V service would be sufficient based on the estimated loads of the MPE system and the future corporation yard building.
- Architectural Coordination: As described above, it is anticipated that the MPE system would utilize the same electrical service as the future corporation yard. Prior to investigation of the extent of contamination at the Site, the City had previously developed plans to remodel the existing corporation yard building. However, these plans are no longer feasible given the magnitude and extent of contamination and the proposed remedy in the Draft FS/RAP. Prior to DOF’s determination, the City requested proposals from 3 architectural design firms for developing conceptual designs of the future corporation yard layout given the public works needs of the City and the anticipated layout of remedial work. An architectural firm was selected by the City but subsequent

contracting and design efforts did not commence due to DOF's determination. It is EKI's understanding that an architectural firm will be engaged by the City to complete the scope of work described above such that the permanent location of the future 480 V service for the Site can be located and incorporated into the design of remedial work at the Site.

- RDIP for ISTT: A draft RDIP for ISTT will be prepared and will describe procedures to implement ISTT with MPE activities, to provide guidance for health and safety measures to be employed during ISTT with MPE, and will incorporate required mitigation measures specified in the approved IS/MND. The RDIP will describe the layout, installation, and operation of the ISTT and MPE Systems such as but not limited to process flow diagrams for the heating, extraction and design specifications for ISTT and MPE wells, well heads, soil vapor monitoring points, groundwater monitoring wells, conveyance piping, secondary containment, alarm systems, etc. It is anticipated that the RDIP will include the following plans: (1) EKI's Health and Safety Plan, (2) Well Installation Work Plan, (3) Startup and Operations & Maintenance Plan, (4) Sampling and Analysis Plan, and (5) Quality Assurance Project Plan. The draft RDIP will be completed and submitted to the Successor Agency for review. Successor Agency review comments will be incorporated into the draft RDIP, which will then be submitted to DTSC for review. It is assumed that multiple rounds of comments and response to comments will be needed prior to finalizing the RDIP for DTSC approval. It is EKI's understanding that the RDIP will not require a public comment period.

Prior to DOF's determination, EKI in consultation with the Successor Agency requested proposals from the two primary ISTT contractors, as these services are a specialty niche. One ISTT contractor was selected in consultation with the Successor Agency, and EKI subcontracted with the selected ISTT contractor to begin preliminary design services to primarily assist with PG&E coordination. It is EKI's understanding that it may take PG&E up to one year to provide the required power service. EKI will subcontract and coordinate with the ISTT contractor for design services to provide the necessary information for inclusion in the RDIP. Detailed design services for preparation of plans and specifications for contract documents are not included in this proposal.

- BAAQMD Permit: With assistance from the ISTT contractor, EKI will prepare a draft permit application package for ISTT with MPE on behalf of the Successor Agency. EKI will respond to BAAQMD comments on the permit application. It is assumed that responses to multiple rounds of BAAQMD comments may be required based on previous experience. Once approved, BAAQMD will issue an authority to construct permit. Based on EKI's previous experience, application approval may take approximately 6 to 7 months but will likely be longer given the nature of the ISTT and MPE Systems and the magnitude of VOC

contaminant mass to be extracted and treated. BAAQMD will issue a Permit to Operate after startup documentation is submitted that demonstrates compliance with permit conditions.

Task 7 – Public Outreach Assistance

Prior to DOF's determination, EKI assisted the Successor Agency with public outreach efforts with the owners and tenants of adjacent properties to the north of the Site ("Corporation Yard neighbors"), which would be most directly impacted by implementation of remedial actions at the Site. Shallow soil excavation on the northern end of the Site to impact access, parking, and utilities for Corporation Yard neighbors. The Successor Agency held a meeting with the Corporation Yard Neighbors on 24 March 2017, wherein EKI made a presentation describing the proposed remedy and the potential staging of implementation of remedial components at the request of the Successor Agency. It is assumed that the following public outreach assistance will be required by the Successor Agency for the scope of work included in this proposal:

- (1) prepare for and attend another meeting with the Corporation Yard Neighbors;
- (2) draft notices when identified milestones in the Corporation Yard Neighbors Communication Plan are met; and
- (3) prepare and distribute work notices for conducting MPE Pilot Tests, pre-excavation sampling, and evaluations in accordance with DTSC requirements.

Task 8 – General Environmental Project Management Services

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

- Monthly Progress Reports and Budget Updates: EKI will prepare monthly progress reports for the Client that will accompany EKI invoices. The progress reports will summarize tasks completed in the previous month and planned for the coming month. This task will also include preparation of specific workplans or amended scopes of work prepared for review and approval by Client for major phases of remediation-related services. Certain specialized work will be completed by EKI's subcontractors or subconsultants.
- 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.

FUTURE TASKS

Based on EKI's current understanding, an overview of future tasks to complete implementation of the proposed remedy in the Draft FS/RAP in subsequent ROPs cycles are described below.

- Demobilization and temporary storage of MPE system prior to shallow soil excavation;
- Environmental Management of Implementation of shallow soil excavation by 3rd Party Contractor:
 - Selected Contractor to submit plan/plan addenda for DTSC review and approval in accordance with the DTSC-approved RDIP for shallow soil excavation;
 - Selected Contractor to implement shallow soil excavation in accordance with DTSC-approved RDIP and plan/plan addenda;
 - Environmental sampling and Contractor oversight to confirm implementation of shallow soil excavation in accordance with DTSC-approved RDIP and plan/plan addenda;
 - Overexcavation, if needed, based on confirmation soil sampling results;
 - Backfilling excavation with DTSC-approved import fill;
 - Approximately 6 months to complete;
 - Ongoing public outreach during implementation of shallow soil excavation; and
 - Preparation of a completion report summarizing soil excavation, off-site disposal, and backfilling activities, field observations, and field monitoring and sampling results for DTSC review and approval.
- Environmental Management of Implementation of ISTT with MPE by 3rd Party Sub-Consultant to EKI:
 - Prepare detailed design and plans and specifications for contract documents;
 - Installation of temporary power supply for ISTT and permanent power supply for future public works facility that will also supply power for the MPE system;
 - Mobilization of MPE system back to Site;
 - Installation of ISTT wells and monitoring points, above grade infrastructure, power control unit, and treatment system;
 - Installation of MPE vertical/horizontal wells and/or shallow trenches;
 - Conduct sampling to evaluate baseline conditions prior to ISTT;
 - Operation of ISTT system to remove VOCs by vaporizing VOCs from soil, groundwater, and separate phase liquid. Approximate operation time of 1 year;
 - Recovery of vapor and steam using MPE and treated aboveground. Maximize the efficiency of ISTT using MPE for hydraulic and vapor control to prevent migration of VOCs outside the ISTT treatment area. Modify and optimize MPE treatment system, as needed, based on the change in the waste stream compared with the MPE pilot test phase.

- Conduct interim confirmation sampling to determine if ISTT remediation goals met and ways to optimize the ISTT system for portions of treatment areas that don't meet ISTT remediation goals;
 - Continued operation of ISTT/MPE system to meet ISTT remediation goals and conduct final confirmation sampling to verify;
 - Demobilization of ISTT system and removal of temporary power supply for ISTT;
 - Preparation of a completion report summarizing ISTT/MPE system installation, operation, and treatment activities, field observations, and field monitoring and sampling results for DTSC review and approval.
- Planning and Implementation of Post-Thermal In-Situ Polishing:
 - Development and design of a post-thermal in-situ polishing strategy for the ISTT treatment area based on the ISTT results. Assumed to likely include enhanced reductive dechlorination ("ERD") as microbial population would likely benefit from the warmer subsurface conditions after ISTT.
 - Preparation of a work plan for DTSC review and approval;
 - Installation of injection and monitoring points/wells if not feasible to reuse existing ISTT subsurface infrastructure depending on when future redevelopment of the Site occurs;
 - Conduct sampling to evaluate baseline conditions prior to in-situ polishing;
 - Implementation of in-situ polishing;
 - Conduct interim and subsequent monitoring to evaluate the effectiveness of in-situ polishing and to determine if additional in-situ polishing rounds are needed;
 - Preparation of a completion report summarizing in-situ polishing activities and baseline and initial post-in-situ polishing sampling results for DTSC review and approval; and
 - Conduct ongoing routine groundwater monitoring to evaluate effectiveness of in-situ polishing and to determine if additional in-situ polishing rounds are needed. Prepare ongoing groundwater monitoring reports for DTSC review and approval.
- Planning and Implementation of Post-Thermal MPE:
 - Development and design of a post-thermal MPE system configuration to control off-site migration and onsite impacts from upgradient sources and to address impacted groundwater remaining between the ISTT and in-situ polishing area and the property boundary;
 - Preparation of a work plan for DTSC review and approval;
 - Installation of MPE/monitoring wells if not feasible to reuse existing ISTT subsurface infrastructure, if applicable, depending on when future redevelopment of the Site occurs;

- Conduct ongoing MPE system operations, maintenance, and monitoring (“OM&M”), routine groundwater monitoring to evaluate effectiveness of the MPE system, and to determine if changes to the MPE and associated treatment system configuration are needed. Assumed long-term operation for 30+ years needed; and
 - Prepare ongoing OM&M and groundwater monitoring reports for DTSC review and approval. These reports would be coordinated and combined with reporting requirements for in-situ polishing.
- Monitored Natural Attenuation for Deeper Groundwater:
 - Based on available data, monitored natural attenuation (“MNA”) was selected as the proposed remedy for deeper groundwater in the Draft FS/RAP. Deeper groundwater refers to groundwater deeper than that treated by ISTT;
 - Preparation of a proposed monitoring plan that would be incorporated to the appropriate RDIP or work plan for DTSC review and approval, as described above;
 - Installation of monitoring wells, as needed, with locations in consideration of future redevelopment of the Site;
 - Conduct ongoing routine groundwater monitoring to evaluate effectiveness of MNA for deeper groundwater and to determine if in-situ polishing, as a contingency measure, is needed; and
 - Prepare ongoing groundwater monitoring reports for DTSC review and approval. These reports would be coordinated and combined with reporting requirements for post-thermal in-situ polishing and MPE.
- Long-term Indoor Air Vapor Mitigation:
 - Based on the proposed redevelopment of the Site, design a long-term indoor air vapor control system for any future inhabited structures to be protective from the structure’s intended use. Likely to include a geomembrane, sub-slab piping network, and sub-slab soil vapor monitoring points;
 - Prepare plans and specifications for the long-term indoor air vapor control system;
 - Obtain BAAQMD permit, if treatment of air discharge is needed;
 - Installation of long-term indoor air vapor control system during Site redevelopment;
 - Conduct ongoing routine OM&M and reporting. Assumed long-term operation for 30+ years needed.
- Institutional Controls:
 - Prepare a soil management plan (“SMP”) after implementation of shallow soil excavation and prior to redevelopment activities for DTSC review and approval that provides a framework to manage any residual contamination in a manner that is

- consistent with planned future land uses and is protective of human health for expected future populations;
- Prepare and record a deed restriction that incorporates the SMP and land use controls for the protection of human health and the environment; and
- Routine inspections by DTSC to verify compliance with the deed restriction.

The detailed scope within each of these future tasks is subject to change based on: (1) results of evaluations and pilot tests performed as part of Tasks 2, 5, and 6 of this proposal, (2) public comments and input received and incorporated as part of Tasks 1 and 7 of this proposal, (3) DTSC comments received and incorporated as part of Tasks 1, 2, 5, and 6 of this proposal, (4) permit approval conditions from public and private entities as part of Tasks 2, 5, and 6 of this proposal, and (5) results of future tasks themselves that occur earlier in the sequence of tasks for remedy implementation.

PROJECT SCHEDULE

It is EKI's understanding that this proposal is for the July 2019 to June 2020 ROPS period and is subject to initial funding approval by the Alameda County Oversight Board in January 2019 and final funding approval by DOF in April/May 2019. The scope of work in this proposal includes preparatory activities, based on EKI's current understanding of the project, such that the shallow soil excavation component of the proposed remedy in the Draft FS/RAP would begin in July 2020, as requested by the Successor Agency, and subsequent components of the proposed remedy can be implemented shortly thereafter. We are prepared to begin work immediately on this project upon receipt of authorization to proceed from Client.

COMPENSATION FOR CONSULTING SERVICES

Compensation for consulting services by EKI will be on a time and expense reimbursement basis in accordance with our current Schedule of Charges, dated 13 December 2018. On the basis of the proposed Scope of Work, we propose a budget of \$2,995,000 for completion of Tasks 1 through 8, which will not be exceeded without prior authorization from Client. A breakdown of the proposed project budget by key task is presented below.

<u>Proposed Task</u>	<u>Proposed Budget</u>
Task 1 Finalize FS/RAP and IS/MND	\$60,000
Task 2 MPE Pilot Tests	\$1,140,000
Task 3 Above Grade Building Demolition	\$1,000,000
Task 4 Well Abandonment	\$160,000
Task 5 Preparatory Activities for Shallow Soil Excavation	\$400,000
Task 6 Planning for In-Situ Thermal Treatment	\$180,000
Task 7 Public Outreach Assistance	\$25,000
Task 8 General Environmental Project Management Services	<u>\$ 30,000</u>
Total Proposed Budget	\$2,995,000

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.

We are pleased to have the opportunity to work with you on this project. Please call if you have any questions or wish to discuss this proposal in greater detail.

Very truly yours,

EKI ENVIRONMENT & WATER, INC.



Earl James, P.G.
Vice President

Client/Address:

City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency
 1333 Park Avenue
 Emeryville, California 94608



Proposal/Agreement Date: 13 December 2018

EKI Proposal # B8-206

SCHEDULE OF CHARGES FOR EKI ENVIRONMENT & WATER, INC.

13 December 2018

<u>Personnel Classification</u>	<u>Disc. Hourly</u>	
	<u>Hourly Rate</u>	<u>Rate</u>
Officer and Chief Engineer-Scientist	286	271
Principal Engineer-Scientist	275	261
Supervising I, Engineer-Scientist	265	252
Supervising II, Engineer-Scientist	255	242
Senior I, Engineer-Scientist	243	231
Senior II, Engineer-Scientist	230	219
Associate I, Engineer-Scientist	219	208
Associate II, Engineer-Scientist	205	195
Engineer-Scientist, Grade 1	191	182
Engineer-Scientist, Grade 2	180	171
Engineer-Scientist, Grade 3	165	157
Engineer-Scientist, Grade 4	146	139
Engineer-Scientist, Grade 5	129	123
Engineer-Scientist, Grade 6	113	107
Technician	104	99
Senior GIS Analyst	133	126
CADD Operator / GIS Analyst	118	112
Senior Administrative Assistant	130	124
Administrative Assistant	103	99
Secretary	85	81

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.

A Communication charge for e-mail access, web conferencing, cellphone calls, messaging and data access, file sharing, local and long distance telephone calls and conferences, facsimile transmittals, standard delivery U.S. postage, and incidental in-house copying will be charged at a rate of 4% of labor charges. Large volume copying of project documents, e.g., bound reports for distribution or project-specific reference files, will be charged as a project expense as described above.

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 fifteen percent (15%).

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 EKI Environment & Water, Inc. and may be updated annually.



EXHIBIT B
Contract Insurance Requirements

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

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

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.
- ☐ **General Liability (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:

- ☒ **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; 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.

☒ **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.

☒ **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. SEPARATION OF INSURED; NO SPECIAL LIMITATIONS

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such 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.