

RESOLUTION NO. 19-53

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute Amendment No. 1 To The Professional Services Agreement With EKI Environment and Water, Inc. Granting A Time Extension To December 31, 2020 For Soil Services within the East Side of Railroad Tracks side of The South Bayfront Pedestrian And Bicycle Bridge And Horton Landing Park, Project No. EPW 17-112 (CIP No. 16475006 And CIP No. 17237003)

WHEREAS, in July 2017, the City Council of the City of Emeryville authorized the City Manager to enter into a Professional Services Agreement (PSA) with EKI Environment and Water in an amount not to exceed \$200,000 for updating a Soil Cleanup Plan and overseeing the remediation of soil contamination on the east side of the railroad tracks portion of the South Bayfront Bridge project site; and

WHEREAS, the PSA was given a termination date of June 30, 2019 for a time expected to coincide with the completion of construction of the South Bayfront Pedestrian Bicycle Project; and

WHEREAS, additional time is required to complete work including construction so that December 31, 2020 is the expected new date of completion; and

WHEREAS, Amendment 1 to the PSA is necessary to extend the term of the PSA to December 31, 2020, and

WHEREAS, there is sufficient funding appropriated as part of the Capital Improvement Program for the South Bayfront Bridge / Horton Landing Park project to cover the cost of said Professional Services Agreement; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute Amendment No 1 to the Professional Services Agreement with EKI Environment and Water and granting a time extension to December 31, 2020 for the services covering the East Side Project Area associated with the South Bayfront Pedestrian Bicycle Bridge, CIP#16475006 and CIP#17237003.



ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, May 21, 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



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

FIRST AMENDMENT

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT

("Amendment") is effective as of this _____ day of _____, 2019, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **EKI ENVIRONMENT AND WATER, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Professional Services Contract dated August 25, 2017 ("Contract") for the purpose of retaining the services of Contractor to provide Pre-Characterization Waste Sampling, Soil Cleanup Plan Update, Bid Assistance, Services during Soil Remediation, and Completion Report Preparation; and

WHEREAS, the City and Contractor desire to amend the Contract; and

WHEREAS, the public interest will be served by this Amendment.

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

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 Exhibit A

- ☐ Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-Revision Number**;

OR

- ☐ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-Revision Number**, attached hereto and incorporated herein by this reference.

1.2 Termination Date

- ☒ The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **DECEMBER 31, 2020**.

| FOR CITY USE ONLY | | | |
|-------------------|--|-------------|--|
| Contract No. | | CIP No. | |
| Resolution No. | | Project No. | |

1.3 Total Compensation Amount

- ☐ The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **NO DOLLARS AND NO CENTS (\$0)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$200,000)**.

2. CONTINUING EFFECT OF CONTRACT

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Contract" appears in the Contract, it shall mean the Contract as amended by this Amendment.

3. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

4. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5. WAIVER

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

SIGNATURES ON FOLLOWING PAGE

**6. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT
FIRST AMENDMENT**

IN WITNESS WHEREOF the City and the Contractor have executed this Contract,
which shall become effective as of the date first written above.

Approved As To Form:

Michael Quinn
City Attorney

Dated:

_____, 2019

CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated:

April 24, 2019

EKI ENVIRONMENT AND WATER, INC.

Earl James (Signature)
Earl James, Vice President