

RESOLUTION NO. 17-121

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Professional Services Agreement With EKI Water And Environment Inc. (EKI) In An Amount Not To Exceed \$200,000 For Hazardous Materials Investigation And Mitigation Services Within The Site Of The South Bayfront Pedestrian Bicycle Bridge, CIP # 16475006

WHEREAS, in 2010, Emeryville Redevelopment Agency (Agency) entered into a Professional Services Agreement (PSA) with EKI to perform Hazardous Material Investigation and Site Cleanup Plan at the site of Horton Landing Park; and

WHEREAS, this work looked into the project site of South Bayfront Bridge/Horton Landing Park on the east side of Union Pacific Railroad tracks; and

WHEREAS, the work was halted due to the loss of major funding with the dissolution of the Emeryville Redevelopment Agency; and

WHEREAS, in June 2015, funding became available for the project; and

WHEREAS, the City is now ready to move the project forward to construction; and

WHEREAS, City Staff solicited a reactivation and update proposal from EKI to update and complete the Hazardous Material Investigation and Site Cleanup Plan; and

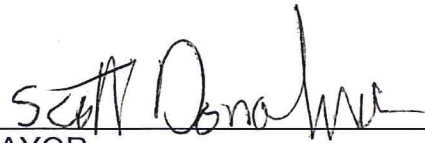
WHEREAS, the proposed Professional Services Agreement with EKI is in an amount not to exceed \$200,000; and

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 enter into a Professional Services Agreement with EKI Water and Environment, Inc. in an amount not to Exceed \$200,000, in the form attached hereto as Exhibit A, to complete Hazardous Materials Investigation and Mitigation Services at the site of The South Bayfront Pedestrian Bicycle Bridge, CIP# 16475006.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 25, 2017, by the following vote:

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


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of this 25th day of August, 2017, by and between THE CITY OF EMERYVILLE, a municipal corporation, ("City") and EKI Environment & Water, Inc.(Consultant"), collectively referred to as the "Parties."

WITNESSETH THAT:

WHEREAS, in 2008, the former Emeryville Redevelopment Agency ("Agency") approved the South Bayfront Pedestrian-Bicycle Bridge, also referred to as the Horton Landing Park Project (referred to herein as "Project"); and

WHEREAS, in 2009, in preparation to construct the Project, pursuant to the City's General Plan Policy CSN-P-41, the Agency contracted with EKI, Inc.("EKI") to examine the Project site; and

WHEREAS, in 2011, the State of California began taking steps to dissolve redevelopment agencies, which resulted in efforts to complete the Project stalling; and

WHEREAS, although EKI preformed some services, in 2012, the contract expired due to lack of funding; and

WHEREAS, the City desires to move the Project towards completion; and

WHEREAS, the City desires to complete the Hazardous Materials Assessment including assessment of lands on the west side of Union Pacific Railroad tracks; and

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

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

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

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

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

I. SCOPE OF SERVICES AND TERMINATION DATE**A. Project Description**

FOR CITY USE ONLY			
Contract #:	17028-0000-PW01	CIP #:	16475006
Reso. #:	17-121	EPW #:	N/A

A complete Project Description is described in Exhibit A.

B. Services

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

C. Schedule and Completion Date:

The services to be provided by Consultant under this Agreement shall commence on within 14 Calendar Days of the Notice to Proceed and terminate on June 30, 2019.

D. Right of Entry Agreement and Release:

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

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

II. WORK CHANGES

- A. The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.
- B. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.
- C. The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section III.B below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

III. COMPENSATION AND METHOD OF PAYMENT

- A. City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.
- B. The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **TWO HUNDRED THOUSAND DOLLARS (\$200,000)** except as outlined in Section II.C., above. The compensation for Services performed shall be computed based upon time and materials at the hourly rates stated in Attachment A attached to Exhibit A. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications,

facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

IV. COVENANTS OF CONSULTANT

A. Assignment of Agreement

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

B. Responsibility of Consultant and Indemnification of City

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code as enacted by AB 573. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and 5616 Bay Street Investors, LLC, and their respective members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City and/or 5616 Bay Street Investors, LLC, but, to the extent required by law, excluding liability caused by the conduct of the City and/or 5616 Bay Street Investors, LLC. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant. This obligation to indemnify and defend the City and 5616 Bay Street Investors, LLC, their respective members, officers, agents, employees and volunteers shall survive termination of this Agreement.

C. Independent Contractor

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the City. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

D. Insurance

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

- c. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.
- d. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

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

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

_____ (Consultant's initials)

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

3. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.
4. Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:
 - a. General Liability and Automobile Liability Coverage.
 - i. Consultant shall name the City of Emeryville, 5616 Bay Street Investors, LLC, and their officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as *additional insured* and is not acceptable.
 - ii. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
 - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.
 - iv. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- v. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
 - vi. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
 - vii. All endorsements to policies shall be executed by an authorized representative of the insurer.
- b. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
- c. All Coverages
 - i. Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation.
- 5. Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Bests' rating of no less than A minus VIII.
- 6. Verification of Coverage: Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.
- 7. Subcontractors: Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this

Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

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

E. Records, Reports and Audits

1. Records

- a. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- b. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

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

3. Audits and Inspections: At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

F. Conflicts of Interest

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

G. Confidentiality

The Consultant agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

H. Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability.

I. Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

J. Key Personnel

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

reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

K. Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

L. Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

M. Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant shall comply with the requirements of the City's Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless (i) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

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

Consultant shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.44 per hour (as of July 1, 2015, subject to increase annually on July 1st to reflect the twelve month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

N. Prevailing Wages

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

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

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

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

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

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

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

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

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

4. Payroll Records: Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.
 - a. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
 - b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the

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

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

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

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

5. Apprentices: Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.
6. Workers' Compensation: Pursuant to the requirements of section 1860 of the California Labor Code, Consultant will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Agreement, Consultant certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
7. Event of Default: Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

V. TERMINATION

- A. The City shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used

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

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

VI. NO PERSONAL LIABILITY

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

VII. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

VIII. SUCCESSORS AND ASSIGNS

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

IX. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

X. SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

XI. BUSINESS LICENSE

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

XII. NOTICES

A. Communications Relating to Daily Activities

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

B. Official Notices

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

CITY

Andrew Clough,
Acting Public Works Director
City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Phone No. (510) 596-4341
Fax No. (510) 596-4389
E-Mail aclough@emeryville.org

CONSULTANT

Earl James, Vice President
EKI Environment and Water, Inc.
577 Airport Blvd., Suite 500
Burlingame, CA 94010
Phone No. 415-385-2326
E-Mail ejames@ekiconsult.com

XIII. WAIVER OF AGREEMENT

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

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

Approved as to form:



Michael A. Guina, City Attorney

CITY OF EMERYVILLE

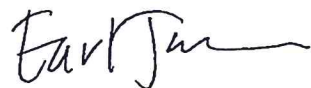
Dated: 8-25, 2017



Carolyn Lehr, City Manager

CONSULTANT

Dated: 14 July, 2017

By:  _____

Its: Vice President _____

EXHIBIT A
SCOPE OF WORK

23 May 2017

Maurice Kaufman
Public Works Director/City Engineer
City of Emeryville
1333 Park Avenue
Emeryville, California 94608

Subject: Proposal for Pre-Characterization Waste Sampling, Updating the SCP and Contract Documents, Providing Bid Assistance and Environmental Services During Soil Remediation, and Preparing a Completion Report
Horton Landing Park
Emeryville, California
(EKI B7-081)

Dear Mr. Kaufman:

Erler & Kalinowski, Inc. ("EKI") is pleased to submit this proposal for environmental services related to the preparation for and the implementation of soil remediation activities for the Horton Landing Park property (the "Site") in Emeryville, California. Such activities include pre-characterization waste sampling, updating the Site Cleanup Plan ("SCP") and contract documents, providing bid assistance and environmental services during soil remediation, and preparing a completion report. EKI services are proposed to be provided on behalf of our client, the City of Emeryville ("City"; "Client"), in accordance with similar terms in our previous agreements.

The Site (Areas A to H) is approximately 1.2 acres and is bordered on the north by City's former Public Works Facility, on the west by the Union Pacific Railroad ("UPRR") tracks, on the south by the Sherwin-Williams facility, and on the east by the Novartis Vaccines & Diagnostics facilities and the Novartis Easement Parcel. It is EKI's understanding that the City is considering purchasing Area I, a 0.15 acre parcel located adjacent to the west of the Site. Like the Site, Area I was a former rail spur. It is EKI's understanding that the City is interested in redeveloping the Site, including Area I, as part of the Emeryville Greenway that extends to the north and as part of the bridge across the railroad tracks to the Bay Street development ("Project"). It is EKI's understanding that this Project has not substantially changed since the April 2010 Project plans and specifications prepared by Biggs Cardosa Associates Inc. ("BCA").

Formerly known as Erler & Kalinowski, Inc.

Previous environmental investigations at the Site (Areas A to H) and were documented in the *Soil and Groundwater Investigation Data Report, Horton Landing Park, Emeryville, California*, dated 20 July 2009. Shallow soils are primarily impacted by arsenic and lead. Additional chemicals of concern include selected petroleum hydrocarbons, polychlorinated biphenyls ("PCBs"), and organochlorine pesticides.

The approved remedy for Areas A to H of the Site was described in the *Site Cleanup Plan, Horton Landing Park, Emeryville, California* ("SCP"), dated March 2010. The remedy includes excavation to a minimum of 1 foot below ground surface ("bgs") in areas with impacted shallow soil. Deeper soils excavations may be necessary to meet project grading requirements. Deeper soils are also impacted and will require handling in accordance with the approved plan. Excavated soils with a non-hazardous waste classification could potentially be reused within the embankment fill area where the pedestrian bridge would be constructed. It is EKI's understanding that additional waste characterization sampling is needed to facilitate direct loading and/or reuse of excavated soil within the embankment fill area because previous waste characterization data were collected approximately 8 years ago and landfills are unlikely to accept data of that age. It is EKI's understanding that the SCP will be updated to incorporate Area I and that the investigation of Area I will be completed prior the start of work included in this proposal.

It is EKI's understanding that the City is acting as the Lead Agency under a Memorandum of Understanding ("MOU") with the California Department of Toxic Substances Control ("DTSC") and the San Francisco Bay Regional Water Quality Control Board ("SFRWQCB"). Ms. Susan G. Colman is acting as Brownfields Site Manager ("Site Manager") who will provide regulatory and technical support to the City. The Site Manager will confer with the Department of Toxic Substances ("DTSC") for review and approval of documents, as needed, in relation to the Site.

The proposed scope of work for EKI's services includes the following tasks:

- Task 1: Conduct waste characterization sampling for soils within Areas A to F
- Task 2: Update SCP
- Task 3: Finalize bid documents and provide bid assistance
- Task 4: Conduct environmental services during soil remediation
- Task 5: Prepare completion report

Further description of the scope of work is provided below. It is assumed that the proposed scope of work will be conducted under oversight from the Site Manager. It is

assumed that the tasks will be completed in the order, as shown above, to facilitate efficient finalization of the SCP and bid documents.

PROPOSED SCOPE OF WORK

Task 1 – Conduct Waste Characterization Sampling for Soils Within Areas A to F

As identified in the SCP, portions of Areas A to F, located outside the footprint of the embankment area, require soil excavation. A portion of excavated soils from Areas A and B were identified for reuse within the embankment area, and other excavated soils were to be disposed of at an off-site permitted disposal facility. It is EKI's understanding that the disposal facilities typically require waste characterization data to be collected within a year prior to waste disposal. The proposed budget for collecting and analyzing pre-characterization waste samples includes the following specific assumptions:

- Coordinate with selected landfills to evaluate if waste characterization sampling plan, described below, is sufficient for the landfills to pre-approve in-place soil for disposal.
- Subcontract a driller to drill 33 borings at previous investigation locations using HSA to a depth of 2 feet bgs. It is assumed that 75-percent of the boring locations will require asphalt coring. It is assumed that the distance from the nearest UPRR main track is sufficient such that a permit will not be required from UPRR to conduct this work. A drilling permit from the ACPWA will be required.
- Stake 33 boring locations in the field by a surveyor based on previous survey coordinates.
- Collect 8 composite soil samples from 0 to 2 feet bgs. Soil samples will be composited in the field.
- Based on previous waste characterization data in the SCP, it is assumed that composite soil samples will be analyzed by a California-certified analytical laboratory as follows:
 - All composite soil samples will be analyzed for Title 22 metals, , total petroleum hydrocarbons ("TPH") as gasoline ("TPH-g"), TPH as diesel ("TPH-d"), and TPH as motor oil ("TPH-mo").
 - All composite soil samples will be subjected to the Waste Extraction Test ("WET"). The extract will be analyzed for arsenic, chromium, copper, and lead, as needed, for comparison against California hazardous waste criteria.
 - 50-percent of the composite soil samples will be subjected to the Toxicity Characteristic Leaching Procedure ("TCLP"). The extract will be analyzed

- for arsenic and lead, as needed, for comparison against Federal hazardous waste criteria.
 - Composite soil samples will be analyzed on a standard, 7-to-10-working day turnaround time.
- Additional waste characterization analyses that may be required by the landfills based on previous investigation data include: PCBs and organochlorine pesticides. Costs for these additional analyses are not included in this proposal.
- Containerize investigation derived wastes ("IDWs") in appropriate Department of Transportation ("DOT") drums. IDW drums will be stored at a location specified by the Client. It is assumed that results from the composite soil samples will be sufficient to characterize the soil cuttings drums. One composite water sample will be collected from the drums containerizing decontamination water and analyzed for Title 22 metals, TPH-g, TPH-d, TPH-mo, and pH. Coordinate disposal of IDWs on behalf of Client. Client will be responsible for disposing of IDWs at a permitted off-site disposal facility in accordance with applicable laws and regulations. Based on previous waste characterization data, it is assumed that IDWs would be hazardous waste, and the Client would have 90 days to dispose of the drums from the date the IDWs were generated. If the IDWs are a Resource Conservation and Recovery Act ("RCRA") hazardous waste, an EPA ID number would be required for the Site. If the IDWs are a non-RCRA hazardous waste, a California temporary ID number would be required for the Site.
- Prepare a memorandum summarizing results of pre-characterization waste sampling results and distribute to appropriate permitted off-site disposal facilities for pre-approval of waste characterization data.

If additional analyses and sampling frequencies are required by appropriate permitted off-site disposal facilities or if subsurface obstructions are encountered, EKI will request additional budget to complete this work.

Task 2 – Update SCP

EKI will update the SCP to incorporate Area I into the definition of the Site, to present investigation results of Area I, to present recent waste characterization data, and to describe proposed remedial activities for Area I, if necessary. Other portions of the SCP that will require updating include: (1) the remedial goals, which were based on the 2008 San Francisco Bay Regional Water Quality Control Board ("SFRWQCB") Environmental Screening Levels ("ESLs") and were updated in February 2016, (2) the estimated cost for potential remedial alternatives, and (3) site-specific plans for implementing remediation activities in accordance with updated sampling methods, regulations, and site conditions, etc.

It is assumed that up to three rounds of response to Client, Site Manager, and/or DTSC comments would be performed and that only hardcopies of the finalized SCP would be required.

Task 3 – Finalize Bid Documents and Provide Bid Assistance

It is EKI's understanding that the status of the technical specifications and plans for soil remediation prior to placing the Project on hold by the City in 2011 is as follows:

- EKI draft technical specifications for soil remediation were incorporated into Section 14 – Remedial Specifications of the draft issued for bid Project contract documents, dated 27 December 2010. EKI provided comments to this document on 19 January 2011, and it is EKI's understanding that this is the most current version of the technical specifications.
- The most recent version of the EKI's draft issued for bid plans are dated 17 May 2011.

EKI will update the remedial specification section of the most current version of the Project contract documents in accordance with the updated SCP and will review other portions of the Project contract documents for conformance with requirements in the updated specifications. EKI will also update soil remediation bid items on the bid sheet, as necessary, and provide an updated engineer's estimate for these bid items. EKI will attend one coordination meeting with the City. This proposal assumes that the City will reproduce and distribute the Contract Documents as needed for public bidding in accordance with City practices.

EKI will provide bidding assistance to the City including attendance at a pre-bid site walk, preparation of one addendum for distribution by the City, and review and tabulation of contractor's bids for bid items that pertain to the soil remediation.

Task 4 – Conduct Environmental Services During Soil Remediation

EKI will provide the following environmental services during soil remediation. The support activities include observation during soil remediation activities, perimeter air monitoring, and additional waste characterization sampling, as needed. The proposed budget for this task is based upon the following assumptions:

- The total soil remediation duration is assumed to be one month of contiguous days of work completed in one mobilization.
- Decontamination water and extracted groundwater, requiring characterization and off-site disposal, is not generated during soil remediation activities.

- Requirements for perimeter air monitoring and soil sampling will be consistent with the original SCP. It is assumed that perimeter air sampling (up to 3 stations) will be collected and analyzed on fast turnaround time for only the first 2 days of excavation and that subsequent monitoring only consists of dust monitoring due to the implementation of effective dust control measures.
- The majority of excavated soil for soil remediation will be pre-characterized in Task 2 to facilitate direct loading and off-haul. For additional soils excavated as part of construction of the pedestrian bridge and Emeryville Greenway, it is assumed that up to 8 stockpile soil samples will be collected and analyzed to characterize stockpiles for off-site disposal.
- During the soil excavation activities, EKI will have one person on Site full time to observe soil excavation activities, conduct perimeter air monitoring, and to collect stockpile soil samples. The EKI field representative will observe the Client's soil excavation contractor ("Contractor") to determine if work is proceeding in compliance with the portion of the Contract Documents that pertain to soil remediation and will advise the Client if the Contractor's work may conflict with those requirements.
- EKI will not have authority to stop the Contractor's work. EKI will not advise on or issue directions with respect to safety and security precautions and programs, or means, or methods of the Contractor's work. EKI does not have a role in the Contractor's health and safety.
- Remediation activities will be conducted during a standard, 40-hour work week.
- EKI personnel will complete the tasks described herein in Level D personal protective equipment ("PPE").
- All surveying of the excavation extent will be performed by the Client's designated surveyor and associated costs are not included in this proposal.

If the soil excavation activities extend beyond the estimated time period or is not contiguous, if the amount of perimeter air sampling or soil sampling is greater than estimated, if previously unknown contamination is encountered during excavation, if a higher level of PPE for EKI personnel is required, if collection and analysis of water samples is deemed necessary, or if shell hash or other items of archaeological significance are encountered, EKI will request additional budget to complete the project.

Task 5 – Prepare Completion Report

EKI will prepare a completion report documenting remediation activities conducted in accordance with the updated SCP. The completion report will provide tables summarizing sampling results and figures summarizing the extent of excavation work. Coordinates of the excavation extent will be provided by the Client's designated

surveyor, and a summary of waste disposal tonnages by landfill will be provided by the Contractor to EKI. The draft completion report will be submitted for Client and regulatory review and approval before finalizing. It is assumed that three rounds of response to Client, Site Manager, and/or DTSC comments and that only hardcopies of the finalized completion report would be required.

PROJECT SCHEDULE

We are prepared to begin work immediately on this project upon receipt of Client's authorization to proceed. Upon notice to proceed from the Client and subject to Client and regulatory approval, EKI anticipates that it will take approximately four weeks to complete pre-characterization waste sampling (Task 1), approximately 2 weeks to update the SCP (Task 2), approximately 2 weeks to update Contract Documents (Task 3), approximately 1 month for environmental services during soil remediation (Task 4), and approximately 3 weeks to prepare the completion report (Task 5). The schedule to perform Tasks 3 to 5 is dependent on the Client's redevelopment schedule and regulatory approval.

COMPENSATION FOR CONSULTING SERVICES

Inasmuch as the exact level of effort to complete the proposed Scope of Work cannot be identified at this time, compensation for consulting services by EKI Environment & Water, Inc. will be on a time and expense reimbursement basis in accordance with our current Schedule of Charges, dated 1 January 2017, attached. We propose a budget of \$200,000 for the performance of Tasks 1 through 5, described above, which will not be exceeded without additional authorization. A breakdown of the budget is provided below:

Task		Estimated Budget
1	Conduct Waste Characterization Sampling for Soils Within Areas A to F	\$57,000
2	Update Site Cleanup Plan	\$10,000
3	Finalize Bid Documents and Provide Bid Assistance	\$16,000
4	Conduct Environmental Services During Soil Remediation	\$87,000
5	Prepare Completion Report	\$30,000
TOTAL PROPOSED BUDGET		\$200,000

We assume that the City will provide a written amendment to our Agreement providing specific work authorization for this project for EKI review and approval.

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

Very truly yours,

EKI ENVIRONMENT & WATER, INC.



Joy Su, P.E.
Project Manager



Earl James, P.G.
Vice President

Attachments: Schedule of Charges, dated 1 January 2017

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



Proposal/Agreement Date: May 23, 2017

EKI Proposal#: B7-081

(Modified)

SCHEDULE OF CHARGES FOR ERLER & KALINOWSKI, INC.

2 JANUARY 2017

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

Direct Expenses

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

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

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

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

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

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

Exhibit B
Right of Entry Agreement

PEDESTRIAN BRIDGE RIGHT OF ENTRY AGREEMENT

This PEDESTRIAN BRIDGE RIGHT OF ENTRY AGREEMENT ("Agreement") is made by and between 5616 Bay Street Investors LLC, a Delaware limited liability company ("Grantor"), and the City of Emeryville, a California municipal corporation ("City"), as of the Effective Date indicated under City's signature block, below.

RECITALS

A. Grantor is the fee owner of certain real property located along Bay Street in the City of Emeryville, County of Alameda, identified as Lots 1 and 5 of Tract Map No. 7661, filed for record on September 25, 2002, in the Official Records of the Alameda County Recorder, in Book 267 of Maps, Pages 1-20, File Number 2002429896, respectively referred to as APN 049-1039-003 and 049-1038-009, and depicted in Exhibit A and Exhibit B attached hereto ("Grantor's Property").

B. As contemplated in the Disposition and Development Agreement between Grantor and the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency"), the City is in the process of designing and securing necessary rights of way for the South Bayfront Bicycle/Pedestrian Overcrossing ("Project"), which will connect Grantor's Property with the City's public park/open space located on the east side of the Union Pacific railroad tracks, commonly referred to as the Horton Landing Park.

C. City is in the process of developing detailed plans and specifications for the construction of the Project (the "Plans and Specifications"), and desires to gain access to Grantor's Property on a temporary basis in order to (i) investigate the potential existence of cultural resources within the location of the foundations for the Main Bridge, West Ramp and West Stairs to be constructed on Grantor's Property, and (ii) subject to the prior written consent of Grantor as to the timing, methods and scope of such mitigation, implement mitigation of any impacts of the Project on cultural resources, if present.

D. Grantor desires to grant to City temporary, non-exclusive rights of access over a portion of the Grantor's Property to undertake its cultural resource investigation and mitigation activities in connection with the Project.

E. The parties further desire hereby to set forth their respective rights and obligations in connection therewith.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Right of Access.

a. Grant. Grantor, for itself, its successors and assigns and all those taking by, under or through Grantor (each, a "Grantor Party"), hereby grants to City a temporary, non-exclusive, right of access ("Temporary Access") to enter upon, exit from, traverse, and otherwise use a portion of Grantor's Property, as described and depicted in Exhibit C ("Access Area 1") and Exhibit D ("Access Area 2"), attached hereto and incorporated herein (each an "Access Area" and collectively the "Access Areas"). The Access Areas may be used by City to (i) investigate the presence of cultural resources and hazardous materials within the planned location of the foundations for the West Ramp, Main Bridge and West Stairs of the Project, as shown on Pages 64, 85 and 116 of the draft Plans and Specifications dated October 7, 2016, and attached hereto as Exhibit E, Exhibit F and Exhibit G, respectively, and (ii) subject to the prior written consent of Grantor as to the timing, methods and scope of such mitigation, implement mitigation of the impact of the Project on cultural resources, if present ("Work").

The Work to be undertaken within the Access Areas pursuant to this Agreement shall be undertaken in two (2) phases and shall be performed by the City at its sole cost and expense. Phase One shall entail surveying, staking, and collecting nine (9) core samples within the footprint of the location of the aforementioned foundations; four (4) core samples will be taken from within Access Area 1 and five (5) core samples will be taken from within Access Area 2, as more particularly described in the proposal dated January 12, 2017, from AECOM, attached hereto as Exhibit H. Further, the nine (9) core samples shall be tested for the presence of hazardous materials in accordance with section 4.7.2 of the ERMP, as more particularly described in the proposal dated January 19, 2017, from Erler & Kalinowski, Inc., attached hereto as Exhibit I.

Phase Two shall only be undertaken within Access Area 2. Phase Two will entail saw cutting and removing any asphalt or concrete material within the footprint of the location of foundations within Access Area 2, and excavating the soils therein with mechanical equipment and by hand to an approximate depth of five feet (5') to seven feet (7'). All asphalt or concrete material shall be disposed of off-site at an appropriate disposal facility at the sole cost and expense of the City. All excavated soils will be stockpiled adjacent to the excavation areas, tested for purposes of characterizing the soil for off-site disposal, and once the investigatory excavation is complete, the excavation areas will be backfilled with the native excavated soils, and those excavation areas underlying parking spaces shall be repaved with asphalt and restriped, as necessary. In addition, as provided in Section 2.a.iv below, all other portions of Grantor's Property (including, without limitation, drive lanes and existing asphalt and concrete areas adjacent to the affected parking spaces) that are damaged or disturbed by the City in connection with the performance of Work shall be promptly repaired and restored to the condition existing immediately prior to the commencement of the Work. The foregoing notwithstanding, if required and directed by DTSC or any other governmental agency, City shall transport and dispose of excavated soils impacted with hazardous materials, and shall sign all manifests for the disposal of any such soils as the "generator" thereof; further, as necessary, City shall backfill excavation areas with clean fill material.

b. Use of and Term of Temporary Access. The term of the Temporary Access shall commence upon the Effective Date. The City Engineer shall provide written notice

to Grantor no less than ten (10) working days prior to undertaking any activities in the Access Areas in connection with the Work pursuant to this Agreement, and shall comply with the provisions of sections 2.d. and 3 in connection with any such entry onto the Access Areas. The Work to be undertaken pursuant to this Agreement shall be completed and the term of the Temporary Access shall terminate upon the earlier of (i) completion of Phase Two, or (ii) September 30, 2017. The City Engineer shall provide written notice to Grantor upon completion of the Work as provided herein.

c. No Unreasonable Interference by Grantor. Grantor shall not obstruct, use, or knowingly permit any Grantor Party to use any of the Access Areas in any manner that will unreasonably interfere with the Work or the other rights expressly granted to the City hereunder (collectively, "Access Rights"). Without limiting the foregoing, Grantor agrees to keep the Access Areas and ingress and egress routes over Grantor's Property open and free from any temporary or permanent structures of any kind installed or controlled by or on behalf of Grantor or any Grantor Party, except for existing surface paving and fencing, and shall utilize diligent good faith efforts to ensure that any maintenance, repair or other work is undertaken expeditiously (but without the requirement for the payment of overtime salaries, wages or charges) and in a manner that minimizes, to the extent reasonably practicable, any unreasonably adverse impacts on any of the Access Rights. To facilitate City's use of the Access Areas, Grantor shall cease use of approximately eight (8) parking spaces within Access Area 2 no later than five (5) working days following receipt of City's notice of commencement of the Work pursuant to Section 1.b. herein; further, prior to commencement of the Work, Grantor shall move and relocate landscaping material currently being stored in Access Area 2, and move and relocate a donation station structure currently located within Access Area 2. Notwithstanding the foregoing, if Grantor fails to do so, the City shall have the right to move and temporarily relocate any materials or items stored within the Access Areas and impeding the Work upon providing notice to Grantor.

d. No Interference by the Grantee with Parking Structures or Loading Docks. The City shall ensure that the exercise of its Access Rights does not interfere with ingress and egress to the parking structures on Grantor's Property, to any parking spaces on Grantor's Property beyond the eight (8) parking spaces referenced above or to any loading dock located on Grantor's Property by delivery vehicles and service vehicles.

e. Rights Retained by Grantor. Grantor shall have the right to use the Access Areas for any purposes not inconsistent with the express rights granted to the City hereunder. The City shall take all actions reasonably requested by Grantor to enable Grantor to make full use of Grantor's Property, excepting only to the extent that such use by Grantor would be inconsistent with the express rights granted to the City hereunder.

2. Work.

a. Conduct of Work; Repair and Restoration.

i. City shall construct the Work using methods and materials selected by City at its sole cost and expense, and in accordance with applicable laws. All Work shall be

conducted and in a manner and timetable determined in City's reasonable discretion but shall be completed prior to the expiration of the term of this Agreement provided above in Section 1.b.

ii. Prior to the commencement of the Work, City shall cordone off the Access Areas and take such other actions as may be reasonably requested by Grantor to ensure the safety of the public, including, without limitation, to ensure that pedestrians do not inadvertently enter upon the Access Areas or into excavated areas.

iii. City shall promptly repair damage to Grantor's Property to the extent caused by City, its employees, agents, contractors or subcontractors in connection with the Work, so as to restore damaged areas to as near to the same condition in which they existed immediately prior to commencement of the Work, to the reasonable satisfaction of Grantor. Access Area 1 is currently improved with concrete sidewalk paving, fencing along its southern edge, and landscaping within a planter strip between the aforementioned sidewalk and fencing. The Work to be undertaken within Access Area 1 is limited to taking soil core samples from within the landscaping planter strip and thus the parties anticipate that there will be no need for City to repair or restore any damage within Access Area 1; provided, however, that if any damage does occur within Access Area 1, then the City shall promptly repair such damage as provided herein.

iv. Access Area 2 is currently improved with asphalt paving and fencing along its eastern edge. Notwithstanding the foregoing, the parties recognize that after completion of the Work, the City will return to Grantor's Property in calendar year 2018 to construct the Project and install permanent foundations in the location of the excavated areas identified in Exhibit E, Exhibit F and Exhibit G and transport and dispose of all excavated soils off-site at an appropriate disposal facility. Accordingly, the parties agree that unless otherwise directed by DTSC or as provided in the immediately succeeding paragraph, as part of the Work the City shall backfill the excavated areas within Access Area 2 with native fill material to the top of the existing ground surface and shall only reinstall asphalt paving in the areas of the parking spaces and restripe as necessary. If required by DTSC, City shall transport and dispose of excavated soils impacted with hazardous materials, and shall backfill excavation areas with clean fill material.

v. For the avoidance of doubt, in the interim between the completion of the Work and the City's return to Grantor's Property, the Access Areas to which the City shall return shall be improved in a manner reasonably acceptable to Owner (*i.e.*, such Access Areas shall either be repaired so that Owner can reopen them to the public or shall be blocked with barricading or fencing, in either case containing graphics, acceptable to Owner, at the City's sole cost and expense).

b. Permits and Licenses; Compliance with Law. In connection with its obligations hereunder, City (i) shall comply with all applicable legal requirements, including all federal, state, and local laws (including City ordinances and resolutions, and requirements of other agencies with authority), whether or not said laws are expressly stated herein, and (ii) shall, at its sole cost and expense, obtain and maintain all necessary permits and licenses.

c. Liens. City shall pay, when due, all persons furnishing labor or materials in connection with any work to be performed by or on behalf of City related to the Work and on or about the Access Areas, and shall keep Grantor's Property free and clear of any related mechanics' liens. If any lien is filed, the City shall cause such lien to be released and removed within ten (10) days after the date of filing, and if City fails to do so, the Grantor may take such action as may be necessary to remove such lien, without the duty to investigate the validity of the lien (unless the City has commenced an action to contest, dispute or defend the claims of lienholders and has provided Grantor with written notice of the pendency of the action, in which case the City shall bond over or otherwise cause such lien to be removed of record pending the resolution of work dispute), and the City shall reimburse Grantor for reasonable actual amounts expended in connection with removing such lien together with interest thereon at the Local Agency Investment Fund interest rate established by the State of California, from the date of expenditure.

d. Environmental Risk Management Plan. City shall undertake its Work within the Access Areas in accordance with the Environmental Risk Management Plan ("ERMP") dated July 12, 2000, applicable to Grantor's Property and available at http://www.envirostor.dtsc.ca.gov/public/final_documents2.asp?global_id=01890019&doc_id=5013135. No less than fourteen (14) calendar days prior to commencing Work, City shall notify the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") of the Work to be undertaken in accordance with this Agreement and secure DTSC's approval of a Health and Safety Plan for each contractor to access the Access Areas pursuant to this Agreement (i.e. AECOM and EKI). City shall place plastic sheeting beneath and over all excavated soils that are temporarily stockpiled within the Access Areas before they are backfilled into the excavation areas. City shall be solely responsible for all costs, fees, taxes and expenses associated with the excavation, handling and testing of soils pursuant to the Work, as well as for the transportation and disposal of soils, if required by DTSC, and shall sign all manifests for the disposal of any soils impacted with hazardous materials as the "generator" thereof.

3. Insurance. Prior to commencing any portion the Work, City shall obtain and maintain, or cause its contractor(s) to obtain and maintain, in full force for the entire term of this Agreement, at no expense to Grantor, insurance for the Work against claims which may arise out of or result from the performance of the Work performed by City, its contractor and subcontractors of any tier, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All policies shall be written on an occurrence basis. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times, a Best's rating of "A- VIII" (A minus VIII) or better by AM Best & Company, and with coverage and policy limits as follows (unless otherwise specified herein):

(i) Commercial General Liability insurance written on Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death), property damage (including loss of use thereof) and products and completed operations with limits of not

less than \$5,000,000 per occurrence. Limits may be provided in a "layered" program utilizing primary, umbrella or excess liability policies and shall be maintained for at least 1 year following completion of the Work;

(ii) Comprehensive auto liability for all owned, hired and non-owned vehicles brought onto the Property with combined single limits of not less than \$3,000,000 per occurrence;

(iii) Worker's Compensation insurance as required by the State of California;

(iv) Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence;

(v) Umbrella/Excess Liability insurance written in amount of \$5,000,000 per occurrence and in the annual aggregate, written on a per location basis. Such insurance shall be written on a follow-form basis and shall be no more restrictive than the commercial general liability, automobile liability, and employers liability policies referenced above in Sections 3(i), 3(ii), and 3(iv) of this Agreement. City shall by specific endorsement or otherwise cause the umbrella/excess policy to be first tier umbrella coverage and sit in excess of the primary coverage afforded within Sections 3(i), 3(ii), and 3(iv) (employers liability only) above. It is the specific intent of the parties that City procure the excess carrier's agreement to waive and/or forego any viable "horizontal exhaustion" rights such excess carriers might have in regard to any insurance carrier by Grantor or the Grantor's Insureds might carry for their own benefit or on behalf of each other;

(vi) Pollution Legal Liability insurance in amounts no less than \$5,000,000, providing coverage for all pollution conditions, which includes, but is not limited to, the remediation of soil, groundwater, or other contaminants; and

(vii) Personal Property insurance on all of its personal property and equipment written on a special causes of loss (all risk) basis in an amount which City or Contractor deems appropriate. Grantor shall have no interest in the insurance upon City or Contractor's property. Grantor will not carry insurance on the City or Contractor's property.

City shall name Grantor, or cause Grantor to be named, as an additional insured under the policies required in Section 3(i), 3(ii), 3(v) and 3(iv) above. All policies shall provide for (a) at least thirty (30) days written notice to Grantor prior to cancellation, and (b) at least ten (10) days written notice to Grantor for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full waivers of subrogation in favor of Grantor. City or its contractors' insurance coverage shall be the primary insurance with respect to any other insurance or self-insurance programs maintained by Grantor and such other insurance or self-insurance programs shall be excess and non-contributory. Prior to the commencement of the Work, City shall deliver to Grantor a certificate of insurance evidencing the coverage provided by each policy and provide replacement certificates fifteen (15) days prior to the expiration of any required coverage. City shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

4. Assumption of Risk and Releases. Each person entering upon Grantor's Property under this Agreement shall do so at its own risk. On behalf of itself and its agents, representatives, assigns, heirs, spouses, successors-in-interest, executors, administrators, employees, contractors, subcontractors, material suppliers and vendors ("**Releasors**"), City assumes all risk of entering Grantor's Property and agrees that Grantor is irrevocably and unconditionally released and shall not be liable in any manner for injury to or death of Releasors or their respective officers, employees or agents or for damage to property of Releasors arising from any cause. This release applies to all potential future claims and City on behalf of itself and the Releasors agrees to waive any and all rights pursuant to Section 1542 of the California Civil Code, which reads as follows:

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

City shall include within each of its subcontracts, and within any other agreements with vendors or suppliers who will be entering upon Grantor's Property, an assumption of risk and a release in favor of Grantor substantially identical to this Section 4.

5. Indemnification. City agrees, on behalf of itself and its Releasors, that Grantor shall not be liable for any bodily injury, sickness, disease or death of any person or damages to any property or any person pursuant to this Agreement and that City shall be responsible for any liability, cost, expenses or claim associated with injuries to or death of any person or damage to property related directly or indirectly to any act or failure to act, whether by Grantor or any Releasor, arising from the activities under this Agreement, including, without limitation, the performance of the Work. City agrees on behalf of itself and its Releasors to indemnify, defend and hold harmless Grantor, from any and all actions, claims and liability for any loss or damage, including, but not limited to, bodily injury, sickness, disease or death of any person or damage to any property, tangible or intangible, resulting from the execution of this Agreement or the entry upon Grantor's Property by Grantor or any Releasor, and from all costs and expenses, including reasonable attorneys' fees, arising therefrom, except for any claim arising from the sole gross negligence or willful misconduct of Grantor. This indemnification shall survive termination of this Agreement.

6. No Merger; Recordation; Amendment. The rights granted hereunder shall not be terminated or extinguished by nonuse, abandonment, merger, or any other manner. This Agreement may be modified only by the written consent of the parties, evidenced by a document that has been fully executed. Notwithstanding any of the foregoing, City has the right to unilaterally terminate its right to enter upon Grantor's Property pursuant to this Agreement via a document that has been approved and executed by City (regardless of any Grantor or other approval, consent, or signature), but no such termination shall affect the rights of Grantor, or the obligations or liability of the City, hereunder.

7. Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions or conditions hereof.

8. Counterparts. The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts.

9. Legal and Equitable Relief. Each party shall have the right (but not the obligation) to prosecute any proceedings at law or in equity against any other party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Agreement in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Agreement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Agreement by any party and, therefore, injunctive or other appropriate equitable relief shall be available to the other party. The remedies available under this Section 9 shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any party, either public or private, shall be applicable against every such result and may be exercised by any party.

10. Venue; Attorneys' Fees. In the event that any action is brought by either party hereto as against the other party for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, venue shall be in the Superior Court of the County of Alameda, State of California, and the prevailing party shall be entitled to recover, and the other party agrees to pay (in addition to any other relief that may be granted) all fees and costs to be fixed by the court therein including, but not limited to, reasonable attorneys' fees.

11. Notices. Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight courier, addressed to the party for whom intended, set forth in this Section 11. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

If to City: City of Emeryville
 1333 Park Avenue
 Emeryville, CA 94608
 Attn: City Attorney
 Telephone: (510) 596-4300

If to Grantor:

5616 Bay Street Investors LLC
c/o Madison Marquette
Property Management Office
5616 Bay Street
Emeryville, CA 94608
Attn: Senior Property Manager, Bay Street

5616 Bay Street Investors LLC
c/o UBS Realty Investors LLC
455 Market Street, Suite 1000
San Francisco, CA 94105
Attn: Asset Manager, Bay Street
Telephone: (415) 538-4800

12. Relationship Between the Parties; Authority; Binding Effect. This Agreement does not create any partnership or agency between the parties, each of which is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, contractors and any subcontractors, including any negligent acts or omissions. Neither party is an agent of the other, and has no authority to act on behalf of or to bind the other party to any obligation whatsoever. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind. Each of the terms, covenants and conditions of this Agreement shall extend to and be binding on and shall inure to the benefit the parties and each of their respective successors and assigns and all those taking by, under or through it or them.

13. No Third Party Beneficiaries. Notwithstanding anything in this Agreement to the contrary, including rights of the general public to use the Access Areas, nothing herein is intended to create any third party benefit and there are no third party beneficiaries of this Agreement or the Access Rights.

14. Assignment. City shall have the right to assign its rights and obligations under this Agreement to the Successor Agency or the City of Emeryville Community Development Commission, provided that such assignee assumes City's rights and obligations hereunder.

15. Entire Agreement; Interpretation. The recitals above and exhibits attached hereto are incorporated herein by reference and comprise part of this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and no prior oral or written understanding shall be of any force or effect with respect to the matters covered herein. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. Any general rule of construction to the contrary, this Agreement

shall be construed to affect the Access Rights. This Agreement shall be interpreted as though jointly prepared by both parties.

16. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

[Signatures Appear On Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date noted below.

CITY:

CITY OF EMERYVILLE,
a California municipal corporation

By: Carolyn Lehr
[signature must be notarized]

Name: Carolyn Lehr

Its: City Manager

Date: 7-7-17
"Effective Date"

APPROVED AS TO FORM:

By: Michael A. Guina
Michael A. Guina, City Attorney

GRANTOR:

5616 BAY STREET INVESTORS LLC,
a Delaware limited liability company

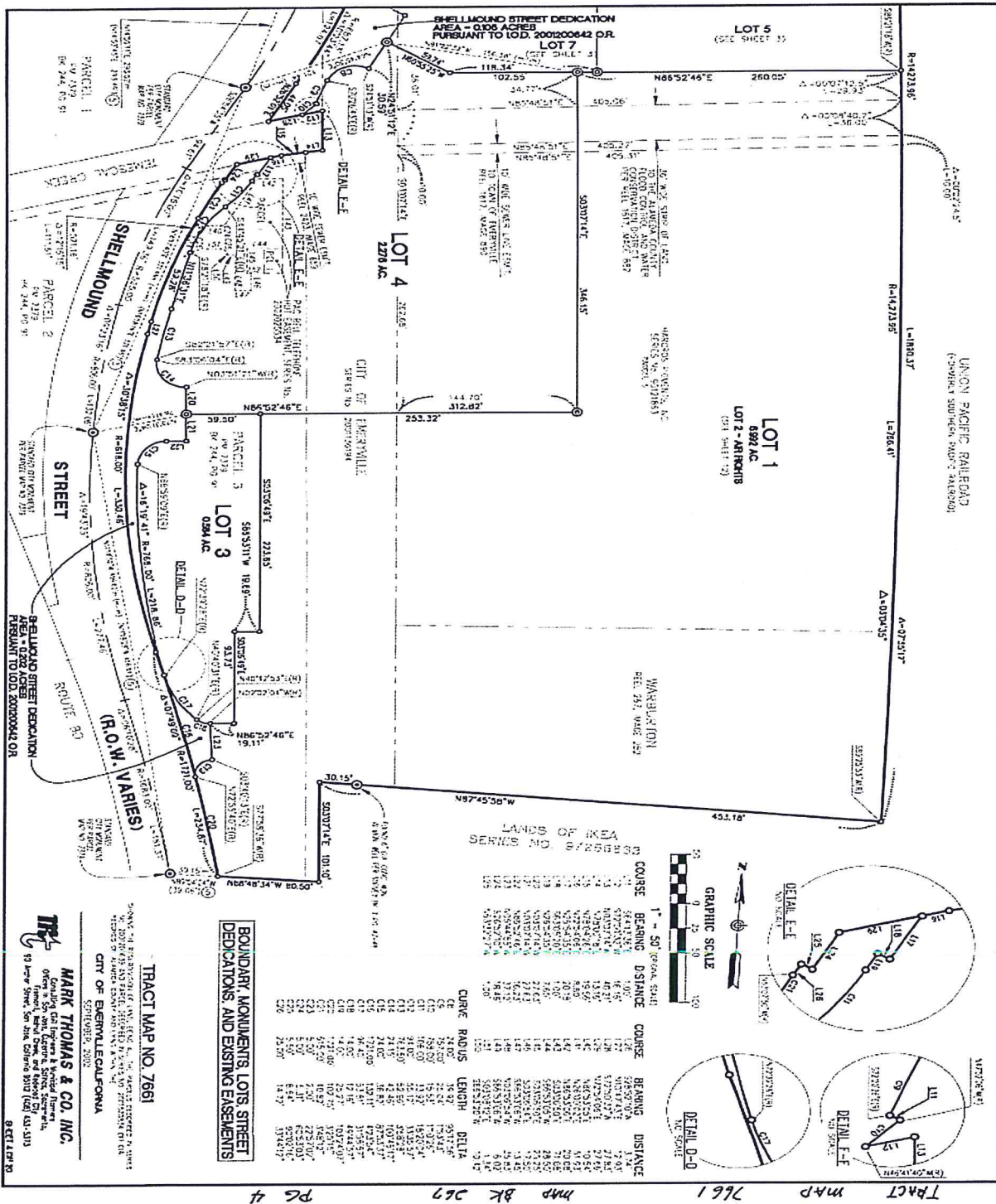
By: TPF Equity REIT Operating Partnership LP,
a Delaware limited partnership,
its sole member

By: TPF Equity REIT Operating
Partnership GP LLC,
a Delaware limited liability company,
its general partner

By: Carl Pierce
Carl Pierce
Executive Director

By: _____

GRANTOR'S PROPERTY



Depiction of Lot 5 of Tract Map No. 7661

GRANTOR'S PROPERTY

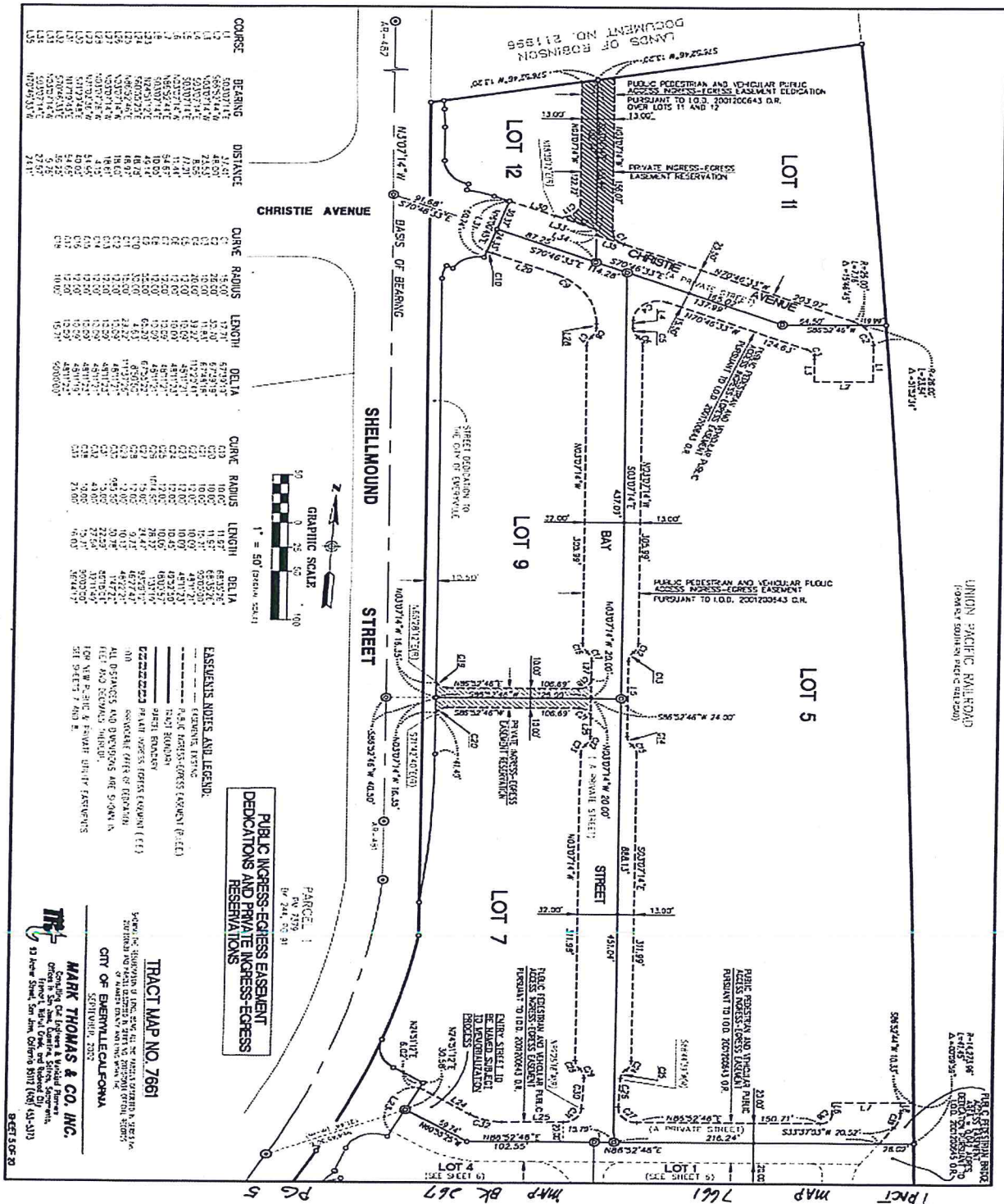


EXHIBIT C

**LEGAL DESCRIPTION AND DEPICTION OF
ACCESS AREA 1**

**LEGAL DESCRIPTION
SOUTH BAYFRONT BRIDGE EASEMENT "A"**

REAL PROPERTY SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND BRASS DISK MONUMENT MARKING THE SOUTHWEST CORNER OF LOT 5, AS SHOWN ON THAT CERTAIN TRACT MAP 7661, RECORDED SEPTEMBER 25, 2002 IN BOOK 267 OF MAPS AT PAGE 1 THROUGH 20, ALAMEDA COUNTY RECORDS;

THENCE LEAVING SAID POINT OF COMMENCEMENT, ALONG THE SOUTHERLY LINE OF SAID LOT 5, NORTH 86°52'46" EAST, 29.91 FEET;

THENCE LEAVING SAID LINE SOUTH 03°07'14" EAST, 20.00 FEET, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE NORTH 86°52'46" EAST, 147.35 FEET,

THENCE SOUTH 03°07'14" EAST, 25.04 FEET;

THENCE SOUTH 86°52'46" WEST, 24.60 FEET;

THENCE NORTH 03°07'14" WEST, 4.25 FEET;

THENCE SOUTH 86°52'46" WEST, 122.75 FEET;

THENCE NORTH 03°07'14" WEST, 20.79 FEET TO THE TRUE POINT OF BEGINNING;

DESCRIBED LANDS CONTAINING AN AREA OF 3,168 SQUARE FEET,
OR 0.07 ACRES, MORE OR LESS.

REFERENCE IS HEREBY MADE OF A PLAT TO ACCOMPANY LEGAL
DESCRIPTION AND THEREBY MADE A PART HEREOF.

Sep 23, 2016 -- 2:16pm
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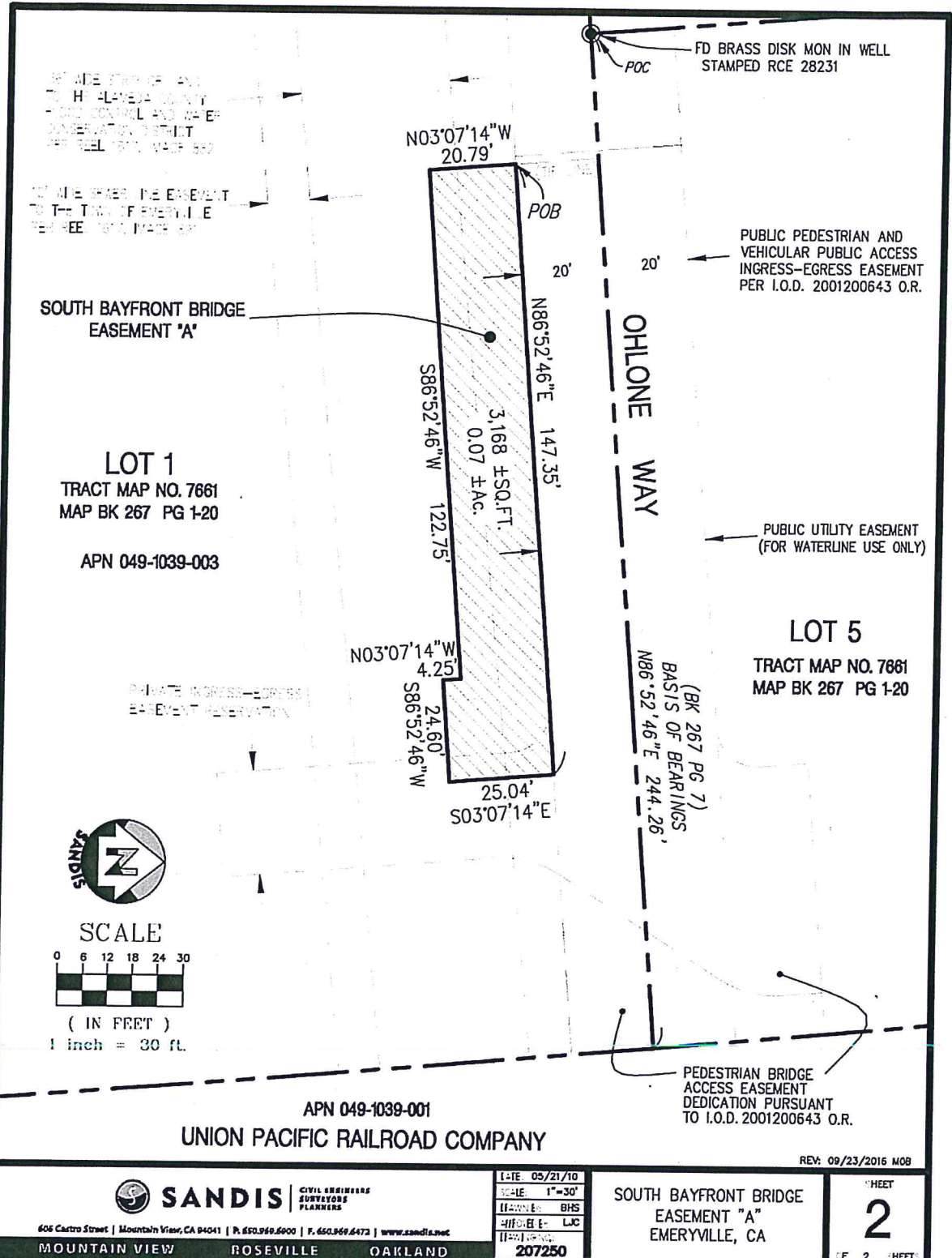


EXHIBIT D

LEGAL DESCRIPTION AND DEPICTION OF

ACCESS AREA 2

**LEGAL DESCRIPTION
SOUTH BAYFRONT BRIDGE EASEMENT "B"**

REAL PROPERTY SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING MORE PARTICULAR DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND BRASS DISK MONUMENT MARKING THE SOUTHWEST CORNER OF LOT 5, AS SHOWN ON THAT CERTAIN TRACT MAP 7661, RECORDED SEPTEMBER 25, 2002 IN BOOK 267 OF MAPS AT PAGE 1 THROUGH 20, ALAMEDA COUNTY RECORDS;

THENCE LEAVING SAID POINT OF COMMENCEMENT, ALONG THE SOUTHERLY LINE OF SAID LOT 5, NORTH 86°52'46" EAST, 193.75 FEET;

THENCE LEAVING SAID LINE SOUTH 03°07'14" EAST, 20.00 FEET, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 03°07'14" EAST, 29.50 FEET;

THENCE NORTH 86°52'46" EAST, 20.38 FEET,

THENCE SOUTH 03°07'14" EAST, 268.12 FEET;

THENCE NORTH 86°52'46" EAST, 29.48 FEET TO THE WESTERLY LINE OF LAND OF UNION PACIFIC RAILROAD;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF LAND OF UNION PACIFIC RAILROAD, ALONG A NON-TANGENT CURVE TO THE LEFT, SAID CURVE BEING CONCAVE TO THE WEST, HAVING A RADIUS OF 14273.96 FEET, THE CENTER OF WHICH BEARS NORTH 87°37'49" EAST, THROUGH A CENTRAL ANGLE OF 1°18'37", ALONG AN ARC HAVING A LENGTH OF 326.42 FEET;

THENCE LEAVING SAID WESTERLY LINE SOUTH 86°52'46" WEST, 47.93 FEET;

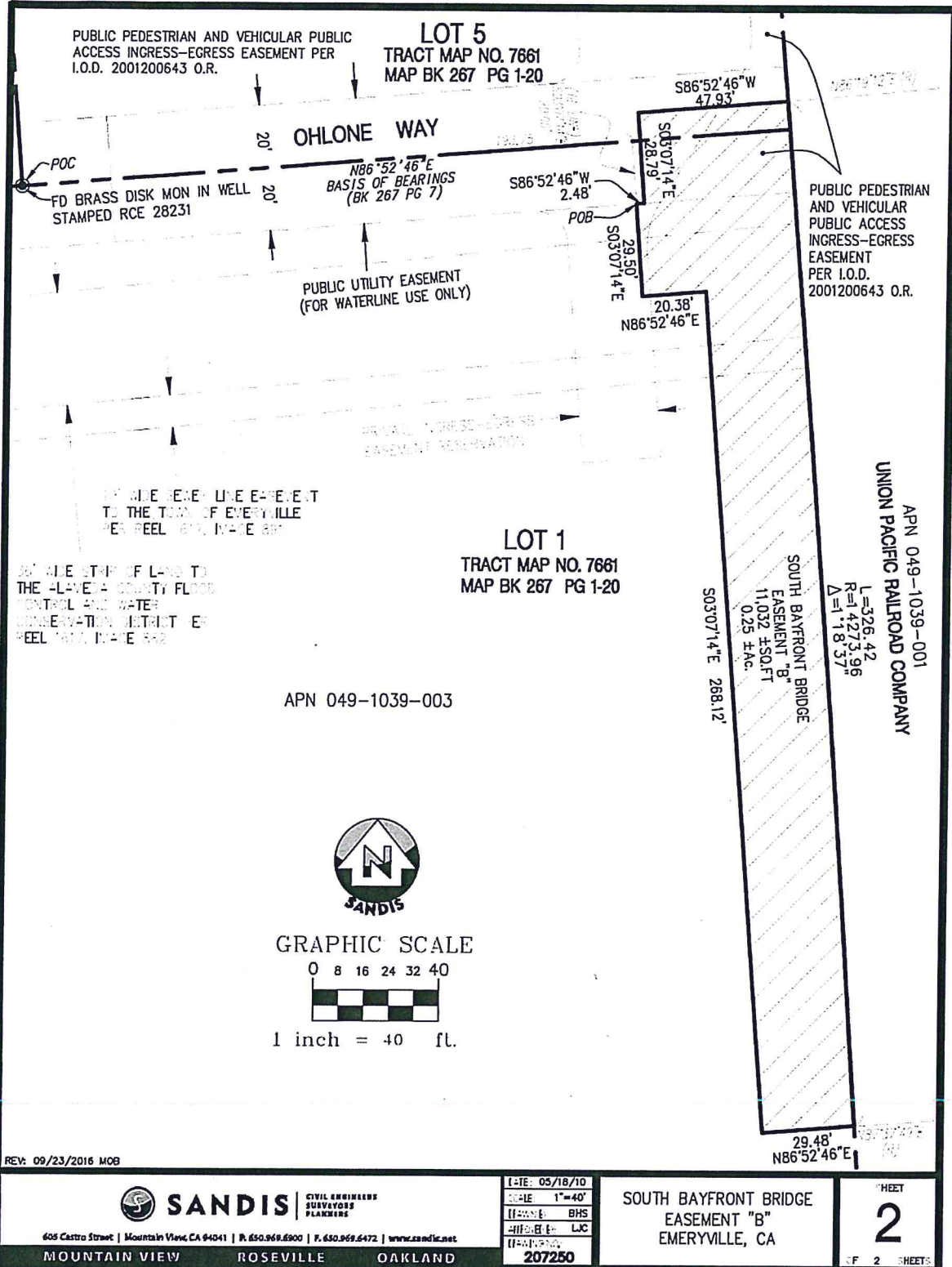
THENCE SOUTH 03°07'14" EAST, 28.79 FEET;

THENCE SOUTH 86°52'46" WEST, 2.48' FEET TO THE TRUE POINT OF BEGINNING;

DESCRIBED LANDS CONTAINING AN AREA OF 11,032 SQUARE FEET, OR 0.25 ACRES, MORE OR LESS.

REFERENCE IS HEREBY MADE OF A PLAT TO ACCOMPANY LEGAL DESCRIPTION AND THEREBY MADE A PART HEREOF.

Sep 23, 2016 2:17pm
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FOUNDATION LOCATIONS FOR WEST RAMP

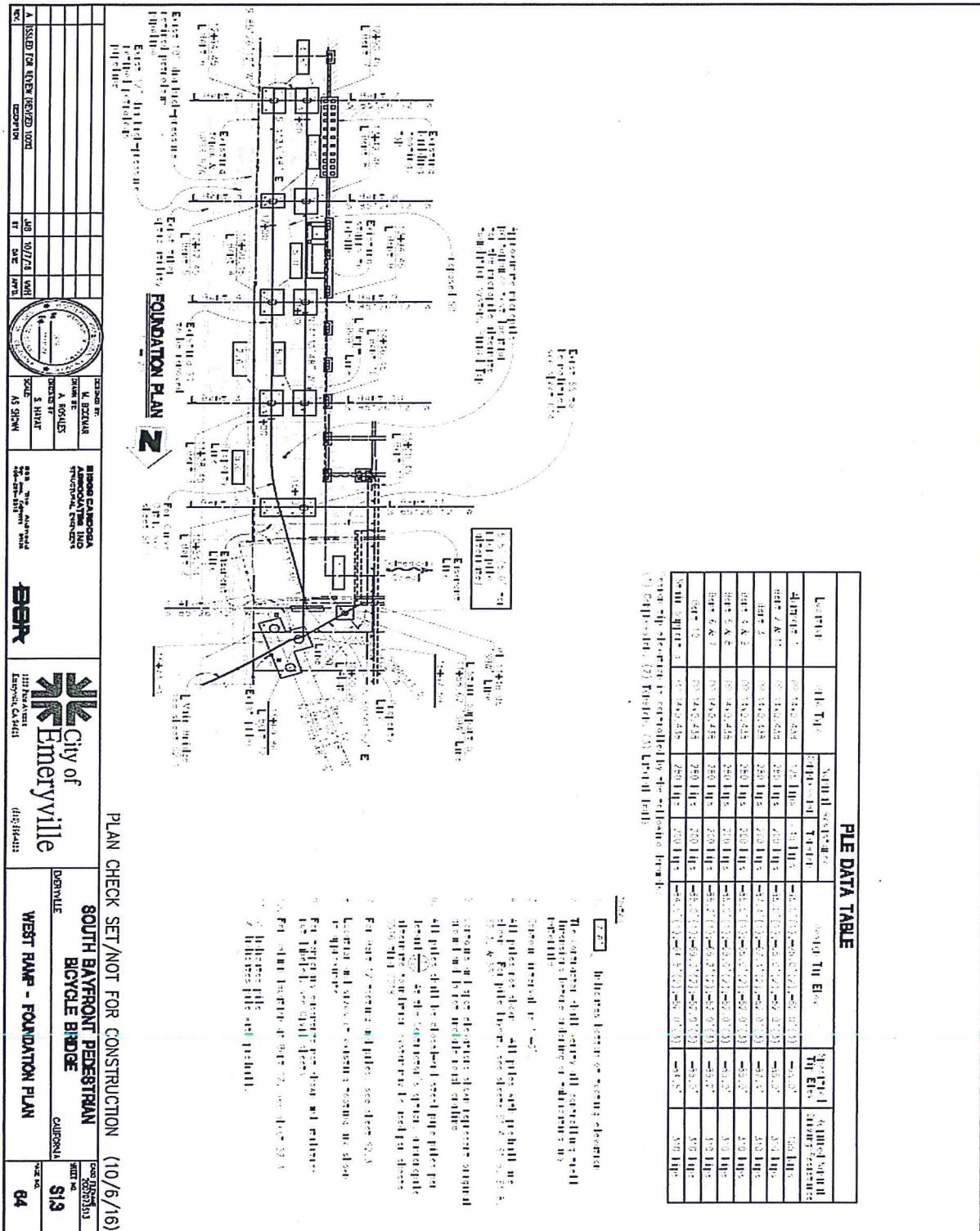


EXHIBIT F

FOUNDATION LOCATIONS FOR MAIN BRIDGE

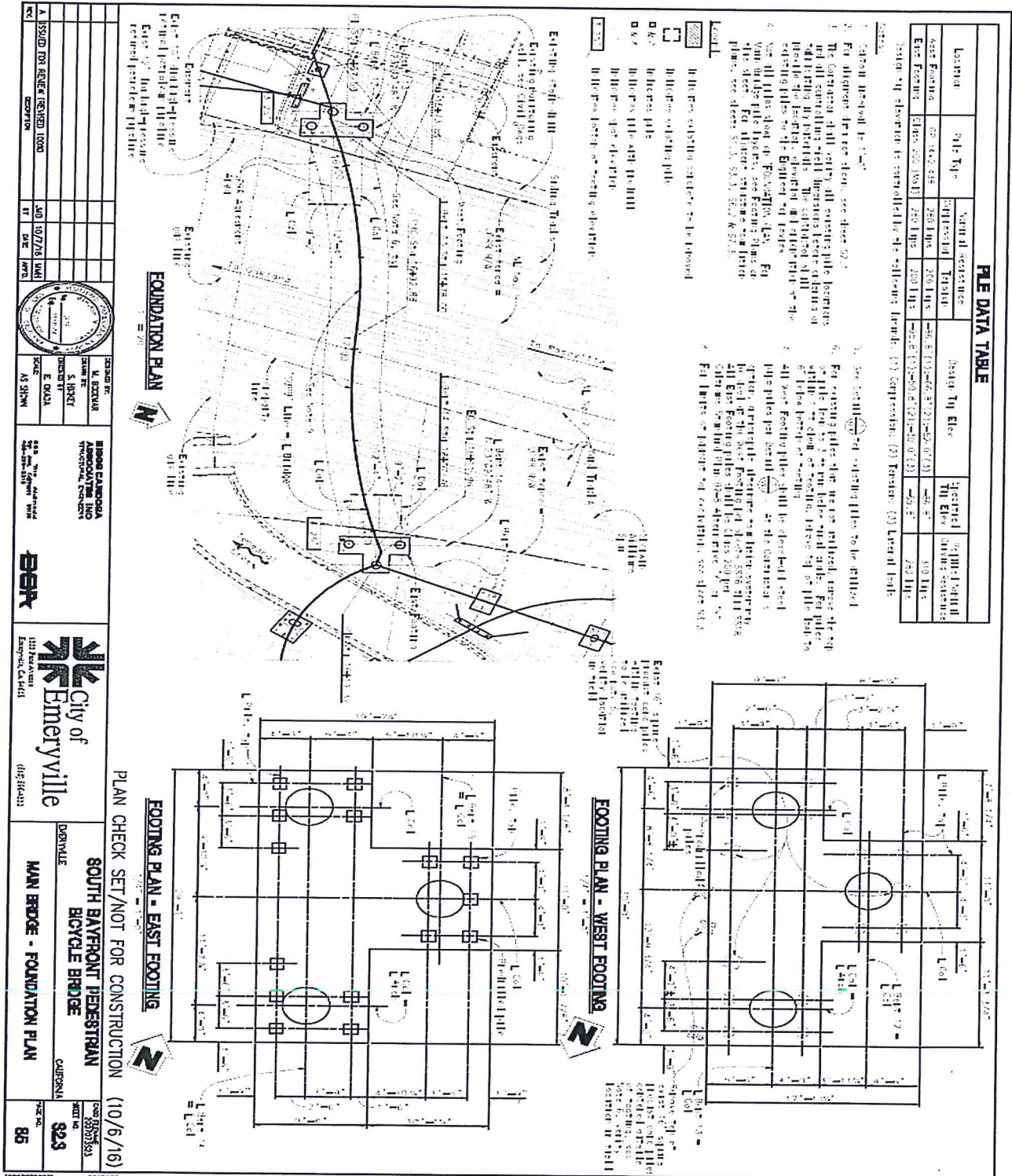


EXHIBIT G

FOUNDATION LOCATIONS FOR WEST STAIRS

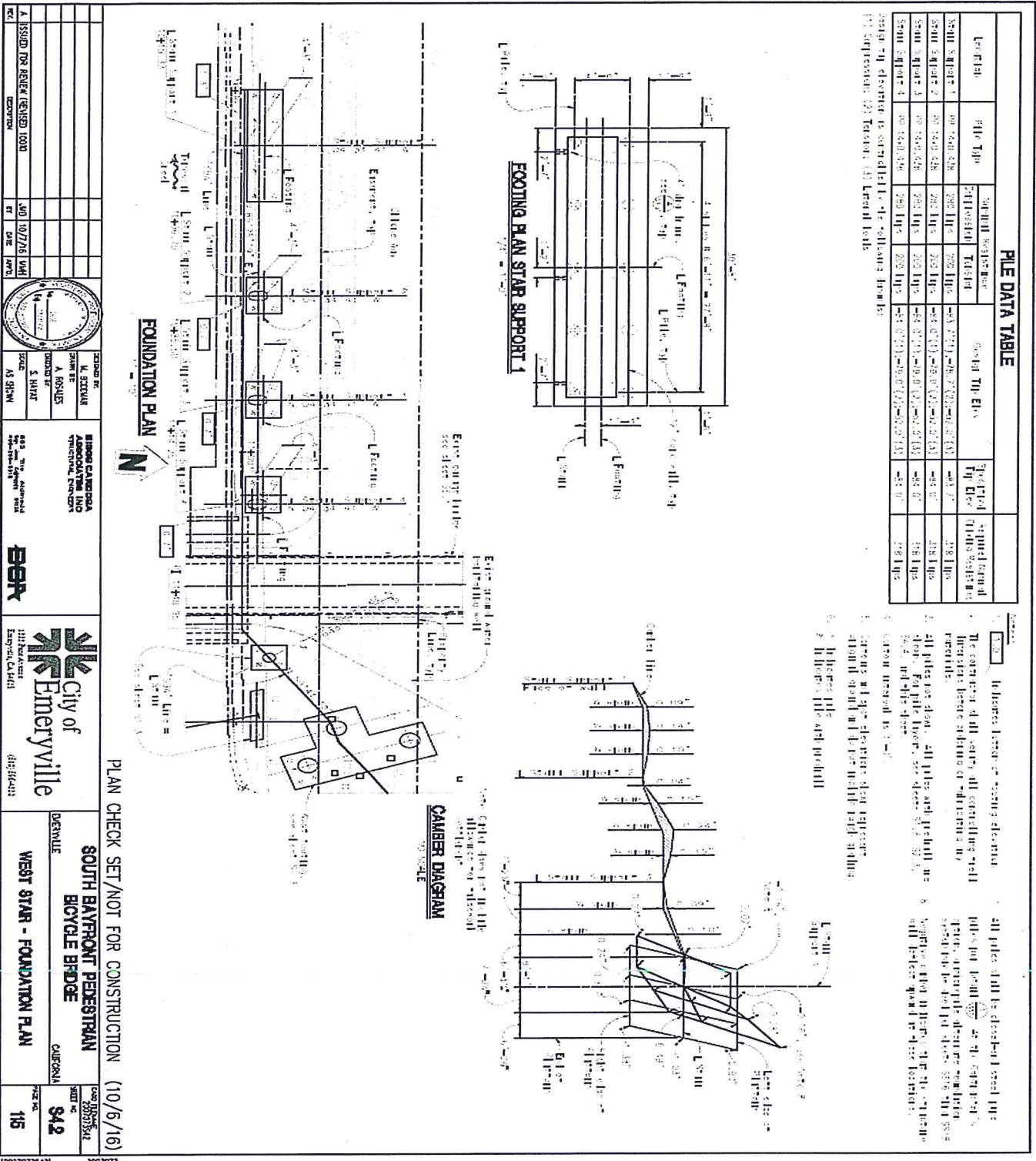


EXHIBIT H

AECOM PROPOSAL DATED JANUARY 12, 2017



January 12, 2017

1/12/2017

Cultural Resources Proposal, Horton Street Landing

Mr. Maurice Kaufman
Public Works Director/City Engineer
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

**Re: Preliminary Archaeological Testing
West Approach Horton Street Landing Project, Emeryville**

Dear Mr. Kaufman:

AECOM (formerly URS Corporation [URS]) has developed the following scope of work and cost estimate to assist the City of Emeryville (City) with preconstruction archaeological clearance for the Horton Street Landing Project. These efforts represent a continuation of the work begun by URS in 2010, which was put on hold in early 2012 due to loss of Redevelopment Agency funding. The archaeological efforts outlined in this scope of work, as well as the balance of the work which was put on hold in the original contract between the City and URS, are required to ensure that the City remains in compliance with Conservation Policy 30 (CSN-P-30) of the City's General Plan.. This proposal responds to your request for a proposal to identify potential archaeological resources on the west abutment and approach of the project, which was not analyzed as part of the original 2010 investigation

The City's current objectives are to establish a better understanding of the subsurface conditions along the west approach for the project, and verify that appropriate mitigation of possible significant archaeological resources can be implemented prior to project construction. This proposal is limited to an initial coring program in order to provide data on subsurface conditions which will inform the approach for pre-construction archaeological clearance and/or archaeological monitoring during construction of the project.

AECOM proposes to conduct an archaeological examination of the soils in the west approach footing locations through investigatory soil bores. If midden soils, or other potentially significant archaeological resources are encountered within the proposed footing locations, additional activities will likely be necessary, including mechanical pre-excavation of the footings in order to ensure that significant archaeological resources or human remains will not be encountered during construction; and possibly limited test excavations or data recovery excavations. Such activities are not covered under the current scope and budget. These efforts would require a separate request that could be combined with the reauthorization of monitoring and report writing funds previously approved for the Horton Landing east approach area ("Area F"), under the original agreement between the City and URS.

Summary descriptions of all tasks are provided below, and a cost estimate for the proposed work is provided in Attachment A.

AECOM
300 Lakeside Drive, Suite 400
Oakland, CA 94612
Tel: 510.893.3600
Fax: 510.874.3268

Task 1: Project Set Up, Site Specific Health and Safety Plan, and Project Management

Prior to initiating field work, AECOM will prepare a site specific Health and Safety Plan which will address concerns regarding contamination of fill material at the site and appropriate work protocol and PPE, given the specific site contaminations identified in the EKI (2010) Environmental Risk Management Plan. It is assumed that no air monitoring will be required, but that all personnel working on site and in direct contact with excavated soils will need to be 40-hour HAZWOPER certified. This task also includes initial project set up, project management, initial field visits to mark the site for Universal Services Alert (USA), a private utility locator, and other preparations prior to field work.

Task 2: Geoprobe Soil Bores

A series of direct push continuous sample Geoprobe soil cores will be excavated and analyzed to characterize subsurface conditions within the proposed footing locations for the west approach and the potential for significant archaeological deposits. Although the footings are planned to be relatively shallow (~5 to 7 feet below surface) the depth of project impacts will be much greater, associated with piles drilled and placed below each footing. In order to determine whether archaeological resources are present within these depths of potential project activities, and document the depositional setting of any archaeological resources that are present, Geoprobe bores will be advanced to a maximum 30 ft below surface. A maximum of 5 bores will be placed south of Temescal Creek, and a maximum of 4 will be placed north of the creek, in proximity to proposed footings.

The soil cores will be transported to and examined at the vacant City-owned lot on the eastern side of the Horton Landing ("Area F"). Each core will be opened and described using standard soils and geomorphological techniques. Natural and or cultural stratigraphy will be identified whenever possible by carefully examining each core. Stratigraphic units (strata) and soil horizons will be identified based on physical characteristics such as composition, color, superposition, textural transitions, and pedogenic properties (i.e., relative soil development). Master soil horizons will be defined using standard United States Department of Agriculture soil taxonomy (Soil Survey Staff 2006). Upon completion of examination and documentation, the cores will be placed in drums and left on-site to be disposed of appropriately by the City's construction/remediation contractor during project construction. AECOM is not responsible for environmental sampling or characterization of the sediments.

Upon completion of the coring program, a brief technical document will be prepared, including stratigraphic profiles, and recommendations for any additional mitigation if necessary, including mechanical pre-excavation of footing locations, construction monitoring, and/or archaeological data recovery excavations. One round of consolidated review by the City, not requiring new data acquisition, is assumed.

Assumptions:

- The City will have a surveyor mark the corners of each proposed footing on the west side of the railroad right-of-way, prior to AECOM marking the site for USA and locating utilities
- No air monitoring or dust suppression required
- No testing or disposal of Geoprobe bore cuttings
- Alameda County Drilling Permit fee not to exceed \$265
- No Native American consultation required at this time by AECOM
- No federal nexus for the project which would require compliance with Section 106 of the National Historic Preservation Act
- Any additional archaeological data recovery, monitoring, treatment plans, recovery plans, or other mitigations would require a separate scope and budget.
- City to secure all right of entry.
- One initial site visit to plot boring locations and mark for Underground Services Alert (USA).
- Three (10 hour) days of coring, with a maximum of nine locations.
- One round of consolidated review for all deliverables, with no new data acquisition.

Estimated Charges and Schedule

URS requests that the City of Emeryville issue a new work order in the not-to-exceed amount of \$26,750 to implement the tasks described herein and detailed in Attachment A. Schedule for these tasks is predicated on issuance of Notice to Proceed (NTP) and pre-marking of the footing areas by the City. Start of the drilling program is anticipated to begin no later than 15 days from issuance of NTP, but is reliant on the drilling subcontractors schedule at the time.

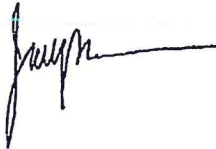
Limitations

AECOM will perform the services described here in a manner consistent with that level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions. This proposal is conditioned upon the negotiation of mutually acceptable contract terms.

If you have any questions about this proposal, please contact Jay Rehor at (510) 874-1726. We appreciate the opportunity to continue to work with you on this important project.

Sincerely,

AECOM



Jay Rehor
Senior Geoarchaeologist
Project Manager



Steve Leach
Vice-President, Environmental Services

Attachment A: Cost Estimate

EXHIBIT I

ERLER & KALINOWSKI PROPOSAL DATED JANUARY 19, 2017



**Erler &
Kalinowski,
Inc.**

Consulting Engineers and Scientists

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

19 January 2017

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

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

Dear Mr. Guina:

Erler & Kalinowski, Inc. ("EKI") is pleased to submit this proposal to City of Emeryville ("City") for environmental engineering tasks related to the implementation of cultural resource investigation activities for the South Bayfront Bicycle/Pedestrian Overcrossing Project ("Project") at the Bay Street development in Emeryville, California ("Bay Street") to be undertaken by City's consultant, AECOM. It is EKI's understanding that the Project will involve soil coring by AECOM at 9 locations (5 south of Temescal Creek and 4 north of Temescal Creek) in connection with investigation for the presence of cultural resources in planned locations of the Project foundations. The Project will further involve mechanical and manual soil excavation by AECOM within 10 separate foundation footing locations for the West Ramp and Main Bridge; EKI will be tasked with testing of the 9 soil cores and soils excavated from the 10 foundation locations and possible disposal activities. The soil excavation, testing and disposal work will need to be conducted in accordance with the Environmental Risk Management Plan dated July 2000 and prepared by EKI (the "ERMP") for the Bay Street site. Oversight of soil excavation, testing and disposal activities is being provided by the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC").

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



PROPOSED SCOPE OF WORK

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

Task 1 – General Consulting

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

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

Task 2 – Provide Field Observation Services

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

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

- Ten (10) hours in the field for EKI personnel to observe cultural resource core drilling activities;
- Ten (10) hours in the field for EKI personnel to observe cultural resource excavation activities; and
- One (1) day in the field for EKI personnel to observe contaminated soil excavation activities, if necessary.

Task 3 – Soil Sampling for Disposal Characterization

EKI shall coordinate with AECOM during its soil coring activities in order to obtain samples for purposes of characterizing soil that will be excavated for bridge footings, support piles, and utility corridors for off-site disposal. Samples for disposal characterization testing purposes will likely be collected from each core at depths of approximately 1, 3 and 6 feet below ground



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

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

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

The Project will further involve soil excavation, testing and possibly disposal activities associated with the soils within 10 excavation areas corresponding to the foundation footing, support pile, and utility corridor locations for the West Ramp and Main Bridge. It is anticipated that the excavation areas will be backfilled with native soils, even if evidence of contamination is present because these same excavation areas will be re-excavated once the Project is actually constructed and all excavated soils will be disposed of at that time. However, EKI will collect representative soil samples from each stockpile of excavated soil and obtain chemical analyses to provide information for determining off-site disposal options. The exact suite of analyses will be conducted pursuant to Section 4.7.2 of the ERMP and the off-site disposal methods listed above.

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



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

- Soil samples collected for the purposes of characterizing soil that will be excavated for bridge footings, support piles, and utility corridors for off-site disposal will be composited by the laboratory into four (4) composite samples prior to analysis. These composite samples will be analyzed on a standard, 10-day turnaround basis.
- Based upon the City's review of plans for the Project, City staff have estimated that approximately 900 cubic yards of soil will be excavated for the construction of the bridge footings.
- Soil samples collected of potentially contaminated soil for the purposes of characterizing the soil for off-site disposal will be composited by the laboratory into two (2) composite samples prior to analysis. These composite samples will be analyzed on a standard, 10-day turnaround basis.
- Excavations for cultural resources investigations will be backfilled with native soil.

Task 4 – Summary of Disposal Characterization Sampling for Footings

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

PROJECT SCHEDULE

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

PROPOSED BUDGET

Inasmuch as the exact level of effort to complete the proposed Scope of Work in this Work Authorization cannot be identified at this time, we propose that compensation for consulting services by Erler & Kalinowski, Inc. be on a time and expense reimbursement basis in accordance with the attached EKI Schedule of Charges, dated 2 January 2017. On the basis of the Scope of Work described above, the proposed budget for the performance of Tasks 1 through 4 is \$25,000, which includes approximately \$10,000 in laboratory analytical costs. As the project progresses, additional budget may be necessary. The proposed budget for EKI's services may be allocated amongst the tasks described herein as needed to fulfill the obligations under this Agreement.

EKI will inform the Client in writing if work beyond the scope identified in this Work Authorization will be required to achieve the objectives described herein or to comply with requirements of the DTSC. EKI will perform such additional services upon written authorization from the Client.

Michael Guina, Esq.
South Bayfront Bicycle/Pedestrian Bridge Project
Bay Street Environmental Engineering Assistance
19 January 2017
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We assume that the Client will provide a written Agreement providing specific work authorization for this project. We assume that the terms of this Agreement will be consistent with the previous agreements between EKI and the City, with modifications appropriate to this specific scope of work.

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

Very truly yours,

ERLER & KALINOWSKI, INC.

A handwritten signature in black ink, appearing to read 'Earl James', with a stylized flourish at the end.

Earl James, P.G.
Vice President

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

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



Proposal/Agreement Date: 19 January 2017

EKI Project # B70013.00
(Modified)

SCHEDULE OF CHARGES FOR ERLER & KALINOWSKI, INC.

2 JANUARY 2017

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

Direct Expenses

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

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

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

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

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

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