

RESOLUTION NO. 21-52**Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute Amendment No. 3 To The Professional Services Agreement With EKI Environment and Water, Inc. increasing the Not-To-Exceed Contract Amount And Extending Time For Environmental Services Related To The South Bayfront Pedestrian Bicycle Bridge Project, EPW17-112 (CIP #16475006)**

WHEREAS, in July 2017, the City Council of the City of Emeryville adopted Resolution 17-121 authorizing the City Manager to enter into a Professional Services Agreement (PSA) with EKI Environment and Water in an amount not to exceed \$200,000 for updating a Soil Cleanup Plan and overseeing the remediation of soil contamination on the east side of the railroad tracks portion of the South Bayfront Bridge project site; and

WHEREA, Council authorized a first amendment to the contract on May 21, 2019 to extend the contract termination date to December 31, 2020 and a second amendment on February 18, 2020 amending the scope of services by \$175,500 and extending the termination date to December 31, 2021, and

WHEREAS, Continued environmental consulting services are required from EKI to support the construction effort and costs are projected to exceed the current contract amount, and

WHEREAS, EKI has provided the City with a supplemental scope of services and cost proposal (Exhibit A-3) in the amount of \$40,000 to complete the effort required to comply with the regulatory requirements for the environmental remediation, and

WHEREAS, Staff has reviewed this proposal and found it to be reasonable; and

WHEREAS, Staff also recommends extending the termination date of the contract to sixty (60) days past the acceptance date of the project construction contract.

WHEREAS, The EKI contract is budgeted from existing project funds as follows:

	Amount	Fund	Project No
Original	\$200,000	472	16475006
Amend 1	\$0(Time)		16475006
Amend 2	\$175,500	475	16475006
Amend 3	\$40,000	475	16475006

now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute Amendment No 3 to the Professional Services Agreement with EKI Environment and Water, attached as Exhibit A-3, increasing the contract not to exceed amount by \$40,000 for a total amount not to exceed \$415,500 for environmental services covering the site associated with the South Bayfront Pedestrian Bicycle Bridge, Project EPW17-112 CIP#16475006 and extending the termination date of the contract to sixty (60) days past the acceptance of the project construction contract.

Resolution No. 21-52

EKI Environment and Water – PSA Amendment 3 for South Bayfront Ped/Bike Bridge West Side Work

Emeryville City Council | June 1, 2021

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ADOPTED, by the City Council of the City of Emeryville at a regular meeting held June 1, 2021, by the following vote:

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

DocuSigned by:

Dianne Martinez

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MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

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CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:

Andra Visveshwara

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INTERIM CITY ATTORNEY



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

THIRD AMENDMENT

THIS THIRD AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT ("Amendment") is effective as of _____, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **EKI ENVIRONMENT AND WATER, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Professional Services Contract dated August 25, 2017 ("Contract") for the purpose of retaining the services of Contractor to provide certain Environmental Services related to cleanup and remediation of contaminated soils and other materials with the site of the South Bayfront Pedestrian Bicycle Bridge Project (CIP No. 16475006 and No. 17237003); and

WHEREAS, the City Council adopted Resolution 19-53 authorizing the City Manager to execute Amendment 1 to extend the term of the Agreement; and

WHEREAS, the City Council adopted Resolution 20-12 authorizing the City Manager to execute Amendment 2 to extend the term of the agreement, revise the budget and work scope to update Cleanup Plans, and provide Bid and Construction support services related to said South Bayfront Pedestrian Bicycle Bridge Project; and

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

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

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

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 Exhibit A

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

OR

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

City of Emeryville | Professional Services Contract Amendment
REV 01/2020

- ☒ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-3**, attached hereto and incorporated herein by this reference.

1.2 Termination Date

- ☒ The Parties desire to extend the termination date. Section I.C of the Contract is hereby amended to extend the termination date to **the sixtieth (60th) calendar day following the date that the South Bayfront Pedestrian Bicycle Bridge is accepted as complete by the City Council**.

1.3 Total Compensation Amount

- ☒ The Parties desire to increase the Total Compensation Amount as set forth in Section III.B of the Contract by **FORTY THOUSAND DOLLARS AND NO CENTS (\$40,000)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **FOUR HUNDRED FIFTEEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$415,500)**.

2. CONTINUING EFFECT OF CONTRACT

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

3. ADEQUATE CONSIDERATION

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

4. SEVERABILITY

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

5. WAIVER

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

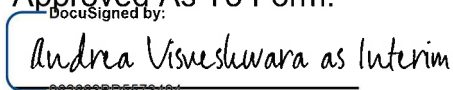
SIGNATURES ON FOLLOWING PAGE

City of Emeryville | Professional Services Contract Amendment
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**6. SIGNATURE PAGE TO PROFESSESIONAL SERVICES CONTRACT
THIRD AMENDMENT**

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

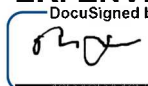
Approved As To Form:

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City Attorney

Dated: **CITY OF EMERYVILLE**

Christine S. Daniel, City Manager

Dated: **EKI ENVIRONMENT AND WATER, INC.**

DocuSigned by:

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5/12/2021
Earl James, Vice President (Signature)