



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

THIRD AMENDMENT

THIS THIRD AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT

("Amendment") is effective as of _____ (the "Effective Date"),, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **MNS ENGINEERS, 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 October 17, 2017 ("Contract") for the purpose of retaining the services of Contractor to provide Construction Management and Inspection Services related to the construction of the South Bayfront Pedestrian Bicycle Bridge Project; and

WHEREAS, City executed said Professional Service Contract with S&C Engineers, Inc. and effective April 1, 2018 S&C Engineers was acquired by MNS Engineers, Inc.; and

WHEREAS, City executed First Amendment to said Professional Services Contract with MNS Engineers, Inc. effective May 19, 2021; and

WHEREAS, City executed Second Amendment to said Professional Services Contract with MNS Engineers, Inc. effective June 24, 2022; 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 06/2020

- ☒ 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 1.3 of the Contract is hereby amended to extend the termination date to **AUGUST 1, 2023**.

1.3 Total Compensation Amount

- ☒ The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **ONE HUNDRED AND THIRTY THOUSAND DOLLARS AND NO CENTS (\$130,000.00)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **TWO MILLION EIGHT HUNDRED THIRTY NINE THOUSAND TWO HUNDRED THIRTY SIX DOLLARS AND NO CENTS (\$2,839,236.00)**.

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

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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:

DocuSigned by:

John Kennedy

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City Attorney

Dated:

CITY OF EMERYVILLE

City Manager

Dated:

12/10/2022

MNS ENGINEERS INC.

DocuSigned by:

Miranda Patton

(Signature)

7B2318990633477...
Miranda Patton, Vice President/Secretary

<i>Attach: W-9 Form</i>	<i>Attach: Business License Certificate</i>	<i>Attach: Insurance Certificate and Endorsements</i>

EXHIBIT A-3

Additional Scope of Work

Post-Construction Claims, Disputes, Mediation, and Litigation Support

The Consultant shall provide support and assistance to the City on an as needed and on-going basis with respect to any post-construction claims, disputes, mediation, or litigation involving the Construction Contractor or any other third party which shall include, but is not limited to, the following:

1. Review and prepare responses to the Construction Contractor's exceptions to the Proposed Final Estimate (PFE);
2. Support the City in preparation for and attend any meet and confer conferences if requested by the City;
3. Prepare and submit a Final Estimate to City for processing;
4. Support the City in preparation for any mediation or litigation if requested by the City as needed including attending mediation;
5. Review, and prepare analysis and reports on Construction Contractor's claims as requested by the City;
6. Attend meetings as requested by the City;
7. Respond to emails, phone calls, and other correspondence related to any post-construction claims, disputes, mediation, or litigation on an as needed basis.
8. Provide claims resolution support as requested by the City