

RESOLUTION NO. 23-65

Resolution Of The City Council Of The City of Emeryville Accepting The Point Emery Shoreline Protection Project, Project No. EPW-18101 (CIP No. 16475021), As Complete And Authorizing The City Engineer To File A Notice Of Completion With The Alameda County Clerk And Authorizing The City Manager To Enter Into A Second Amendment To The Contract With Brannon Corporation, Inc. To Increase The Total Compensation Amount By \$3,535 For A Total Not To Exceed Amount Of \$877,574 For The Point Emery Shoreline Protection Project, Project No. EPW-18101 (CIP No. 16475021)

WHEREAS, on April 5, 2022, the City Council authorized the City Manager to enter into a contract with Brannon Corporation to construct the project for an amount not to exceed of \$820,800 for the construction of improvements related to the Point Emery Shoreline Protection Project, Project No. EPW-18101 (CIP No. 16475021); and

WHEREAS, on December 20, 2022, the City Council authorized the City Manager to enter into a First Amendment with Brannon Corporation to increase the contract amount by \$53,239 for a total contract amount not to exceed \$874,039; and

WHEREAS, as required by the BCDC permit authorizing the project work, a post construction eelgrass condition survey was performed on May 8, 2023, which revealed that no damage to eelgrass occurred during the construction work at Point Emery; and

WHEREAS, the work of protecting Point Emery with rip-rap is now complete and the project is ready for acceptance by the City Council; and

WHEREAS, once the project is accepted and the City Engineer authorized, the Public Works Department must file a Notice of Completion with the Alameda County Clerk; and

WHEREAS, in order to make full payment to Brannon Corporation for the extra work related the installation of new bollards, hydroseeding, and a concrete bike rack pad, a Second Contract Amendment to increase the contract amount by \$3,535, for a total contract amount not to exceed \$877,574, is necessary; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville to accept the Point Emery Shoreline Protection Project, Project No. EPW-18101 (CIP No. 16475021), as complete and authorizing the City Engineer to file a Notice Of Completion with the Alameda County Clerk; and, be it, further

RESOLVED, that the City Manager is authorized to enter into a Second Contract Amendment with Brannon Corporation, Inc. to increase the contract amount by \$3,535, for a total not to exceed amount of \$877,574, for the Point Emery Shoreline Protection Project, Project No. EPW-18101 (CIP No. 16475021).

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ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 6, 2023, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Welch and Council Members Kaur, Mourra and Priforce
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:
John Bauters
C7388B49E2C9456...
MAYOR

ATTEST:

DocuSigned by:
April Richardson
9AF9F67CE6264D8...
CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:
John Kennedy
2C934D02DB55467...
CITY ATTORNEY



City of Emeryville

C A L I F O R N I A

CONSTRUCTION CONTRACT

SECOND AMENDMENT

THIS FIRST AMENDMENT TO THE CONSTRUCTION CONTRACT ("Amendment") is effective as of _____ by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **BRANNON CORPORATION** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Construction Contract dated June 17, 2022 ("Contract") for the purpose of retaining the services of Contractor to provide construction of the Point Emery Shoreline Protection Project, Proj. No.18101, CIP No. 16475021; and

WHEREAS, the City and Contractor entered into a First Amendment of the Contract on February 7, 2023 for the purpose of increasing the contract amount and extending the termination of the contract; and

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

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

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

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 *Exhibit A*

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

OR

- ☒ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-2**, attached hereto and incorporated herein by this reference.

FOR CITY USE ONLY

Contract No.		CIP No.	
Resolution No.		Project No.	

City of Emeryville | Construction Contract Amendment
REV 02/2020

1.2 Termination Date

- ☒ The Parties desire to extend the termination date. Section 2 of the Contract is hereby amended to extend the termination date to **OCTOBER 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 **THREE THOUSAND FIVE HUNDRED THIRTY FIVE DOLLARS AND NO CENTS (\$3,535.00)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **EIGHT HUNDRED AND SEVENTY SEVEN THOUSAND AND FIVE HUNDRED SEVENTY FOUR DOLLARS AND SEVENTY CENTS (\$877,574.70)**.

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 CONSTRUCTION CONTRACT
SECOND 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

City Attorney

Dated:

CITY OF EMERYVILLE

City Manager

Dated:

BRANNON CORPORATION

DocuSigned by:

Paul Brannon

05/05/2023

(Signature)

Paul Brannon, Owner

EXHIBIT A-2

SECOND AMENDMENT BRANNON CORPORATION INCREASE IN CONTRACT AMOUNT

In order to pay for extra work as directed it is necessary to increase the contract amount by \$3535.

Furnish and install bollards, bike rack pad and hydroseeding:	\$18,931.00
Remaining contract amount:	\$15,396.00
Contract increase necessary:	\$3535.00