



# City of Emeryville

CALIFORNIA

## PROFESSIONAL SERVICES CONTRACT

### FIRST AMENDMENT

**THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT** (“Amendment”) is effective as of 08/16/2024 (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 January 2, 2024 (“Contract”) for the purpose of retaining the services of Contractor to provide On Call Construction Management, Engineering Design, and City Engineer Support Services; and

WHEREAS, an acceleration of capital improvement projects and private development work in the public right of way has depleted the original contract value at a faster rate than originally estimated and a contract amendment is necessary to provide for continuity and availability of on-call construction management services; and

WHEREAS, a contract amendment increasing the contract amount is required for additional on-call design services to deliver design changes to the 2024 Sustainable Streetscapes Paving Project, construction documents for the 2025 Sustainable Streetscapes Paving Project, and the Doyle Street-Phase 3 Project whose grant funding is time sensitive; 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***;

FOR CITY USE ONLY			
Contract No.	24044E-0123-PW01	CIP No.	N/A
Resolution No.	23-165	Project No.	N/A

**OR**

- Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-1**, 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 **NEW END DATE**.

**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 **NINE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$950,000.00)**. 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 DOLLARS AND NO CENTS (\$2,000,000.00)**.

**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*

**City of Emeryville** | Professional Services Contract Amendment  
REV02/2024

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

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

Approved As To Form:

DocuSigned by:  
*John Kennedy*  
2C934D02DB55407...  
\_\_\_\_\_  
City Attorney

Dated: **CITY OF EMERYVILLE**

08/16/2024  
\_\_\_\_\_  
DocuSigned by:  
*Paul Buddenhagen*  
4D944104CBF29476...  
\_\_\_\_\_  
Paul Buddenhagen, City Manager

Dated: **MNS ENGINEERS INC**

08/14/2024  
\_\_\_\_\_  
DocuSigned by:  
*Shawn Kowalewski*  
B01F8FF34231468...  
\_\_\_\_\_  
Shawn Kowalewski, Vice President (Signature)

<i>Attach: W-9 Form</i>	<i>Attach: Business License Certificate</i>	<i>Attach: Insurance Certificate and Endorsements</i>
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**Task and Contract Staus Through June Time**

Project Name	MNS PN	Status	Task Budget				Notes	
			Original (A)	Adjustments (B)	Revised (C=A+B)	Billed JTD thru Jun (D)		Remaining (E=C-D)
Shellmound 62nd-65th CI-IV	CIEME.230597.01	Closed	\$16,000	\$19,263	\$35,263	\$35,263	\$0	
Bay St Cycle Track	CIEME.230597.03	Closed	\$63,995	-\$23,905	\$40,090	\$40,091	\$0	
BMR Offsite Imp	CIEME.230597.04	Active	\$63,806	\$117,000	\$180,806	\$67,173	\$113,634	120hrs/mo through Nov
Sherwin Williams Traf. Calm.	CIEME.230597.05	Active	\$63,995		\$63,995	\$45,986	\$18,009	
CIP Sewer Spot Rprs FY22/23	CIEME.230597.06	Active	\$92,124	\$60,000	\$152,124	\$141,112	\$11,012	60hrs to closeout
Hollis St Transit and Ped Imp	CIEME.230597.07	Active	\$233,450	\$330,000	\$563,450	\$223,959	\$339,491	Subcon GPR utils; more extensive tech scope/grading; support City mtgs; July is \$198k (899hrs) of the \$330k adj
Marina Lighting	CIEME.230597.08	Active	\$174,925	\$160,000	\$334,925	\$174,809	\$160,116	
Sustainable Streetscape 2024	CIEME.230597.09	Active	\$227,036		\$227,036	\$11,404	\$215,632	
Shellmound-Temescal Crk Brdg	CIEME.230597.10	Closed	\$10,000	\$7	\$10,007	\$10,007	\$0	
			<b>\$945,332</b>	<b>\$662,365</b>	<b>\$1,607,697</b>	<b>\$749,803</b>	<b>\$857,894</b>	

Contract Limit \$1,050,000

Contract Limit Exceedence **(\$557,697)**

Estimated Future Design Services \$392,303

Contract Amendment Amount \$950,000