



# City of Emeryville

CALIFORNIA

## PROFESSIONAL SERVICES AGREEMENT

### SECOND AMENDMENT

**THIS SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT** ("Second Amendment") is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and AECOM Technical Services, Inc. ("Consultant"), collectively referred to as the "Parties."

### WITNESSETH THAT

**WHEREAS**, the City and Consultant entered into a Professional Services Agreement ("Agreement") effective August 4, 2017, whereby Consultant is authorized to investigate the west side stair and landing area of the South Bayfront Bridge/Horton Landing Park Project (a.k.a. South Bayfront Pedestrian and Bicycle Bridge) for pre-historic cultural resources; and

**WHEREAS**, the City Council adopted Resolution No. 17-120, approving Amendment No. 1 to the Professional Services Agreement ("First Amendment") whereas Consultant would continue investigations of footing area on the on the east side of the project site and prepare reports documenting findings of archaeological investigations authorizing the City Manager to execute Amendment No. 1 on behalf of the City; and

**WHEREAS**, on February 8, 2018, midden was found at a stair footing, necessitating more detailed excavation and cultural resource documentation than had been originally envisioned in the project work scope; and

**WHEREAS**, Consultant has prepared a work scope anticipating costs to provide detailed assessment of found pre-historic cultural resources in project site east side areas believed to encroach into possible pre-historic human settlement areas ("Services"); and

**WHEREAS**, a second amendment to Agreement is necessary to conduct the tasks related to assessment of cultural resources on the project site east side areas; 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 Second Amendment; and

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

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

**WHEREAS**, the public interest will be served by this Second Amendment;

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

- A. Section 1.B of the Agreement "Services" is hereby amended to read as follows:

The services to be completed under this Second Amendment are as described in the Consultants Proposal dated February 27, 2018, attached hereto as Exhibit "A."

- B. Section 1.C Schedule and Completion Date is amended to read as follows:

The services provided by Consultant under this agreement shall commence on the Effective Date and terminate on December 31, 2020.

- C. The Effective Date of this Second Amendment is the date on which the Second Amendment is executed on behalf of the City.

- D. Section III.B of Compensation and Method of Payment is amended to read as follows:

The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed THREE HUNDRED, SIXTY-NINE THOUSAND, FOUR HUNDRED THIRTY ONE DOLLARS (\$369,431). The compensation will be for Services performed based upon time and materials basis at the hourly stated in Attachment A attached to Exhibit A. Reimbursements 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, meal and authorized subcontracts shall be at cost plus no more that 10% administrative burden. Automobile mileage shall be no more that the current deductible rate set by the Internal Revenue Service.

- E. All other terms and conditions of the original Professional Services Agreement as amended by the First Amendment shall remain unchanged as a result of this Second Amendment.

**WAIVER OF AGREEMENT**

The City's failure to enforce any provision of this Second Amendment 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 Second Amendment, which shall become effective as of the date the City Manager executes this Second Amendment on behalf of the City.

Approved As To Form:



Michael A. Guina, City Attorney

**CITY OF EMERYVILLE**

Dated:

\_\_\_\_\_, 2018

\_\_\_\_\_  
Carolyn Lehr, City Manager

**CONSULTANT**

Dated:

April 26, 2018

BY: 

ITS:

VICE PRESIDENT

February 27, 2018

Cultural Resources Proposal, Modification 2, Horton Street Landing 2/27/2018

Mr. Todd Teachout  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

**Re: Modification 2, Archaeological Services  
Horton Street Landing Project, Emeryville**

Dear Mr. Teachout:

AECOM has developed the following scope of work and cost estimate to address mitigation of unanticipated intact cultural deposits associated with archaeological site CA-ALA-312, encountered during backhoe “pre-excavation” of Stair Support 7, located at the eastern extent of the project, on February 8, 2018. To date, other footing locations scoped for excavation have been completed. The new archaeological data recovery efforts outlined in this scope of work are designed to assist the City with appropriate mitigation of impacts to significant archaeological resources prior to project construction.

AECOM is currently contracted to complete: an initial geoarchaeological analysis of the subsurface impacts associated with the west approach of the project (Task 2); backhoe pre-excavation of footing locations on the west side of the project and Stair Support 7 on the east side (Task 3); reporting on the results of subsurface investigations on the west side and archaeological data recovery excavations conducted on the east side in 2011 (Task 5); and archaeological monitoring during certain portions of project construction (Task 6). In addition, AECOM has an existing contingency task (Task 4) for manual hand test excavations in areas where potentially significant intact archaeological deposits are identified that need to be assessed for their significance and eligibility to the California Register of Historical Resources (CRHR). As authorized by the City’s project manager, portions of the budget for this contingency task (\$6000 of the total \$45,042 task budget) were used to cover out-of-scope services due to unanticipated conditions and landowner requirements during excavation activities on the west side of the project, under Task 3.

As defined under existing contingency Task 4, if the determination is made that a “significant resource is present, additional scope and cost would be necessary once the nature and extent of the resource is better understood. If such additional work is deemed necessary, AECOM will submit to the City a supplemental proposal and budget for these efforts.” Through exposure of the subsurface archaeological deposit in Stair Support 7, during implementation of Task 3, sufficient evidence was uncovered to demonstrate that the deposit is intact and retains sufficient data potential to be assumed eligible under Criterion D of the CRHR. The following Task 4.1 modification scope provides for data recovery excavations to mitigate project-related impacts to the CRHR-eligible resource, in lieu of the testing efforts previously defined under Task 4.

In addition, potential impacts from a new drain line (located east of the railroad tracks and north of Temescal Creek) were not previously considered during the 2011 east side archaeological

investigations. Based on data obtained in 2011, it appears that there is the potential for the new drain line to extend deep enough to potentially impact significant intact archaeological deposits associated with CA-ALA-312. Modification Task 4.2, described below, provides for limited test excavations to explore portions of the vertical area of disturbance for the new drain line, and conduct limited data recovery excavations in the event that significant intact archaeological deposits are encountered.

A cost estimate for the proposed work is provided in Attachment A. The estimated time and materials not-to-exceed costs are based on typical archaeological data recovery excavations required for a prehistoric shell midden deposit; however, given the unknown nature of archaeological resources, it is possible that a greater than normal level of effort may be required (if, for example, intact burials are encountered). AECOM will perform any additional required work on a time and materials basis, after approval from the City.

#### **Task 4.1 (modification): Archaeological Test Excavations**

Based on the assumed CRHR-eligibility of the archaeological shell midden deposit identified in Stair Support 7, AECOM will conduct controlled data recovery excavations and analysis of a portion of the exposed deposit to recover sufficient data from the site to mitigate for destruction of the deposit through project construction. The archaeological deposit, as defined in profile during backhoe trenching under Task 3, covers the entire footprint of the footing, extending from approximate elevation 9.5 feet to 7.5 feet (approximately 2 to 4 feet below surface 60cm total depth).

It is anticipated that two 100cm x 50cm x 60cm deep hand excavation control units (CUs), in conjunction with three 25cm x 25cm x 60cm deep column samples, will be sufficient to capture the data potential of the Stair Support 7 archaeological deposit, and address important archaeological research questions. The CUs will be oriented using true north and hand excavated in arbitrary 10-cm levels, unless excavation using stratigraphic levels is warranted. Levels exposing stratigraphic contacts will be divided, with each stratum being individually treated. Each level will be documented using standard unit level field forms, and AECOM will prepare stratigraphic profile(s) from representative side walls of select excavation units. All soils from each unit level will be screened through 1/8-inch hardware mesh. The CUs will be excavated at least one full level below the lowest level containing cultural material to ensure that the base of the deposit has been reached, or until bedrock, groundwater, soil instability, or another obstruction is encountered. Due to the high clay content of the cultural soils exposed in Stair Support 7, AECOM will use a wet screening method, which will require an on-site water source and development of a small catch basin to control the water used in the wet screening process.

Cultural materials (e.g., shell, bone, lithic artifacts) recovered during the data recovery effort will be collected, field sorted, and bagged for lab analysis; except for fire-affected rock, which will be weighed and discarded in the field. The three column samples will be excavated by hand and bagged by arbitrary 10cm level, unless stratigraphic differentiation is warranted. A subset of these column samples will be submitted to a lab specializing in processing floatation samples and analysis of floral remains. The processed floatation samples will also be submitted to individuals/labs specializing in the analysis of faunal (fish, mammal bone, etc.) remains. Each of

these labs will submit summary reports of findings to be included in the Final Archaeological Resources Report under existing Task 5.

At the conclusion of the fieldwork, cultural materials recovered during the testing effort will be transported to, and temporarily housed at, the AECOM archaeological laboratory in Oakland. Once in the laboratory, collected materials will be processed, cataloged, analyzed, and prepared for curation. Collected materials will be washed prior to analysis except in those cases where washing will result in damage or loss of potential data. Collected artifacts, ecofacts, and sample materials will be cataloged as individual items or in lots, where appropriate (i.e., marine shell detritus from the same level). Cataloged items will be enumerated sequentially with the site trinomial used as the accession number for each collection, and incorporated into the existing catalog from the earlier 2011 site excavations. The Excel catalog form will record provenience information (location and depth), date collected, collector, description, count, size, weight, artifact/sample class, and artifact/sample type. During the cataloging procedure, the collected cultural material will be segregated by type for further analysis. Diagnostic and unique artifacts will be drawn and/or photographed for inclusion in the technical report.

AECOM will perform specialized analyses on recovered artifacts and animal remains (e.g., flaked stone, ground stone, or faunal remains) as appropriate in its laboratory. Faunal material recovered from the CUs will be sorted to the lowest possible taxonomic category using the aid of a comparative collection, weighed, and counted. In the event that extremely large quantities of shell or animal bone are recovered, the detailed identification and analyses will focus on the materials derived from a single, representative CU.

The ability to place an archaeological site within a chronological sequence is a critical component of data recovery. The most widely used absolute dating method for shell midden sites like CA-ALA-312 is radiocarbon dating. AECOM will submit up to twelve (12) samples (e.g., charcoal, wood, faunal bone, marine shell) from the site for radiocarbon analysis to a professional radiocarbon laboratory.

The methods and findings of the data recovery excavations, including the results of associated laboratory studies, will be documented in the Final Archaeological Resources Report (included under existing Task 5). Based on the detailed scope of work defined above, it is assumed that a standalone Archaeological Treatment Plan (ATP) is not necessary to guide the data recovery effort.

Upon completion of the excavation of the CUs and column samples, the remaining unexcavated portion of the midden deposit in Stair Support 7 will be excavated in very shallow lifts using a backhoe fitted with a flat-edge bucket. This excavation will be directed and observed by two archaeologists (one observing the excavation and the other actively sorting through the spoils) in order to identify formal artifacts, human remains, and/or significant archaeological features not encountered during the controlled data recovery excavations. It is assumed that no human remains or unique/significant archaeological features will be encountered during the mechanical excavations. If such features are encountered, additional scope and cost may be necessary to adequately address the potentially significant features. Based on guidance provided by the City, it is assumed that no Native American involvement will be required during any portion of the data recovery excavations within Stair Support 7. An estimate has been provided for 5 days of on-site monitoring by the Most Likely Descendant (MLD), in the event that human remains are discovered and MLD requests to be present during work in the vicinity of the discovery.

Once fully excavated, AECOM will place orange snow-fencing in the base of the Stair Support 7 excavation, as a visual demarcation of the extent of excavation, prior to backfilling. The excavation will then be backfilled and compacted with the backhoe bucket and wheels. AECOM will return the excavation as closely as reasonably possible to pre-excavation conditions, but is not responsible for the maintenance of the footing location prior to project construction.

Once the analysis of the collections and final reporting is completed, the collections will be curated in a recognized and certified archaeological collection facility at Sonoma State University. A curation cost of \$11,000 is currently approved (under Task 5) for curation of the archaeological materials recovered from CA-ALA-312 in 2011. It is anticipated that four (4) additional curation boxes will be generated as a result of the Stair Support 7 data recovery excavations, requiring an additional \$4,800.

#### **Task 4.2 (modification): East Side Drain Line Investigation**

It has been determined that the proposed drain line north of the Temescal Creek Channel and east of the railroad tracks may encroach into intact midden deposits. Archaeological excavations in 2011 determined that this general vicinity contained intact archaeological deposits capped by several feet of fill. In order to minimize potential impacts, the City has raised the elevation of the drain as much as feasible. However, the potential still remains that potentially significant intact archaeological resources could be encountered. In an effort to further investigate this potential, and mitigate impacts prior to project construction, AECOM will conduct test excavations in portions of the new drain line. The excavation will be conducted using a backhoe with a flat-edged bucket excavating in shallow lifts, up to one foot deeper than the proposed invert elevations for the new line. If an intact deposit is encountered, AECOM will switch from backhoe excavation to manual hand excavation to determine if the deposit appears CRHR-eligible. If such a determination is made, controlled data recovery excavations, adhering to the methodology described in Task 4.1, will be conducted.

For the purposes of this scope it is assumed that the test excavations of the proposed new drain line north of Temescal Creek will be primarily limited to the three new inlet grates in the vicinity of Bents 16, 17, and 18, and portions of the line between the grates. It is assumed that it will take two HAZWOPER-certified archaeologists, working in conjunction with a backhoe and operator, a maximum of three days to complete the initial mechanical excavation; and that significant intact deposits will be encountered in one of the new inlet locations, requiring an additional 5 days by four archaeologists to complete data recovery excavations of the deposit.

Although it is assumed that intact human burials will not be encountered during the archaeological investigations described in this task or Task 4.1, at the request of the City, in the event that an isolated human bone discovery is made, a line item cost for five days of an on-site Native American consultant has been included in this task.

**Assumptions:**

- No air monitoring or dust suppression is required.
- AECOM field personnel must be 40-hour HAZWOPER certified.
- All spoils can be returned to the footing excavations. Backhoe bucket and wheel compaction is sufficient, and each excavation can be covered with plastic and sand bags. No additional securing of the excavations is necessary after AECOM's demobilization from the site.
- Water will be available for wet screening at no charge to AECOM, either from a source on the City property or adjacent Novartis property.
- No chemical testing or disposal of excavated soils by AECOM is required.
- Native American monitoring is not required, however the unit cost for this monitoring is provided as contingency in the instance that limited human bone is identified and the Most Likely Descendant requests monitoring while working in the vicinity of the discovery.
- No intact human burials, requiring exhumation and re-interment, will be encountered during field work.
- There is no federal nexus for the project which would require compliance with Section 106 of the National Historic Preservation Act.
- Any additional archaeological data recovery, treatment plans, or mitigations other than specified above would require a separate scope and budget.
- The City will secure all right of entry.

**Estimated Charges and Schedule**

AECOM estimates the updated cost to complete the data recovery excavations, as described above, within Stair Support 7 to be \$108,468; and the cost for testing and data recovery in the East Side Drain Line to be \$52,988. AECOM requests that the \$39,042 remaining in Task 4, previously scoped for archaeological testing efforts, be reallocated to the new Task 4 testing and data recovery scope, and issue a work order amendment in the not-to-exceed amount of **\$122,414** to cover the difference to implement the tasks described herein and detailed in Attachment A. The new revised contract value, with this second modification, would be **\$369,431**.

Schedule for implementation of the revised Task 4 is predicated on issuance of Notice to Proceed (NTP). Once NTP is received, it is anticipated that field work can be completed in 45 days.

**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**

A handwritten signature in blue ink, appearing to read 'Jay Rehor', with a long horizontal stroke extending to the right.

Jay Rehor  
Senior Geoarchaeologist  
Project Manager

A handwritten signature in blue ink, appearing to read 'Steve Leach', with a long horizontal stroke extending to the right.

Steve Leach  
Vice-President, Environmental Services

## Attachment A: Cost Estimate Table

COST ITEM	Rates	Current Authorization	Task 4.1 (modification)	Task 4.2 (modification)	Subtotal Cost
		Task 1 through Task 6	Archaeological Data Recovery	East Drain Line Investigation	
Labor Costs (AECOM)					
Project Manager/Senior Geoarchaeologist (JR1)	\$145.00		120	100	\$31,900.00
Senior Technical Reviewer (MH)	\$135.00		8		\$1,080.00
Project Archaeologist (KK)	\$110.00		32		\$3,520.00
Project Archaeologist (JR2)	\$110.00		40		\$4,400.00
Archaeological Technician (AG)	\$90.00		120	70	\$17,100.00
Archaeological Technician w/HAZWOPER (FH)	\$80.00			50	\$4,000.00
Osteologist (SM)	\$75.00		40	40	\$6,000.00
Equipment Operator (NM)	\$100.00		30	30	\$6,000.00
CAD/ GIS Tech/ Illustrator (OA)	\$115.00		24	18	\$4,830.00
Health and Safety Officer (SC)	\$135.00		4		\$540.00
Editor /Word Proc. (DF)	\$95.00				
Administrator (JR3/MW)	\$90.00		3		\$270.00
Subtotal Labor Hours by Task			421	308	729
Total Labor Cost by Task			\$46,770	\$32,870	\$79,640
Other Direct Costs (ODCs) and Subcontractors					
ODCs (boxes/bags, GPS, camera, etc.)		/hour	\$800	\$800	\$1,600
Native American Monitor (subcontractor)	\$100			\$4,000	\$4,000
PaleoWest (2 HAZWOPER archaeologists)			\$18,000		\$18,000
Alan J Blair (1 HAZWOPER archaeologist)			\$6,800		\$6,800
Hotel/Per Diem			\$1,200	\$2,000	\$3,200
Floatation/floral analysis (Far Western)		/sample	\$10,400	\$1,800	\$12,200
Pollen analysis	\$360		\$2,160	\$2,160	\$4,320
Human Remains analysis (J. Erkens)			\$2,500		\$2,500
Obsidian hydration (Origer)			\$400	\$200	\$600
Other Laboratory Analysis (subcontractors/vendors)		/box	\$7,200	\$4,200	\$11,400
Curation fees	\$1,200		\$4,800		\$4,800
Direct AMS (radiocarbon)	\$333		\$2,000	\$2,000	\$4,000
Backhoe rental, water buffalo, on-site storage, etc.			\$2,500	\$2,000	\$4,500
Markup on ODC's and Subs	5%		\$2,938	\$958	\$3,896
Total ODCs			\$61,698	\$20,118	\$81,816
TOTAL BY TASK		\$247,017	\$108,468	\$52,988	
Modified Task 4 cost, minus existing Task 4 budget:					\$122,414
Revised Contract Total:					\$369,431

Staff:  
AG= Annamarie Guerrero; DF= Deborah Fournier; JR1= Jay Rehor ; KK= Kathleen Kubal;  
FH = Frank Humphries; RD = Ragan Driver  
JR2= Jennifer Raneeses; MA= Melissa Walden; OA= Otto Alvarez; SC= Shannon Couch