

## **RESOLUTION NO. 22-06**

**Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Fourth Amendment To The Professional Services Agreement With AECOM To Amend The Scope Of Work, To Increase The Total Compensation By An Additional \$64,635.00, For A Total Amount Not to Exceed \$434,066.00 And To Extend The Term Of Service To The Later Of Sixty Days After Council Acceptance Of Construction Or September 28, 2022 For Archeological Services For The South Bayfront Pedestrian Bicycle Bridge/Horton Landing Park Project, EPW 17-112 (CIP # 16475006 And CIP#17237003)**

**WHEREAS**, the South Bayfront Pedestrian Bicycle Bridge/Horton Landing Park is a capital improvement project that has been in the CIP since the early 2000s and the City's General Plan for many years before that; and

**WHEREAS**, the project site contains a portion of the former Emeryville Shellmound; and

**WHEREAS**, pursuant to the City's General Plan Policy CSN-P-30, AECOM was authorized in June of 2017 to do geotechnical and environmental exploratory pre-construction investigation work of the project site under a \$26,750 Professional Services Agreement; and

**WHEREAS**, the City Council authorized a First Amendment to the Professional Services Agreement with AECOM to perform detailed investigative work on the Project Site on the West side of the Railroad tracks and continue investigative work on the East Side (Resolution No. 17-120) for a cost of \$220,267.00; and

**WHEREAS**, the City Council authorized a Second Amendment to the Professional Services Agreement to consolidate west side and east side work, authorize additional services before, during, and after construction (Resolution No. 18-51) augmenting the budget by \$122,414 for a total amount not to exceed \$369,431; and

**WHEREAS**, the City Council authorized a Third Amendment to the Professional Services Agreement with AECOM to revise and extend the term from December 31, 2020 to sixty days after the date of acceptance of the Construction project; and

**WHEREAS**, due to unforeseen cultural resource discoveries and request to perform out of scope services, AECOM cannot complete the remaining work with available resources so is requesting a budget augmentation of \$64,635 to do so; and

**WHEREAS**, AECOM is also requesting the term to be revised to the later of sixty days following the acceptance of the construction project or September 28, 2022.

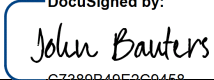
**RESOLVED**, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a Fourth Amendment to the Professional Services Agreement with

Resolution No. 22-06  
S. Bayfront Bridge/Horton Landing Park-PSA- AECOM  
City Council Meeting | January 18, 2022  
Page 2 of 2


AECOM, in the form attached as Exhibit A, which amends the scope of work, increases compensation under the contract by \$64,635.00, for a total compensation amount not to exceed \$434,066.00 and extends the term to the later of Sixty Days following acceptance of Construction by the City Council or September 28, 2022 for Archeological Services related to the site of The South Bayfront Pedestrian Bicycle Bridge, CIP# 16475006 and CIP#17237003.

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, January 18, 2022, by the following vote:

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

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MAYOR

ATTEST:  
  
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INTERIM CITY ATTORNEY



City of Emeryville  
CALIFORNIA

## PROFESSIONAL SERVICES CONTRACT

### FOURTH AMENDMENT

**THIS FOURTH AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT** ("Amendment") is effective as of this \_\_\_\_\_, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **AECOM TECHNICAL SERVICES, 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 Agreement dated August 4, 2017 ("Contract") for the purpose of retaining the services of Contractor to provide Archaeological Investigation of pre-historic cultural resources within the proposed foundations and permanent easements within the Bay Street Shops on the West Side of the South Bayfront Pedestrian Bicycle Bridge Project Limits; and

**WHEREAS**, the City Council adopted Resolution 17-120 authorizing the execution of Amendment 1 to allow Archaeological Investigation of pre-historic cultural within remaining unexplored structure foundations, drain lines within the area planned to become Horton Landing Park on the east side of the project limits; and

**WHEREAS**, the City Council adopted Resolution 18-51 authorizing the execution of Amendment 2 to extend contract term to December 31, 2020 and to augment budget due to desire to analyze and document the discovery of significant cultural resources within the project site and adjacent property that was acquired from Union Pacific Railroad Company in 2018; and

**WHEREAS**, the City Council adopted Resolution 21-10 authorizing the execution of Amendment 3 to reactivate the agreement and to extend the term to sixty days following the acceptance of Construction of the South Bayfront Pedestrian Bicycle Bridge Project by the City Council.

**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:

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

**City of Emeryville** | Professional Services Contract Amendment  
REV 06/2020

**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-Workscope To Completion**, 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 the later of sixty days after acceptance of construction or **SEPTEMBER 28, 2022**.

**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 **SIXTY FOUR THOUSAND SIX HUNDRED THIRTY FIVE DOLLARS AND NO CENTS (\$64,635.00)**. 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 THIRTY FOUR THOUSAND SIXTY SIX DOLLARS AND NO CENTS (\$434,066.00)**.

**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.

**City of Emeryville** | Professional Services Contract Amendment  
REV 06/2020

**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*

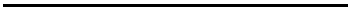
6. SIGNATURE PAGE TO PROFESSESIONAL SERVICES CONTRACT  
FOURTH AMENDMENT

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

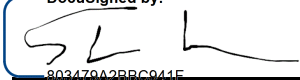
Approved As To Form:

DocuSigned by:  
  
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City Attorney

Dated: CITY OF EMERYVILLE

 Christine S. Daniel, City Manager

Dated: AECOM TECHNICAL SERVICES, INC.

DocuSigned by:  
  
903470A2B8C941F... (Signature)  
Steve Leach, Vice President

Attach: W-9 Form	Attach: Business License Certificate	Attach: Insurance Certificate and Endorsements

December 3, 2021

City of Emeryville  
c/o Todd Teachout  
City Engineer  
Department of Public Works  
1333 Park Avenue  
Emeryville, CA 94608

## Exhibit A - Workslope To Completion

### **South Bayfront Pedestrian-Bicycle Bridge Project, Archaeological Services: Amendment 4 Request, Contract 17022-0000-PW01 (AECOM Project No. 60551384)**

Dear Mr. Teachout:

As a result of changed conditions and City of Emeryville staff requested out of scope services, there is insufficient funding to complete needed work, unless the budget is augmented. This letter documents services completed by AECOM and the budget request to cover those out-of-scope services performed under existing Tasks 4, 5, and 6. This Amendment 4 also includes additional funding for curation costs, under Task 5, due to the larger archaeological collection created as a result of changed field conditions. Following is a summary of the additional activities AECOM conducted at the direction of the City, under existing task numbers, and the associated costs. These costs were paid under existing purchase order authorizations and had the effect of reducing the remaining budget to complete the authorized scope.

#### **Additional Scope of Work**

**Tasks 4 and 5:** An unanticipated complex archaeological feature (consisting of thousands of bone fragments, hearth features, unique artifacts, etc.) was identified at the bottom of Stair Support 7 (SS7) during mechanical excavation of SS7, after completion of the scoped data recovery excavations for the previously identified midden deposit there. This type of unanticipated significant complex archaeological feature was explicitly excluded through assumptions under Task 4 (Amendment 2). At the request of the City, between May 24, 2018 and June 28, 2018, AECOM archaeologists conducted additional archaeological field excavations in order to appropriately document this deeply buried unique archaeological feature and allow the project to move forward as planned, through the clearance of each proposed bridge footing location. The out-of-scope work at SS7 included several weeks of hand excavations to expose and document the feature's constituents, screen excavated soils for additional archaeological materials, collection of samples for additional laboratory analysis, laboratory analysis of collected samples, and an additional day of backhoe work (including backhoe rental and operator) to complete clearance of SS7 (once hand excavation was completed). The cost for these out-of-scope services totaled **\$27,887**.

In addition to the scope of work described above, Amendment 4 includes additional funding for the curation of archaeological materials from the 2018 field excavations and subsequent monitoring. As described in Amendment 2, Sonoma State University's curation facility has agreed to house the collection in perpetuity. The original budget for the collection curation was estimated at \$11,000 in 2011. Since that time, the cost of curation has increased. An additional \$4,800 was allocated in 2018 (Amendment 2) for four additional boxes, for a total curation

budget of \$15,800. However, significantly more archaeological material was recovered than initially anticipated, due to the density of the midden deposit, the complex SS7 feature described above, and additional artifacts recovered during monitoring. With a total anticipated collection size of 25 boxes, once materials not worthy of curation are disposed of (e.g., historic period artifacts mixed in with the surface of the midden deposit, unprocessed soil samples, etc.), at a standard cost of \$1200/box, the cost for curation would be \$30,000. As such, Amendment 4 includes an additional **\$14,200** (the difference between the current cost, \$30,000, and the original estimate of \$15,800) to complete the curation of collected archaeological materials.

**Task 6:** Between 11/13/2019 and 7/16/2021, out-of-scope work conducted by AECOM under Task 6, at the direction of the City, included:

- a) AECOM coordinated with the Most Likely Descendant (MLD/tribe), City, and contractor on human remains reburial. Since the start of data recovery excavations in 2018, three burials were encountered (two during excavation and one during monitoring). One burial was recorded and left in place, but the other two burials required recordation and excavation. Tribal involvement in these excavations were covered by the contingencies in Amendment 2. However, at the request of the City, AECOM prepared an out-of-scope formal reburial plan document, which included multiple review cycles and revisions. Subsequently, AECOM coordinated the implementation of the plan with the contractor and MLD.
- b) At the beginning of 2021, the City identified a new opportunity to develop and install interpretive panels within the Horton Landing Park, to better integrate the park with other greenway elements to the south. At the request of the City, AECOM, in coordination with eth MLD, developed a conceptual draft for a cultural/tribal interpretive panel, including development of a formal land acknowledgement statement.
- c) The original scope and budget for construction-period archaeological monitoring, under Task 6 (Amendment 1), was developed in 2017, based on assumptions of level of effort provided by the City at the time. Due to project schedule, design, and other changes (including pandemic-related delays) that were beyond AECOM's control, additional days of monitoring (by archaeologists and tribal members) and coordination were required beyond the original scope. The delay in project construction also resulted in higher labor costs, beyond what was originally anticipated in 2017.

The cost for these out-of-scope services, provided under Task 6, totaled **\$22,548**.

## Summary

The total cost for out-of-scope services performed to date (inclusive of Task 4 and Task 6, as described above) and additional curation budget due to the increased size of the archaeological collection, is **\$64,635**. AECOM requests a fourth contract amendment in this amount, for a total revised contract amount of **\$434,066**.

The remaining work under the existing contract (Task 4 and Task 5) includes: (1) completion of the sorting, analysis (e.g., speciation of faunal bone, shell, etc., to create data tables for comparative analysis and complete documentation); (2) preparation of the collection for curation (bags and tags meeting the requirements of the specific curation facility); (3) transfer of the collection and payment to the curation facility; and (4) preparation of the final data recovery report. Amendment 4 is necessary for the completion of these services and the successful mitigation of project-related impacts to this important historical resource and unique



archaeological resource. We look forward to our continued work with the City and the successful completion of this important project.

Respectfully,

A handwritten signature in blue ink, appearing to be 'SL' followed by a stylized flourish.

Steve Leach  
Vice President

E: [steve.leach@aecom.com](mailto:steve.leach@aecom.com)

A handwritten signature in blue ink, appearing to be 'Jay Rehor'.

Jay Rehor  
Project Manager

# South Bayfront Pedestrian Bicycle Bridge/Horton Landing Park Project.

## EXHIBIT A-Workscope to Completion and Summary of Work Done and Work Remaining

Task	Description	Status	Contract Authorization	Authorized Budget	Spent (as of 10/8/2021)	Budget Remaining	Additional Budget needed to make whole
1	Proj Admin/MLD Coordination	Ongoing	Original and Amend 1	\$13,971	\$20,355	(\$6,385)	Note 1
2	GeoProbe-W. Side	Done	Original	\$21,988	\$21,342	\$646	
3	Pre-Excavation (Bent 2-11, Bent 12, Stair Support 7)	Done	Amend 1	\$31,320	\$41,522	(\$10,202)	Note 2
4	Archaeological Test and Data Recovery Excavations	Field Work Done/ Analysis in progress	Amend 1 and 2 (part of Amend 1 budget brought into Amend 2)	\$167,457	\$156,847**	\$10,610	Note 3
	4.1- Data recovery exc. Stair Support 7	Field Work Done	Amend 2			(\$27,887)	\$27,887
	4.2- Mechanical Pre-Exc. and Data Recovery exc. – HLP Drain line	Field Work Done	Amend 2				
	<b>Post-Field Lab Tasks:</b>						
	Floatation Processing of Column Samples	Done	Amend 2				
	Floral Analysis (Wholgemuth)	90% Done (awaiting final report)	Amend 2				
	Pollen Analysis (ACS)	Done	Amend 2				
	Human Remains Analysis (Eerkens)	90% Done (awaiting final report)	Amend 2				
	Obsidian Hydration (Origer)	0%	Amend 2				
	Radiocarbon Assay	Done	Amend 2				
	Isotope Analysis (Eerkens)	20%	Amend 2				
	Fish Remains Analysis (Gobalet)	0%	Amend 2				

Task	Description	Status	Contract Authorization	Authorized Budget	Spent (as of 10/8/2021)	Budget Remaining	Additional Budget needed to make whole
	Curation Facility Fees	0%	Amend 2	\$4,800			
5	<b>Analysis and Reporting</b>	<b>In Progress</b>	<b>Amend 1</b>	<b>\$93,085</b>	<b>\$30,054</b>	<b>\$63,031</b>	<b>Note 4</b>
	Narrative Report	In progress	Amend 1				<b>\$14,200 Note 4</b>
	Shellfish Analysis	In Progress, 40%	Amend 1				
	Faunal Analysis	In Progress, 60%	Amend 1				
	Formal Artifact/Tool documentation and analysis	In Progress, 10%	Amend 1				
	Groundstone analysis	0%	Amend 1				
	Lithic Analysis	0%	Amend 1				
	Prep of collection for curation (bagging/boxing/labeling)	0%	Amend 1				
	Curation Facility Fees	0%	Amend 1	\$11,000			
6	<b>Construction Monitoring</b>	<b>Done</b>	<b>Amend 1</b>	<b>\$41,610</b>	<b>\$64,158*</b>	<b>(\$22,548)</b>	<b>\$22,548</b>
<b>Total</b>				<b>\$369,431</b>	<b>\$334,278</b>	<b>\$35,153</b>	<b>\$64,635</b>
<b>*Out of Scope Services Rendered and Billed Under Task 6</b>							
	Interpretive Signage	Done			\$23,067	(\$22,548)	
	Addn Monitoring-Irrigation/Electric Trenching	Done					
	Reinterment Plan Prep	Done					
<b>**Out of Scope Services Rendered and Billed Under Task 4</b>							

Task	Description	Status	Contract Authorization	Authorized Budget	Spent (as of 10/8/2021)	Budget Remaining	Additional Budget needed to make whole
	Excavation of unanticipated complex feature at base of SS7 (work conducted 5/16-6/28/2018)	Done			\$27,887	(\$27,887)	

- Note 1** Originally scoped in 2017 to cover coordination during early reactivation efforts. Duration of project and degree of coordination required (with City, contractor, and Native American's) greater than anticipated at the time. Going forward Admin costs will be distributed within the Task Budgets of the remaining work (Task 4 and 5).
- Note 2** Additional cultural resources discovered were beyond expectation and cost estimates, and explicitly exclude through assumptions. Out-of-scope costs incurred, and authorized by the City, were related to additional field work to retrieve and analyze resources in advance of curation.
- Note 3** Budget remaining for Task 4 is insufficient to complete remaining work, particularly in light of additional resources encountered during excavation and monitoring.
- Note 4** As of 10/8/2021, the current Budget balance is \$35,153. \$30,000 is proposed to be the revised cost to curate artifacts that have been recovered and need to be archived. This amount includes a budget augmentation of \$14,200 due to time passing since earlier estimates were prepared as well as a greater quantity of artifacts that must be archived. The remaining \$5,153 plus the additional Amendment 4 funding request of \$64,635 (total \$69,788) is the cost estimate for completing remaining analyses of the archaeological collection, including payment to subcontractors, preparing the collection for curation, and completing the final project report that will be forwarded to Tribal representatives and submitted to the California Historical Resources Information System.