

**AMENDMENT NO. 10 TO THE
AGREEMENT FOR DESIGN/BUILD SERVICES
AMONG THE CITY OF MORRO BAY AND
OVERLAND CONTRACTING INC. AND
J.R. FILANC CONSTRUCTION COMPANY, INC.**

This Amendment No. 10 is entered by and among the CITY OF MORRO BAY, a municipal corporation (City) and OVERLAND CONTRACTING INC., a Delaware corporation, dba KS OVERLAND CONTRACTING, INC. (OCI) and J.R. FILANC CONSTRUCTION COMPANY, INC., a California corporation (JRF), the latter two acting as FBV Morro Bay Joint Venture (collectively, OCI and JRF are referred to as the “Design Build Entity”). City and Design Build Entity are sometimes referred to individually as “Party” and collectively “Parties.”

RECITALS

WHEREAS, City and the Design Build Entity entered into an agreement as of October 23, 2018, to design and construct a new Water Reclamation Facility (Project), which was approved by the City Council for a Cost Plus with Guaranteed Not to Exceed Amount of \$67,234,512 (Agreement);

WHEREAS, the Parties amended the Agreement, as of May 14, 2019, to provide for design and construction of additional elements for the Project and to increase the Cost Plus with Guaranteed Not to Exceed Amount for the construction of the Project to \$68,870,571 (Amendment No. 1);

WHEREAS, the Parties amended the Agreement, as of April 21, 2020, to provide for updated Davis Bacon Wage Requirements for the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$68,934,508 (Amendment No. 2);

WHEREAS, the Parties amended the Agreement, as of May 20, 2020, to provide design and construction of additional elements for the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$74,926,725 (Amendment No. 3);

WHEREAS, the Parties amended the Agreement, as of November 17, 2020, to provide design and construction of additional elements for the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$75,761,822 (Amendment No. 4);

WHEREAS, the Parties amended the Agreement, as of March 9, 2021, to provide changes and adjustments to the design and construction of the Project and to decrease the Cost Plus with Not to Exceed Amount for the construction of the Project to \$75,565,877 (Amendment No. 5);

WHEREAS, the Parties amended the Agreement, as of August 24, 2021, to provide changes and adjustments to the design and construction of the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$76,697,994 (Amendment No. 6);

WHEREAS, the Parties amended the Agreement, as of August 23, 2022, to provide changes and adjustments to the design and construction of the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$77,057,879 (Amendment No. 7);

WHEREAS, the Parties amended the Agreement, as of November 22, 2022, to provide changes and adjustments to the design and construction of the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$78,015,298 (Amendment No. 8);

WHEREAS, the Parties amended the Agreement, as of May 24, 2023, to provide changes and adjustments to the design and construction of the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$78,424,326 (Amendment No. 9);

WHEREAS, the Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6, Amendment No. 7, Amendment No. 8, and Amendment No. 9 are collectively referred to as the Amended Agreement.

NOW, THEREFORE, City and Design Build Entity mutually agree to further amend the Amended Agreement as follows:

1. City issued a Notice of Substantial Completion to the Design Build Entity on January 24, 2024, with an effective date of September 7, 2023. The Notice of Substantial Completion included the list of remaining work items to be completed by the Design Build Entity to achieve Final Completion of the Project.
2. City and the Design Build Entity mutually agree City shall take full responsibility for fixing the failed concrete of the treatment facility known as the SAFE Diversion Box. The Parties understand and agree other than the responsibility stated above and any rectification related to the responsibility stated above, the Parties retain all contractual rights under the Amended Agreement to the extent any breach of any obligations occurs and is timely raised.
3. The Design Build Entity submitted its Notice of Final Completion with a completion date of March 8, 2024. The Notice of Final Completion has been accepted by the City and the Project is closed out.
4. City and the Design Build Entity mutually agreed the Design Build Entity is to be compensated in the revised Guaranteed Not to Exceed Amount of \$79,000,000, as full and final payment, pursuant to the Amended Agreement, as herein amended, for any and all work, claims, costs and attorney's fees, related directly or indirectly to the Amended Agreement, including the list of remaining work as included in the Notice of Substantial Completion. Such payment shall be made in accordance with the terms of the Amended Agreement.
5. The Design Build Entity shall be paid for the Final Work within 30 days after City's receipt of an invoice for a total Guaranteed Not to Exceed Amount of \$79,000,000. The final invoice will account for the remaining difference between the mutually agreed to total Guaranteed Not to Exceed Amount of \$79,000,000 and the total amount invoiced to date.

6. The Exhibit A, attached to the Amended Agreement, shall be replaced in its entirety with the new Exhibit A, dated March 26, 2024 attached hereto and incorporated herein, as well as into the Amended Agreement as amended herein.

7. Except as expressly stated herein, all terms and conditions in the Amended Agreement shall remain in full force and effect.

8. The effective date of this Amendment No. 10 shall be deemed to be March 26, 2024.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 10 to be executed by their duly authorized representatives.

CITY OF MORRO BAY
a municipal corporation

DESIGN BUILD ENTITY

OVERLAND CONTRACTING INC.

By: _____
Yvonne Kimball, City Manager

By: _____
Charles B. Mitchell,
Its Attorney in Fact

Dated: _____, 2024

Dated: _____, 2024

J.R. FILANC CONSTRUCTION
COMPANY, INC.

Attest:

By: _____
Omar Rodea,
Its President

Dana Swanson, City Clerk

Dated: _____, 2024

Approved As To Form:

Acting together as FBV Morro Bay Joint
Venture, PWCR #947773 – Classification A

Chris F. Neumeyer, City Attorney