

**DRAFT EIGHTH AMENDMENT TO
CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
PSOMAS FOR WATER POLLUTION CONTROL PLANT
CONSTRUCTION MANAGEMENT SERVICES**

This Eighth Amendment to Consultant Services Agreement dated, _____ is by the CITY OF SUNNYVALE (“City”), a California chartered municipal corporation, and PSOMAS (“Consultant”).

WHEREAS, on May 6, 2015, CITY and the Covello Group, Inc. (“Covello Group”) entered into an agreement entitled, “Consultant Services Agreement between City of Sunnyvale and the Covello Group, Inc. for Water Pollution Control Plant Construction Management Services” (“Agreement”); and

WHEREAS, on March 13, 2018, CITY and the Covello Group entered into a First Amendment to Consultant Services Agreement whereby the Services by the Covello Group, Notice to Proceed, and Time for Performance were modified to incorporate Exhibit A-1, and the Payment for Fees and Expenses was modified as not to exceed \$8,665,632; and

WHEREAS, on June 28, 2018, the Covello Group was dissolved via an executed Stock Purchase Agreement, as evidenced by Exhibit “D”; and

WHEREAS, on June 28, 2018, CITY was issued written notification that the resulting legal entity is on and the same, with no change in corporate staff nor changes in services rendered to CITY, nor changes in assignment of contract personnel will occur as a result of the legal entity name change, as evidenced by Exhibit “E”; and

WHEREAS, on October 17, 2018, CITY and CONSULTANT entered into a Second Amendment to Consultant Services Agreement whereby CITY acknowledged all references to “The Covello Group, Inc.” shall henceforth be to “PSOMAS”; and

WHEREAS, on December 7, 2019, CITY and CONSULTANT entered into a Third Amendment to Consultant Services Agreement whereby the Services by CONSULTANT, Notice to Proceed, and Time for Performance were modified to incorporate Exhibit A-2, and the Payment for Fees and Expenses was modified as not to exceed \$8,985,991; and

WHEREAS, on March 4, 2020, CITY and CONSULTANT entered into a Fourth Amendment to Consultant Services Agreement whereby the Project Manager stated in the Services by Consultant and Notice were changed to Mike Redig; and

WHEREAS, on November 11, 2020, CITY and CONSULTANT entered into a Fifth Amendment to Consultant Services Agreement whereby the Time for Performance was extended through August 31, 2021; and

WHEREAS, on October 19, 2021, CITY and CONSULTANT entered into a Sixth Amendment to Consultant Services Agreement whereby the Services by CONSULTANT, Notice to Proceed, and Time for Performance were modified to incorporate Exhibit A-3, Exhibit A-4, Exhibit B-2, and Exhibit B-3, and the Payment for Fees and Expenses was modified as not to exceed \$13,316,082;

WHEREAS, on November 13, 2021, CITY and CONSULTANT entered into a Seventh Amendment to Consultant Services Agreement whereby the Services by CONSULTANT was modified to include attorney client privileges; and

WHEREAS, City and Consultant desire to further amend the Agreement to amend the services provided by the Consultant.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Section 1 is hereby amended to read as follows:

1. Services by CONSULTANT

[Replace the first paragraph of this section with the following:]

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work", Exhibit "A-1" entitled "Additional Scope of Work", and Exhibit "A-2" entitled "Additional Scope of Work – 1", Exhibit "A-3" entitled "Additional Scope of Work – 2", Exhibit "A-4" entitled "Additional Scope of Work – 3", and Exhibit "A-5" entitled "Additional Scope of Work – 4". All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Mike Redig, PE, to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

2. Section 2 is hereby amended to read as follows:

2. Notice to Proceed/Completion of Services

[Replace paragraph (b) with the following:]

(b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A"; Exhibit "A-1"; Exhibit "A-3", Exhibit "A-4"; and Exhibit "A-5", CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit "A"); Additional Scope of Work (Exhibit "A-1"); Additional Scope of Work – 1 (Exhibit "A-2"); Additional Scope of Work – 2 (Exhibit "A-3"); Additional Scope of Work – 3 (Exhibit "A-4"); and Additional Scope of Work – 4 (Exhibit "A-5") and if so requested, CITY shall make this determination within fourteen (14) days of such request.

3. Section 4 is hereby amended to read as follows:

4. Payment of Fees and Expenses

[Replace existing section with the following:]

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule", Exhibit "B-1" entitled "Additional Compensation Schedule", Exhibit "B-2" entitled "Additional Compensation Schedule -1", Exhibit "B-3" entitled "Additional Compensation Schedule - 2", and Exhibit "B-4" entitled "Additional Compensation Schedule - 3". All compensation will be based on monthly billings as provided in Exhibit "B", Exhibit "B-1", Exhibit "B-2", Exhibit "B-3", and Exhibit "B-4". Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B", Exhibit "B-1", Exhibit "B-2", Exhibit "B-3", and Exhibit "B-4" for each phase. In no event shall the total amount compensation payable under this agreement exceed the sum of Twenty-Nine Million Nine Hundred Sixty-Six Thousand Five Hundred Forty-Nine and No/100 Dollars (\$29,966,549.00) unless upon written modification of this Agreement. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box, Sunnyvale, CA 94088-3707.

4. Exhibit A-5 entitled "Additional Scope of Work - 4" and Exhibit B-4 entitled "Additional Compensation Schedule - 3" are attached hereto and are incorporated into the amended Agreement.

5. All of the terms and conditions of the amended Agreement not specifically modified by this Eighth Amendment shall remain in full force and effect.

REMAINDER OF PAGE IS INTENTIONALLY BLANK.

IN WITNESS THE EXECUTION HEREOF, the parties have executed this Agreement Amendment.

CITY OF SUNNYVALE ("CITY")

PSOMAS ("CONSULTANT")

By _____
City Manager

By _____

Name/Title

ATTEST:

By _____
City Clerk

By _____

Name/Title

APPROVED AS TO FORM:

By _____
City Attorney

EXHIBIT A-5, Additional Scope of Work - 4
SCWP SECONDARY TREATMENT AND DEWTATERING PROJECT #UY-21-07
PSOMAS – CONSTRUCTION MANAGEMENT
SCOPE OF WORK

I. GENERAL

This scope of work provides Construction Management services for the Sunnyvale Clean Water Program (SCWP) Secondary Treatment and Dewatering Project UY-21-07 (Secondary Project) at the Sunnyvale Water Pollution Control Plant (WPCP) for the City of Sunnyvale, California.

Psomas will serve as the City's Construction Management Consultant (CMC) for this project. The CMC will be the focal point for construction oversight of the facility reconstruction process.

This scope of work covers the Construction Management services for the Secondary Project which shall start when the City issues the notice to proceed to the Contractor.

II. CONSTRUCTION PHASE

1. Construction Administration

- a. Project Coordination: Psomas will act as the project coordinator and the point of contact for all communications with the Contractor. Psomas will coordinate the activities of the City, Design Consultant (DC), Program Management Consultant (PMC), and Contractor.
- b. Construction Administration Services: Psomas will provide administrative and management services. Psomas will receive all correspondence from the Contractor and will address all inquiries from the Contractor and all construction related correspondence. The DC will be responsible for providing any design input.
- c. Psomas will facilitate timely decision making through coordination with City staff, the PMC and DC during construction.
- d. Psomas will monitor the Contractor's compliance with the Contract Documents and will address corrective measures with the Contractor when deviations are observed or identified. Psomas will notify the City if the Contractor does not appropriately address such corrective measures.

2. Meetings

- a. Preconstruction Conference: Psomas will prepare the agenda and facilitate the meeting, address administrative and non-design issues, and prepare record of discussions.
- b. Partnering Workshop: Psomas will facilitate "in-formal" workshops, as applicable.
- c. Psomas will lead progress meetings. This includes preparing and distributing agendas and review logs, preparing and issuing the record of discussions.

3. Records Management

- a. The City has initiated the use of e-Builder for program document management.
- b. Psomas will be provided with the necessary licenses for the e-Builder system by the City.
- c. Psomas will use e-Builder for management, coordination, logging, tracking, and sharing of all construction documents. All correspondence for the Project including pertinent emails will be stored in the records management system.
- d. Customization of the e-Builder system, by the City, may be necessary to utilize the system for all construction documentation.

4. Submittals

- a. Psomas will implement and coordinate the submittal processing. This includes receiving submittals from the Contractor and checking for general conformity with the Contract requirements prior to forwarding to the Design Consultant (DC). If obvious deficiencies are apparent, Psomas will return the submittal back to the Contractor for correction.
- b. Once confirming general conformance, Psomas will route the submittal to the DC for review and comments. Psomas will review DC comments on submittals to determine if additional follow-up with the Contractor is warranted and to identify prospective scope changes.
- c. Psomas will maintain a log and tracking system (using e-Builder) for submittals. Psomas will track the status of submittal review with the DC and the status of shop drawing resubmittals with the Contractor.
- d. The DC will review all design related submittals and submittals related to temporary facilities for compliance with the Contract Documents.
- e. Psomas will retain Dave Mathy, DMC Consulting to review shoring and dewatering submittals, if applicable, for compliance with the Contract Documents. The Contractor is responsible for ensuring that shoring is adequate and safe.

5. Clarification Processing

- a. Psomas will implement and coordinate the system for processing and tracking clarifications also called Requests for Information (RFIs).
- b. Psomas will receive all RFIs from the Contractor and determine if the request is a valid RFI; if not, Psomas will return the RFI to the Contractor with an appropriate response.
- c. Psomas will provide responses to non-design related, administrative, coordination and general RFIs.
- d. Psomas will route all other RFIs to the DC.
- e. The DC will review RFIs and provide design response.
- f. Psomas will review the DC's response to verify clarity/acceptability of response and transmit the Clarification Response to the Contractor. If the response materially affects the design, it will be reviewed with the City and/or the DC, as necessary, to verify that the change is required. If the change is required, Psomas will issue a change request to the Contractor.
- g. The DC will prepare Design Clarifications where design issues are identified by Psomas, the DC, or the City. If the Design Clarification materially affects the design, it will be reviewed with the City and/or the DC, as necessary, to verify that the change is required. If the change is required, Psomas will issue a change request to the Contractor. Otherwise, Psomas will prepare a Clarification Letter for transmittal to the Contractor of the DC's Design Clarification and other clarifications.

6. Change Order Preparation, Negotiation & Processing

- a. Psomas will implement, coordinate the system for tracking and processing change order, potential change orders and other change related correspondence from the Contractor.
- b. The DC will prepare design details for change requests.
- c. Psomas will prepare and issue the change request to the Contractor with the appropriate design documents.
- d. Psomas will verify the acceptability of the Contractor's cost proposal for each change request. On large cost items, Psomas will prepare detailed independent estimates.

The DC's input may be requested for specific equipment and material costs.

- e. In the event the Contractor encounters a time sensitive problem where time is not available to negotiate a settlement prior to performing the work, Psomas will coordinate with the City and issue a field order. All work done under a field order will be completed on a time and material basis. Field Orders will be approved by the City and accepted by the Contractor before work is initiated.
- f. Psomas will prepare change order pre-authorizations and justifications for City approval before finalizing all change order items. Once all items are negotiated or T&M work is completed, Psomas will prepare a change order for execution by the City and Contractor.

7. Progress Payment

- a. Psomas will review and with input from the City and DC approve the initial cost breakdown (Schedule of Values-SOV) prepared by the Contractor. Psomas will review and process the progress payment requests using the SOV as required in the Contract Documents.
- b. Psomas will verify the quantity of stored materials and that they are stored in accordance with the Contract requirements.
- c. Psomas will verify the Contractor's construction progress as it relates to the progress billing procedure. Psomas will ensure that invoices are in compliance with the appropriate Contract Documents and that payments are only made for services authorized and received by the City.
- d. Psomas will prepare the summary cover sheet for the progress payments which will be executed by Psomas, the Contractor, and the City.
- e. Psomas will review and provide recommendation regarding the application for final payment, retention release, and Project acceptance.
- f. Psomas will track contingency levels throughout construction.

8. Scheduling

- a. Psomas will work with the Contractor in the development of the initial Baseline schedule and will review it to confirm it incorporates the project facets and reflects any sequence requirements and constraints.
- b. Psomas will provide written comments to the Contractor on the Baseline and update schedules.
- c. The review includes confirming the following:
 - 1. Projects are constructed in a logical sequence to keep the plant operational during construction
 - 2. Milestones are included and met
 - 3. Potential conflicts or long lead-time activities are identified, and timely cost-effective resolutions are being discussed.
 - 4. Schedules include the necessary timeframes for temporary or permanent shutdowns of plant utility systems, pipelines and treatment processes
 - 5. Perform CPM analysis as necessary to assess that progress represented on the schedule updates is consistent with actual progress in the field and address with the Contractor when deviations are noted.
 - 6. Weather days allowed and used are properly included.
- d. Psomas will recommend schedules be adjusted/revised if necessary.
- e. Psomas will coordinate construction schedules with the PMC. The PMC will be tasked with incorporating all design and construction schedules into a Master Program Schedule.

9. Field Quality Control

- a. Psomas will provide field inspection/observation services to monitor compliance with the Contract Documents.
- b. Psomas will use a combination of Procore and e-Builder to prepare a daily inspection report documenting field activities, field crews, Contractor equipment, and field problems.
- c. Psomas will maintain a Corrective Work Item List. The list will provide a current inventory of required corrections to aid in timely completion of such items.
- d. Psomas will provide photographic and video documentation of the project prior to construction. Psomas will provide and maintain photographs of field activities for status monitoring of the project.
- e. Psomas will monitor the record documents on a monthly basis to determine if they are being maintained by the Contractor.
- f. Special Inspections: Psomas will contract with specialty firms to furnish the materials testing and special inspections. Psomas will schedule and coordinate special inspections.
- g. Psomas shall not be responsible for scheduling material testing and specialty inspection services contracted by the Contractor.
- h. Electrical: Psomas will retain Beecher Engineering for technical support, assistance and periodic observations of the installation and testing of the critical components of the electrical and instrumentation portions of the work.
- i. Surveying: Psomas to provide QA-level surveying support services which include checking horizontal and vertical survey control established by the Contractor and spot checking the grade and location of critical structures and pipelines.
- j. Hazardous Materials: No provision has been included in the scope of work or budget for observation, testing, and handling of hazardous material.

10. Environmental and Regulatory Conformance

- a. The Contractor will be responsible for environmental compliance, monitoring and surveying as required by the Programmatic Environmental Impact Report (PEIR) and the Mitigation Monitoring and Reporting Program (MMRP).
- b. The Contractor will engage a wildlife biologist and all other special monitors to furnish environmental compliance services during the Project.
- c. Psomas will perform QA-level oversight to monitor whether the Contractor's work is being performed in accordance with their regulatory and environmental work scope, as identified in the Contract Documents.
- d. Psomas will perform QA-level oversight to monitor whether the required regulatory, environmental and permit compliance documentation identified in the Contract Documents is completed by the Contractor as necessary.

11. Clean Water State Revolving Fund (CWSRF) and Water Infrastructure Finance and Innovation Act (WIFA) Coordination

- a. Psomas will assist in providing the project documentation required by the CWSRF and WIFA Programs. Psomas will assist the City with preparing the necessary documentation. This includes project progress reports, quarterly reports from the Contractor for Disadvantage Business Enterprise participation, and Contractor progress invoices.
- b. If applicable, the City will retain a consultant to implement a Labor Compliance Program (LCP) to provide all reporting, documentation and oversight required by the CWSRF and WIFA.

- c. City/PMC will review American Iron and Steel (AIS) information submitted by the Contractor.

12. Means and Methods of Construction

- a. Psomas will not have responsibility for directing the means and methods of construction. The Contractor shall be solely responsible for the means and methods of construction.

13. Safety

- a. Psomas will comply with appropriate regulatory, project and City regulations regarding necessary safety equipment or procedures used during performance of Psomas's work and will take necessary precautions for safe operation of Psomas's work, and the protection of Psomas's personnel from injury and damage from such work.
- b. Neither the professional activities of Psomas, nor the presence of Psomas's employees or sub-consultants at the construction/project site, shall relieve the Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending, or coordinating their work in accordance with the Contract Documents, City regulations, and any health or safety precautions required by any regulatory agencies. Psomas and its personnel have no authority to exercise any control over any Contractor or other entity or their employees in connection with their work or any health or safety precautions.
- c. Psomas will follow the City's confined space procedures for entry into any existing City confined spaces.
- d. Psomas has no authority to exercise control over any construction contractor in connection with their work or health or safety programs and precautions. Except to protect Psomas's own personnel and except as may be expressly required elsewhere in the scope of services, Psomas has no duty to inspect, observe, correct, or report on health or safety deficiencies of the construction contractor. If Psomas becomes aware of serious safety deficiencies not addressed by Contractor, Psomas will notify City.

14. Testing & Training

- a. The scope and budget do not include Psomas's participation in factory witness testing.
- b. Psomas will coordinate onsite/field training and testing activities.
- c. Psomas will provide oversight and administration of testing, commissioning, startup activities, plant shutdowns, and plant tie-ins and will coordinate these activities with Contractors, DC, PMC, and the City.
- d. The PMC will attend any SCADA/PLC factory acceptance testing on behalf of the City. The PMC will verify that the Contractor's field calibrations are coordinated with controller programming, witness loop checkout testing to verify successful completion by the Contractor and verify control system installation following PLC and control system communication testing.

15. Corrective Work Item List

- a. Psomas will maintain a Corrective Work Item list (CWL) during the course of construction. To determine the validity of the CWL items, Psomas may seek input from the City and DC.
- b. Psomas will confirm that the items identified in the Corrective Work Item list are completed in preparation for issuance of the Substantial Completion Certificate.

- c. Psomas will prepare the Substantial Completion Certificate for execution by the City and Contractor when the Corrective Work Items are completed to the City's and Psomas's satisfaction. All incomplete Corrective Work Items will be moved to the punch list.

16. Final Inspection and Punchlist

- a. Final Inspection
 - 1. Psomas will have primary responsibility for conducting the final inspection.
 - 2. The City will participate and provide input on the final inspection.
 - 3. DC will provide design input on final inspection items if determined necessary by the City.
 - 4. Psomas will have oversight and final review responsibility for the final inspection.
- b. Psomas will prepare the list of outstanding deficiencies.
- c. Psomas will prepare and issue the punchlist(s) from the list of deficiencies.
- d. Psomas will have primary responsibility for verifying that punchlist work is complete.

17. Warranty Coordination

- a. Psomas will maintain a warranty file and a tabular summary of the warranties and their expiration.
- b. Psomas will confirm all necessary guarantee and warranty information required by the Contract Documents has been submitted by the Contractor.
- c. Coordination of warranty repair is not included in this Scope of Work or Budget.

18. Public Outreach Support

- a. The PMC shall be responsible for all public outreach efforts for the entire program. This includes developing outreach strategies, approaches, and templates to help communicate the scope, status, and objectives of the Program to stakeholders, residents and businesses located in the City.
- b. Psomas will provide the PMC necessary construction project progress updates and photographs for inclusion into outreach efforts and reports.
- c. Psomas will attend and participate in the presentation of construction project information to interested stakeholder groups as requested by the City.

19. Project Closeout

- a. Psomas will review the Contractor's record documents to assess if they are reflective of the final field conditions. Psomas will transfer the Contractor's record documents to the City.
- b. Psomas will prepare necessary City documentation recommending acceptance of the completed work.
- c. Psomas will turnover project documentation to the City in a timely and orderly manner.
- d. Psomas will download from e-Builder a complete copy of all files created by Psomas during the Project. At Psomas's expense, Psomas will be allowed to maintain e-Builder licenses and will be granted electronic access to these files in the e-Builder system while the e-Builder system for this project is still in operation. After completion of the Project and the extent available from the City, Psomas will have full and complete access to project files created by Psomas. Such access, subject to availability of files, shall include the right to copy any and/or all such files at Psomas's expense.

20. Dispute Resolution

- a. Claims avoidance, settlement support, and resolution, when possible, of routine disagreements through the normal efforts of the day-to-day project site staff will be performed.
- b. Dispute resolution services using third parties or special processes (e.g. Mediation, Arbitration, Mini-Trials, Dispute Consultants), or those requiring extraordinary efforts by Psomas are not included in this Scope of Work. If such non-routine dispute resolution services are required, either an amendment or a separate budget will be authorized.

21. Construction Manager's Field Office

- a. Psomas will furnish the field office for the construction management team. Psomas will furnish the furniture, copier, computers and other equipment for the field office.
- b. The Contractor will be responsible for installing potable water, electrical services, and internet services to the field office. Psomas will define the Contractor's responsibilities for these provisions in the Contract Documents.
- c. The Contractor will be responsible for emptying septage holding tank(s), if applicable.

22. Project Schedules / Durations

- a. The Budget Estimates and Level of Work Effort in Exhibit B are based on the Contract Documents durations. Delay to or extension of the Project schedule could impact the Budget Estimates and Level of Work Effort and necessitate either adjustment to project staffing and scope and/or amendment of the budget.

EXHIBIT B-4, Additional Compensation Schedule - 3
CITY OF SUNNYVALE – WATER POLLUTION CONTROL PLANT
CONSTRUCTION MANAGEMENT SERVICES
PSOMAS – EXPERT RATES

Hourly Rates

CM Service Expert Rates	2021 Rate	2022 Rate	2023 Rate
Gary Skrel	\$450	\$455	\$460
Chris Davenport	\$450	\$455	\$460
Mike Redig	\$400	\$405	\$410