

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

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

RECITALS

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” or “Consultant 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; and

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, on December 12, 2021, CITY and CONSULTANT entered into an Eighth Amendment to Consultant Services Agreement whereby the Services by CONSULTANT, Notice to Proceed, and Time for Performance were modified to incorporate Exhibit A-5 and Exhibit B-4, and the Payment for Fees and Expenses was modified as not to exceed \$29,966,549.00; and

WHEREAS, on February 24, 2023, CITY and CONSULTANT entered into a Ninth Amendment to Consultant Services Agreement whereby Services by CONSULTANT, Notice to Proceed, and Payment of Fees and Expenses were modified to incorporate Exhibit A-6 and Exhibit B-5, and the Payment for Fees and Expenses was modified as not to exceed \$36,429,124.00; and

WHEREAS, on October 2, 2024, CITY and CONSULTANT entered into a Tenth Amendment to Consultant Services Agreement whereby the Time for Performance was extended through December 31, 2025; and

WHEREAS, on April 20, 2026, CITY and CONSULTANT entered into an Eleventh Amendment to Consultant Services Agreement whereby the Time for Performance was extended through December 31, 2026; and

WHEREAS, the parties desire to modify the Services by CONSULTANT by updating language relating to the attorney client privileges, extend further the Time for Performance through May 1, 2029, and modify Payment for Fees and Expenses as not to exceed \$39,846,201.00; and

WHEREAS, CITY and CONSULTANT agree that a Twelfth Amendment to the Agreement is advisable.

NOW THEREFORE, the parties agree to enter into this Twelfth Amendment to the Consultant Services Agreement as follows:

1. Section 1 is hereby amended in its entirety to read as follows:

1. Services by CONSULTANT

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", Exhibit "A-5" entitled "Additional Scope of Work – 4", and Exhibit "A-6" entitled "Additional Scope of Work – 5". 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.

Except as specified in this Agreement, CONSULTANT shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

In addition to the services being provided to the Department of Public Works as described above, CONSULTANT shall provide the following services related to the project under the direction of the City Attorney. CONSULTANT shall determine the method, details and means of performing such services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing CONSULTANT'S services. CONSULTANT shall perform the services at such times and places as CONSULTANT shall determine, with the exception of attendance at meetings required in conjunction with the services rendered. CONSULTANT shall assist the City Attorney and City's outside contract attorney(s) by providing specialized consulting services and technical advice and, if necessary, expert testimony under oath related to any potential claim or actual claim filed by C. Overaa & Co. ("Overaa") including, but not limited to, Overaa's Change Order Requests 171.1 and 171.2 (failure by PG&E to provide permanent power to the project site), *C. Overaa & Co. v. City of Sunnyvale* (Santa Clara County Case No. 25CV462318), and other Change Order Requests submitted by Overaa as requested by the City Attorney, or their designee. The City, City Attorney, and the City's outside contract attorney(s) will otherwise be solely responsible for the defense of such claims. Any communications between CONSULTANT and the City Attorney and/or outside counsel are confidential communications.

2. Section 2, subsection (b), is hereby amended to read as follows:

2. Notice to Proceed/Completion of Services

(b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A"; Exhibit "A-1"; Exhibit "A-2"; Exhibit "A-3"; Exhibit "A-4"; and Exhibit "A-5", and Exhibit "A-6", 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 Additional Scope of Work – 5 (Exhibit “A-6”); and if so requested, CITY shall make this determination within fourteen (14) days of such request.

3. Section 3 is hereby amended in its entirety to read as follows:

3. Time for Performance

The term of this Agreement will be from contract execution through May 1, 2029. CONSULTANT shall deliver the agreed upon services to CITY as specified in the scopes of work as specified in Section 1 of this Agreement.

4. Section 4 is hereby amended in its entirety to read as follows:

4. Payment of Fees and Expenses

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", Exhibit “B-4” entitled “Additional Compensation Schedule – 3”, Exhibit “B-5” entitled “Additional Compensation Schedule – 4”, and Exhibit “B-6” entitled “Additional Compensation Schedule – 5”. All compensation will be based on monthly billings as provided in Exhibit “B”, Exhibit "B-1", Exhibit "B-2", Exhibit "B-3", Exhibit "B-4", Exhibit "B-5", and Exhibit “B-6”. 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", Exhibit "B-4", Exhibit "B-5", and Exhibit “B-6” for each phase. In no event shall the total amount compensation payable under this agreement exceed the sum of Thirty-Nine Million Eight Hundred Forty-Six Thousand Two Hundred One and No/100 Dollars (\$39,846,201.00) 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.

5. Section 8 is hereby amended in its entirety to read as follows:

8. Scope of Work

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being

employed by professionals in the same discipline in the State of California. The plans, designs, specifications, estimates, calculations reports and other documents furnished under the scopes of work as specified in Section 1 shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

- 6. Exhibit B-6, entitled "Additional Compensation Schedule – 5", is attached hereto and incorporated into the Agreement.
- 7. All of the terms and conditions not specifically modified by this Twelfth Amendment shall remain in full force and effect.

IN WITNESS HEREOF on the day and year first written above, the parties have executed this Twelfth Amendment.

CITY OF SUNNYVALE ("CITY")

PSOMAS ("CONSULTANT")

By _____
TIM KIRBY
City Manager

By _____

Name and Title

ATTEST:

By _____
DAVID CARNAHAN
City Clerk

By _____

Name and Title

APPROVED AS TO FORM:

By _____
SUSAN YOON
Assistant City Attorney

Exhibit B-6
Additional Compensation Schedule – 5

Personnel/Service	Hours and Forecast Hourly Rates								
	Hours	2023	2024	2025	2026	2027	2028	2029	Amount
Psomas Labor									
Principal-CD	144	\$ 249	\$ 261	\$ 275	\$ 280	\$ 288	\$ 297	\$ 306	\$ 41,542
PM-MR	1,340	\$ 245	\$ 257	\$ 270	\$ 275	\$ 283	\$ 292	\$ 300	\$ 378,824
Construction Manager-RG	6,240	\$ 230	\$ 242	\$ 254	\$ 247	\$ 254	\$ 262	\$ 270	\$ 1,595,382
Assist CM-AA	6,240	\$ 205	\$ 215	\$ 226	\$ 233	\$ 240	\$ 247	\$ 255	\$ 1,504,956
Office Engineer-MH	6,000	\$ 155	\$ 163	\$ 171	\$ 179	\$ 185	\$ 190	\$ 196	\$ 1,111,900
Office Engineer-JW	4,240	\$ 205	\$ 215	\$ 226	\$ 168	\$ 173	\$ 178	\$ 184	\$ 726,089
Office Engineer -Bioreactors/Secondaries-JL	2,320	\$ 155	\$ 163	\$ 171	\$ 168	\$ 173	\$ 178	\$ 184	\$ 391,776
Office Engineer - Solids Thickening-MR	3,600	\$ 155	\$ 163	\$ 171	\$ 179	\$ 185	\$ 190	\$ 196	\$ 660,661
Lead Inspector Site/Bioreactors-KL	3,760	\$ 185	\$ 194	\$ 204	\$ 214	\$ 221	\$ 227	\$ 234	\$ 817,066
Inspector Secondaries-DC	2,480	\$ 185	\$ 194	\$ 204	\$ 208	\$ 214	\$ 221	\$ 227	\$ 519,334
Inspector Bioreactors/Secondaries-BK	2,480	\$ 180	\$ 189	\$ 198	\$ 208	\$ 215	\$ 221	\$ 228	\$ 520,264
Inspector Solids Thickening-DK	5,440	\$ 185	\$ 194	\$ 204	\$ 208	\$ 214	\$ 221	\$ 227	\$ 1,167,822
Inspector Solids Thickening	2,960	\$ 180	\$ 189	\$ 198	\$ 208	\$ 215	\$ 221	\$ 228	\$ 631,830
Start-Up Specialist	1,520	\$ 200	\$ 210	\$ 221	\$ 232	\$ 238	\$ 246	\$ 253	\$ 368,199
Psomas Labor Subtotal									\$ 10,435,646
Total Hours	48,764								
Other Direct Costs									\$ 402,500
Subconsultant Labor									
Mat'l's Testing/Special Inspection			Allowance						\$ 800,000
E, I and C			Allowance						\$ 150,000
Geotechnical			Allowance						\$ 65,000
Schedule Review Support			Allowance						\$ 150,000
Coatings			Allowance						\$ 250,000
Subconsultant Mark-up						5%			\$ 70,750
Subconsultant Total									\$ 1,485,750
Total									\$ 12,323,896
									ACTUAL
									Thru 12/25/25 \$ 7,251,780
									REMAINING
									Thru 12/25/25 \$ 8,906,819
						Original PSO Budget	\$ 16,650,467		
						Budget Amendment (CCO 9)	\$ (491,868)		
									TO COMPLETE
									Thru 4/24/29 \$ 12,323,896
									Budget Adjustment R2 \$ 3,417,077
									Budget Adjustment R1 \$ 4,131,253
									Reduction \$ 714,177
Notes & Assumptions:	PSOMAS Original	Revised Schedule							
Construction Bid Amount:	\$277,872,751	\$ 316,372,751							
CM Budget	\$ 16,650,467	\$ 19,575,676	\$ 2,925,209	delta					
Percent CM	5.99%	6.19%							
NTP1	11/1/2022	12/1/2022							
NTP2	4/1/2023	12/5/2023							
NTP3	7/1/2023	2/2/2026							
Final Completion 1,087 Days after NTP3	6/22/2026	1/24/2029							
Closeout Complete:	10/31/2026	4/24/2029							
Duration (NTP1 to Closeout):	1460	2336							
			876	Extended CD Extension					