

**DRAFT THIRD AMENDMENT TO CONSULTANT SERVICES AGREEMENT BETWEEN  
CITY OF SUNNYVALE AND PSOMAS (FORMERLY KNOWN AS THE COVELLO  
GROUP, INC.) FOR WATER POLLUTION CONTROL PLANT CONSTRUCTION  
MANAGEMENT SERVICES**

Third Amendment to Consultant Services Agreement, dated \_\_\_\_\_, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and PSOMAS ("CONSULTANT").

WHEREAS, on May 6, 2015, CITY and CONSULTANT entered into a Consultant Services Agreement to provide services necessary for investigation, analysis, contract specifications, consultation, services during construction and other services for a project known as Water Pollution Control Plant Construction Management Services; and

WHEREAS, on May 13, 2018, CITY and CONSULTANT entered into a First Amendment to Consultant Services Agreement whereby the Services by CONSULTANT, 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, Inc. 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 one 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, the parties now agree that a Third Amendment to said Agreement is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS THIRD AMENDMENT TO CONSULTANT SERVICES AGREEMENT:

1. Services by CONSULTANT

Replace the first paragraph 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". All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Bruce Presser, PE, to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

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"; and Exhibit "A-2", 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"); and Additional Scope of Work – 1 (Exhibit "A-2") and if so requested, CITY shall make this determination within fourteen (14) days of such request.

3. Time for Performance

Replace this section with the following:

The term of this Agreement will be from contract execution through the duration of the construction of the Primary Treatment Facility Project, through the completion of the pre-construction activities for the Administration and Laboratory Building, or through the completion of the pre-construction activities for the Secondary Treatment and Dewatering Project, whichever comes later, unless otherwise terminated. CONSULTANT shall deliver the agreed upon services to CITY as specified in Exhibits "A", "A-1", and "A-2".

4. Payment of Fees and Expenses

Replace the paragraph 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", and Exhibit "B-2" entitled "Additional Compensation Schedule -1." All compensation will be based on monthly billings as provided in Exhibit "B", Exhibit "B-1", and Exhibit "B-2." 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", and Exhibit "B-2" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of Eight Million Nine Hundred Eighty Five Thousand Nine Hundred Ninety One and No/100 Dollars (\$8,985,991.00) 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 3707, Sunnyvale, CA 94088-3707.

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

PSOMAS ("CONSULTANT")

By \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_

\_\_\_\_\_  
Name/Title



**EXHIBIT A-2  
CITY OF SUNNYVALE  
WATER POLLUTION CONTROL PLANT  
PLANT REHABILITATION PROJECT  
PSOMAS – PRECONSTRUCTION PHASE  
ADDITIONAL SCOPE OF WORK -1**

**I. GENERAL**

This scope of work provides Preconstruction and Bid Period services for the Plant Rehabilitation Project at the Water Pollution Control Plant (WPCP) for the City of Sunnyvale, California. Psomas will serve as the City's Construction Management Consultant (CMC) for this work.

**II. PRECONSTRUCTION PERIOD**

**1. Design Information Memorandums (DIM)**

- a. Psomas will participate in the Workshops and review of the following DIMs. Psomas will provide written comments following the review of each DIM.

- 1. DIM – Western Perimeter Wall

**2. Constructability Reviews**

- a. Constructability reviews will be performed for the 30%, 60%, 90% and 100% design packages for two separate Bid Packages, Western Perimeter Wall and WPCP Rehabilitation Projects. Constructability reviews will be performed for the 50%, 90%, and 100% design packages for the Site Preparation/Utility Relocation Bid Package.
- b. Constructability Review: Psomas will conduct Constructability Reviews for each project and design level package identified above and provide comments on the Plans and Specifications for the following:
  - 1. Conflicts, omissions, and ambiguities between the plans and specifications.
  - 2. Completeness of the bidding documents.
  - 3. Coordination between the design disciplines.
  - 4. Constructability of the project's facilities.
  - 5. Potential claim areas based on Psomas' experience with this type of work.
  - 6. Plant operations access and operational considerations during construction and after construction during normal operations.
  - 7. Contractor Qualifications: Psomas will provide recommendation on Contractor's, I&C Integration Subcontractor's, and Electrical Subcontractor's experience for inclusion in the Bid Documents.
  - 8. Sequence & Constraints: Psomas will review and provide comments on the construction sequencing, constraints and shutdowns initially developed by the City/Design Consultant (DC).
  - 9. Startup & Testing: Psomas will review and provide comments on the project startup and testing requirements initially developed by the City/DC.
  - 10. Quality Control Testing: Psomas will review and assist with developing the Contractors' Quality Control (QC) testing and inspection requirements and Psomas' Quality Assurance (QA) role.

11. Psomas will confirm that site logistical issues have been addressed including Contractor parking, staging, laydown and storage areas, and ingress/egress for construction and plant operations.
12. Psomas will review and provide comments on the Contractors' responsibilities relative to permit requirements including the Mitigation and Monitoring Reporting Program (MMRP).
13. Review of the electrical and instrumentation specifications and drawings will primarily be provided by Todd Beecher, Beecher Engineering.
14. Review of the geotechnical aspects of the project will be provided by Dave Mathy, DCM Consulting.

The Constructability Review will not include a comprehensive review of all technical specifications or plans but will concentrate on the areas where our past experience has shown the greatest potential for value is generally found. The review will not include a review for building code compliance, design peer review, design plan check or value engineering. The main purpose of a constructability review is to mitigate potential costly problems and changes during construction. The review can reduce and minimize contractual disputes that often arise during the actual construction of the project.

- c. Review Comments: Four weeks are allotted for review of each design package. Detailed written review comments will be provided electronically. Review comments will include plan number and specification number, comment and/or suggestion, Psomas reviewer, space for designer's response, weighted system (critical, general or editorial), and space for including follow-up notes.
- d. City/Design Consultant Response: Psomas requests that the City/DC provide written response to Psomas' review comments. Psomas will review responses to determine if the comments have been adequately incorporated in the documents.
- e. Review Meeting: Psomas will meet with the City and DC to review the findings of each of our reviews. Psomas will review all meeting record of discussions and confirm that comments/discussions have been accurately captured.

### **3. Geotechnical Report**

- a. Psomas will review the Draft and Final Geotechnical Reports.

### **4. Forecast Schedule**

- a. Schedule: Psomas will review and provide additional details if necessary to the forecast schedules prepared by the DC. Psomas' forecast schedule review will assess whether the construction duration (Contract Period) is reasonable and with the incorporation of any possible milestones into the Construction Contract(s).
- b. Weather Days: Psomas will provide recommendations for allowable weather days for the construction Contract(s).
- c. Liquidated Damages: Psomas will provide recommendations for liquidated damages for Substantial Completion and milestones for the construction Contract(s).

### **5. Team and Design Meetings/Project Coordination**

- a. Psomas will attend design and team meetings as necessary. See Exhibit B for budgeted effort.

- b. Psomas will be available for project coordination, communication, and to provide technical expertise as necessary for construction decisions during design.

**6. Front End Specifications**

- a. Psomas will update and tailor the front-end specifications using the base documents previously provided by Psomas. The DC will complete the general formatting of the documents (margins, headers, footers, page numbers, etc) and manage the updates/revisions to be consistent with the overall project requirements for each submittal package.

**III. BID PERIOD**

**1. Bid Advertising**

- a. The City will manage the advertisement and issuance of the bid packages to the Contractors.
- b. The City will manage the distribution of bid documents to plan holders and maintain the plan holders list.

**2. Prebid Meeting**

- a. Psomas will attend the prebid meeting. DC/City responsible for documenting meeting discussions.
- b. City will facilitate the meeting.

**3. Addendum**

- a. DC will review Bidders' questions and prepare addenda.
- b. Psomas will assist with review of addenda, prior to issuance, as requested by the City.
- c. DC and City will manage the fielding of questions from Bidders and issuance of addenda.

**4. Bid Review:** Psomas will assist the City with evaluating and reviewing the bid proposals for completeness, alternate prices and unit prices (if applicable), and determining the lowest responsive, responsible bidder. DC will provide review assistance for technical considerations such as named equipment manufacturers.

**5. Insurance and Bond Coordination:** The City will review the Contractor's bonds and evidence of insurance and coordinate resolution of comments and/or non-compliance with the Contractor. Psomas will assist with this effort as requested by the City.

**6. Notice of Award:** The City will prepare and issue the Notice of Award.

**7. Notice to Proceed:** The City will prepare and issue the Notice to Proceed.

## EXHIBIT B-2



**ADDITIONAL COMPENSATION SCHEDULE -1**  
**CITY OF SUNNYVALE - WATER POLLUTION CONTROL**  
**PLANT PLANT REHABILITATION PROJECT**  
**PRECONSTRUCTION PERIOD SERVICES**  
**PSOMAS - STAFF EFFORT AND BUDGET ESTIMATE**

October 3, 2019

	C.Davenport (Sr. Adv.)	M.Redig (PM/CM)	TBD (CM)	Discipline Specialist	Subconsultants		TOTAL
					D. Mathy (Geotech)	T. Beecher (Elec)	
FY 20 Billing Rate	\$ 235	\$ 216	\$ 216	\$ 206	\$ 230	\$ 206	
FY 21 Billing Rate	\$ 242	\$ 222	\$ 222	\$ 212	\$ 237	\$ 212	
<b>ACTIVITY DESCRIPTION</b>	<b>(Hours)</b>	<b>(Hours)</b>	<b>(Hours)</b>	<b>(Hours)</b>	<b>(Hours)</b>	<b>(Hours)</b>	<b>(Hours)</b>
<b>1. DIM: Western Perimeter Wall</b>							
a. DIM Review	8	16	0	0	8	0	32
b. Workshop 1	6	6	0	0	0	0	12
Subtotal Hours	14	22	0	0	8		44
Subtotal Psomas Cost - FY 20	\$ 3,290	\$ 4,752	\$ -	\$ -			\$ 8,042
Subtotal Subconsultant					\$ 1,840	\$ -	\$ 1,840
5% Markup					\$ 92	\$ -	\$ 92
Total Task 1							<b>\$ 9,974</b>
<b>BASE SCOPE BID PACKAGE</b>							
<b>2. 30% Project Review</b>							
a. 30% Project Review	12	16	8	8	8	8	60
b. Review Meeting	6	6	6	0	0	0	18
Subtotal Hours	18	22	14	8	8	8	78
Subtotal Covello Cost - FY 20	\$ 4,230	\$ 4,752	\$ 3,024	\$ 1,648			\$ 13,654
Subtotal Subconsultant					\$ 1,840	\$ 1,648	\$ 3,488
5% Markup					\$ 92	\$ 82	\$ 174
Total Task 2							<b>\$ 17,316</b>
<b>3. 60% Constructability Review</b>							
a. 60% Constructability Review	12	24	24	16	16	16	108
b. Review Meetings	8	8	8	0	0	6	30
Subtotal Hours	20	32	32	16	16	22	138
Subtotal Covello Cost - FY 20	\$ 4,700	\$ 6,912	\$ 6,912	\$ 3,296			\$ 21,820
Subtotal Subconsultant					\$ 3,680	\$ 4,532	\$ 8,212
5% Markup					\$ 184	\$ 227	\$ 411
Total Task 3							<b>\$ 30,443</b>
<b>4. 90% Constructability Review</b>							
a. 90% Constructability Review	20	32	32	24	16	24	148
b. Review Meetings	8	8	8	0	2	2	28
Subtotal Hours	28	40	40	24	18	26	176
Subtotal Covello Cost - FY 21	\$ 6,777	\$ 8,899	\$ 8,899	\$ 5,092			\$ 29,668
Subtotal Subconsultant					\$ 4,264	\$ 5,517	\$ 9,781
5% Markup					\$ 213	\$ 276	\$ 489
Total Task 4							<b>\$ 39,938</b>
<b>5. 100% Constructability Review</b>							
a. 100% Constructability Review	12	20	20	0	6	16	74
b. Review Meeting	8	8	8	0	0	2	26
Subtotal Hours	20	28	28	0	6	18	100
Subtotal Covello Cost - FY 21	\$ 4,841	\$ 6,229	\$ 6,229	\$ -			\$ 17,300
Subtotal Subconsultant					\$ 1,421	\$ 3,819	\$ 5,241
5% Markup					\$ 71	\$ 191	\$ 262
Total Task 5							<b>\$ 22,803</b>
<b>PERIMETER WALL BID PACKAGE</b>							
<b>6. 30% Project Review</b>							
a. 30% Project Review	8	16	8	0	6	0	38
b. Review Meeting	6	6	6	0	0	0	18
Subtotal Hours	14	22	14	0	6	0	56
Subtotal Covello Cost - FY 20	\$ 3,290	\$ 4,752	\$ 3,024	\$ -			\$ 11,066
Subtotal Subconsultant					\$ 1,380	\$ -	\$ 1,380
5% Markup					\$ 69	\$ -	\$ 69
Total Task 6							<b>\$ 12,515</b>
<b>7. 60% Constructability Review</b>							
a. 60% Constructability Review	8	16	16	0	16	0	56
b. Review Meetings	6	6	6	0	0	0	18

Subtotal Hours	14	22	22	0	16	0	74
Subtotal Covello Cost - FY 20	\$ 3,290	\$ 4,752	\$ 4,752	\$ -			\$ 12,794
Subtotal Subconsultant					\$ 3,680	\$ -	\$ 3,680
5% Markup					\$ 184	\$ -	\$ 184
Total Task 7							\$ 16,658
<b>8. 90% Constructability Review</b>							
a. 90% Constructability Review	16	32	32	0	16	0	96
b. Review Meetings	6	6	6	0	0	0	18
Subtotal Hours	22	38	38	0	16	0	114
Subtotal Covello Cost - FY 21	\$ 5,325	\$ 8,454	\$ 8,454	\$ -			\$ 22,234
Subtotal Subconsultant					\$ 3,790	\$ -	\$ 3,790
5% Markup					\$ 190	\$ -	\$ 190
Total Task 8							\$ 26,214
<b>9. 100% Constructability Review</b>							
a. 100% Constructability Review	8	20	20	0	8	0	56
b. Review Meeting	6	6	6	0	0	0	18
Subtotal Hours	14	26	26	0	8	0	74
Subtotal Covello Cost - FY 21	\$ 3,389	\$ 5,784	\$ 5,784	\$ -			\$ 14,958
Subtotal Subconsultant					\$ 1,895	\$ -	\$ 1,895
5% Markup					\$ 95	\$ -	\$ 95
Total Task 9							\$ 16,948
<b>SITE PREP / UTILITY RELOCATION BID PACKAGE</b>							
<b>10. 50% Project Review</b>							
a. 50% Project Review	16	24	24	0	16	16	96
b. Review Meeting	6	6	6	0	0	0	18
Subtotal Hours	22	30	30	0	16	16	114
Subtotal Covello Cost - FY 20	\$ 5,170	\$ 6,480	\$ 6,480	\$ -			\$ 18,130
Subtotal Subconsultant					\$ 3,680	\$ -	\$ 3,680
5% Markup					\$ 184	\$ -	\$ 184
Total Task 10							\$ 21,994
<b>11. 90% Constructability Review</b>							
a. 90% Constructability Review	16	32	32	0	8	8	96
b. Review Meetings	6	6	6	0	0	0	18
Subtotal Hours	22	38	38	0	8	8	114
Subtotal Covello Cost - FY 20	\$ 5,170	\$ 8,208	\$ 8,208	\$ -			\$ 21,586
Subtotal Subconsultant					\$ 1,840	\$ -	\$ 1,840
5% Markup					\$ 92	\$ -	\$ 92
Total Task 11							\$ 23,518
<b>12. 100% Constructability Review</b>							
a. 100% Constructability Review	16	20	20	0	8	0	64
b. Review Meetings	6	6	6	0	0	0	18
Subtotal Hours	22	26	26	0	8	0	82
Subtotal Covello Cost - FY 21	\$ 5,325	\$ 5,784	\$ 5,784	\$ -			\$ 16,894
Subtotal Subconsultant					\$ 1,895	\$ -	\$ 1,895
5% Markup					\$ 95	\$ -	\$ 95
Total Task 12							\$ 18,884
<b>13. Forecast Schedule Review - LDs / WDs</b>							
	4	12	16	0	0	0	32
Total Task 13 - FY 21	\$ 968	\$ 2,670	\$ 3,560	\$ -	\$ -	\$ -	\$ 7,198
<b>14. Team Meetings/Project Coordination</b>							
	12	32	32	0	0	0	76
Total Task 14 - FY 21	\$ 2,905	\$ 7,119	\$ 7,119	\$ -	\$ -	\$ -	\$ 17,143
<b>15. Front-End Specification Review</b>							
	12	32	32	0	0	0	76
Total Task 15 - FY 21	\$ 2,905	\$ 7,119	\$ 7,119	\$ -	\$ -	\$ -	\$ 17,143
<b>16. Equipment Procurement Assistance</b>							
	0	0	0	0	0	0	0
Total Task 16 - FY 21	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>17. Bid Period Assistance</b>							
	16	40	40	0	0	0	96
Total Task 17 - FY 21	\$ 3,873	\$ 8,899	\$ 8,899	\$ -	\$ -	\$ -	\$ 21,671
<b>TOTAL - Precon Period Services (Hours)</b>							
	274	462	428	48	134	98	1,444
<b>TOTAL - Precon Period Services (Budget)</b>							
							\$320,359

- Escalation estimate is based on an approximate 3% billing rate adjustment each fiscal year; starting on January 1, 2020
- Fiscal year for each task is assumed based on DC schedule dated 7/12/19

