

**AMENDMENT No. 3 TO AGREEMENT WITH
CALRECOVERY INC. FOR CONSULTATION AND OTHER SERVICES**

This Amendment is entered into this 6th day of October, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and CalRecovery, Inc., a California corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement for professional consulting services, on October 16, 2014 in the amount of Fifteen Thousand Dollars (\$15,000.00) for a term ending October 16, 2016 for on-call solid waste support services; and

WHEREAS, on January 20, 2015, the parties entered into Amendment 1 to add additional scope and compensation in the amount of Thirty-Five Thousand Dollars (\$35,000.00) for a total not-to-exceed amount of Fifty Thousand Dollars (\$50,000.00); and

WHEREAS, on July 1, 2015, the parties entered into Amendment 2 to add compensation in the amount of Fifty Thousand Dollars (\$50,000.00) for a total not-to-exceed amount of One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, the parties desire to amend the Agreement to allow CONSULTANT to provide additional professional consulting services for an additional cost of One Hundred and Five Thousand Dollars (\$105,000.00) for a total not-to-exceed amount of Two Hundred and Five Thousand Dollars (\$205,000.00).

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 2, entitled "Compensation" of the Agreement is amended in its entirety to read as follows:

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed Two Hundred and Five Thousand Dollars (\$205,000.00) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree

that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date on page 1.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

George Savage, Executive Vice President

APPROVED AS TO CONTENT:

Steven J. Machida, Director of Engineering

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	280-2909	50,000	280-416-4237	105,000
<input checked="" type="checkbox"/> Budget Appropriation	450-2970	80,000	280-423-4237	25,000
<input type="checkbox"/> Budget Transfer				

Explain the reason for the budget change:

Approve Amendment No. 3 to the Consultant Services Agreement with CalRecovery, Inc. to Increase the Compensation by \$105,000 for Technical Odor Support Services and Approve a Budget Appropriation of \$130,000 (Staff Contact: Steven Machida, 408-586-3355)

Background: On October 16, 2014, the City entered into an agreement for \$15,000 with CalRecovery, Inc. to provide technical on-call consulting support services for odor issues and other technical solid waste management related matters. The agreement was amended on January 20, 2015 and July 1, 2015 for \$35,000 and \$50,000 respectively, for continued services, for a total not to exceed \$100,000. The work has included field visits to odor-generating sites, review of Newby Island permit application documents, preparing written documents, attending regulatory hearings, providing expert witness testimony, and other odor-related technical support services. Additional services will be required to support review of the regional odor study, review of the Newby Island landfill expansion and City of San Jose's Planned Development Permit, and the City's appeal of San Jose's Hearing Officer's decision to CalRecycle.

The Bay Area Air Quality Management District (BAAQMD) staff is requesting the City to submit an application for an Air Permit for the City's sewer lift station located on McCarthy Boulevard. The City will perform air quality sampling and submit the results with the permit application. BAAQMD will then determine if a permit and/or odor treatment facilities are required. CalRecovery will coordinate the sampling, review the results, prepare the application, and assist the City through the permit process. It is now necessary to increase the agreement amount by \$105,000, for a total not to exceed \$205,000, for continued technical odor support services. The permit application is estimated to cost up to \$25,000. A budget appropriation of \$130,000 is necessary to perform this work. Staff will request additional funding in the future, if odor treatment facilities are required.

California Environmental Quality Act (CEQA): This item is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change to the environment.

Alternative: If the amendment is not approved, engineering staff will not receive technical odor consulting services to address ongoing odor problems in the City, will need to accept BAAQMD's decisions on the City's lift station without the ability to review and/or discuss and challenge complex odor emissions chemistry, and will use operating funds, allocated for other activities for the permit application fees.

Fiscal Impact: An operating budget appropriation of \$50,000 from Solid Waste Fund and \$80,000 from Sewer Fund is necessary to perform this work, with \$25,000 from the Sewer Fund going to the Utility Maintenance operating budget and the remaining funds going to the Utility Engineering operating budget.

Recommendation: Approve Amendment No. 3 to the consultant services agreement with CalRecovery, Inc. to increase the compensation by \$105,000 for technical odor support services and approve a budget appropriation of \$130,000.

Check if City Council Approval required.

Meeting: October 6, 2015

Itemization of funds, if needed:	Amount

Requested by:	Elizabeth Koo, Administrative Analyst	Date:
Department Head:	Steven Machida, Director of Engineering	Date:
Reviewed by:	Finance Director: <i>[Signature]</i> for Emma Karlen	Date: 9/29/15
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

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Form 30-222 (Rev. 1/92)