

**AMENDMENT No. 2 TO AGREEMENT
TO CONSULTING SERVICES AGREEMENT BETWEEN THE CITY AND TRIPLE
HS, INC. DBA H. T. HARVEY & ASSOCIATES**

This Amendment is entered into this 16th day of February, 2016, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and Triple HS DBA H. T. Harvey & Associates, (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement on February 19, 2013, entitled "Consulting Services Agreement between the City of Milpitas and H.T. Harvey & Associates ("Agreement") for professional services in the amount of Ninety-Seven Thousand Dollars (\$97,000.00); and

WHEREAS, the parties entered into Amendment No.1 to the Agreement on February 17, 2015, to increase the compensation by the additional amount of Twenty One Thousand Fifty Five Dollars (\$21,055), to allow CONSULTANT to continue provide mitigation monitoring and professional engineering services; and

WHEREAS, the parties desire to amend the Agreement again to increase the compensation by the additional amount of Thirty Thousand Dollars (\$30,000), for a new combined total compensation amount of One Hundred Forty Eight Thousand Fifty Five Dollars (\$148,055), to allow CONSULTANT to continue to provide professional engineering and mitigation monitoring services, as described in Exhibit A-2, attached hereto;

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

Section 2, entitled "Compensation" is hereby amended to read as follows:

1. The City hereby agrees to pay Consultant an amount not exceed (\$148,055) One Hundred Forty-Eight Thousand and Fifty-Five Dollars based on time and materials 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 rate for personnel performing services shall be as shown in Exhibit B-2. 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. The Consultant agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated **February 19, 2013** between **H. T. Harvey & Associates** and **the City of Milpitas**. The Consultant shall provide the City with renewal certificates of the current policies upon the expiration of the current policy.
3. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

Thomas C. Williams, City Manager

Steven Machida, Director of Engineering

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

CONSULTANT
H. T. Harvey & Associates

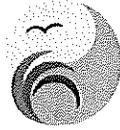
By:-----
Daniel Stephens, its
Authorized Agent

Taxpayer Identification Number

94-2204955

Corporate Entity Number

C0671935



Proposed Scope of Services Wrigley-Ford Creek Maintenance Project

Erosion Repair Permitting and Mitigation Site Maintenance Monitoring

Proposal 8264

25 January 2016

H. T. Harvey & Associates (HTH) is pleased to present this proposal to provide continued ecological consulting services to the City of Milpitas City (City) for erosion repair permitting and mitigation site monitoring at the Wrigley-Ford Creek Maintenance Project (Project).

Erosional areas developed in the mitigation site following mid-December storms in 2014. In summer 2015, Schaaf & Wheeler (S&W) prepared repair designs for erosional gullies in the riparian mitigation area and for a second area of erosion along the bank of Ford Creek near Railroad Court.

The City submitted Schaaf and Wheeler's erosion repair designs to the project permitting agencies under project permits issued by the Regional Water Quality Control Board (RWQCB), the U.S. Army Corps of Engineers (USACE), and the operational law agreement issued for the project by the California Department of Fish and Wildlife (CDFW). However, CDFW determined that the repairs would require a new permit application, and their decision resulted in the RWQCB and USACE not reviewing the designs at that time. Currently, repair of the erosive area along Ford Creek bank is not necessary for the wetland mitigation area to meet its success criteria. However, repairs to the erosional gullies are needed to maintain the integrity of the riparian mitigation area.

HTH proposes to assist the City with permitting and completing repairs to the erosional gullies in the riparian mitigation area. Therefore, this task includes refining the repair design(s) with S&W, permitting the erosion repair design(s), and providing construction support during implementation of the repairs.

HTH also proposes to provide 3 years of additional maintenance monitoring (2016 – 2018) to help the City guide site maintenance tasks, including watering, maintenance of planting basins and riparian mitigation areas, and nesting bird surveys prior to giant reed (*Arrundo donax*) control.

This scope of services and fee estimate are valid for a period of 60 days. This scope and fee are based on the assumptions listed below. If changes are made to any of these assumptions, the scope and fee may be revisited. Specific tasks associated with this scope of work are as follows:

Task 1. CDFW, USFWS, and RWQCB Permitting to Repair Erosional Gullies

During fall 2015 a temporary design prepared by S&W placed drainage pipe in the erosional gullies as a measure to prevent additional erosion during the 2015 – 2016 rainy season. S&W recommends this drainage pipe be incorporated into the permanent erosion repair design to prevent future erosion. Following S&W finalizing the erosion repair design plans, HTH will communicate the proposed design to obtain pre-approval from the permitting agencies (via phone, email, or up to 1 site visit, if necessary). We will prepare a Joint Aquatic Resources Permit Application (JARPA) package to permit repair of the erosional gullies with RWQCB, CDFW, and USACE. HTH will prepare one draft of the permit application package for the City to review and incorporate comments prior to submitting the application to the regulatory agencies. This task also includes time for S&W to make one round of minor modifications to the erosion repair design during communication with permitting agencies, and for S&W and HTH to provide construction support during erosion repair implementation (up to 2 site visits).

Deliverables

- Up to 2 revised engineering details with notes describing the proposed repairs
- Coordination with the regulatory agencies to obtain pre-approval of the proposed repair work
- JARPA permit application (Draft and Final)
- Up to 2 site visits by S&W and HTH during construction

Assumptions

- Only minor design modifications are required to permit repair of the erosional gullies.
- The City's contractor will conduct the required erosion repairs. They will also procure any replacement mitigation plants, meeting the plant origin requirements in the Mitigation and Monitoring Plan, from local native plant nurseries.

Anticipated Schedule

Date	Task 1 Benchmark
February 2016	City approves HTH proposal #8264
February-March 2016	HTH communicates erosion repair design to permitting agencies; S&W revises design, if needed.
March 15, 2016	HTH submits permit application(s) to CDFW, RWQCB and USACE
June 15, 2016	CDFW issues permit; other agencies can take 3-6 additional months to issue permits
June 22, 2016	City Council approves advertisement for erosion repair work
July, 2016	City reviews bids for erosion repair work
August, 2016	City awards construction contract
September 15, 2016	Start construction following receipt of permits from RWQCB and USACE
October 14, 2016	Construction complete

Task 2. Maintenance Monitoring In Years 4 – 6 (2016 – 2018)

An HTH restoration ecologist will attend inspections twice per year during monitoring years 4 – 6 (2016 – 2018) with the City's landscape contractor to increase the likelihood that success criteria for the riparian and wetland mitigation site will be met. Site maintenance monitoring will assess the need for plant replacement, weed control, mulch, and irrigation maintenance.

In addition, an HTH wildlife biologist will provide up to 2 nesting bird surveys 72 hours prior to giant reed treatment when treatment occurs during spring. HTH will provide written email summaries to the City following these site visits.

Deliverables

- 6 inspections (twice per year for 3 years).
- 2 nesting bird surveys (once per year for 2 years).
- Email summaries following visits above.

Assumptions

- 2 years of giant reed treatment will be sufficient to control giant reed at riparian mitigation site.
- Giant reed treatment consists of 2 rounds of herbicide application by the City's landscape contractor per year, one in the spring and one in the fall.
- The City's staff will help the City's contractor identify target areas for eradication of giant reed in the riparian mitigation site.

Task 3. Additional Services Contingency

This task includes a small contingency to fund additional services which may be requested by the City.

Fee Estimate

See attached.

