

List of Attachments for Item No. 16
Wrigley-Ford Creek Erosion Repair / Project No. 3700

Attachments:

- *16A City Council Resolution
- *16B Bid Results
- *16C Construction Change Order Policy
- *16D Amendment No. 3 to Agreement with Triple HS, Inc.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AWARDING A CONSTRUCTION CONTRACT TO AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH THE LOWEST RESPONSIBLE BIDDER, SUBMITTING A RESPONSIVE BID, PRESTON PIPELINES, INC., IN THE AMOUNT OF \$66,600, ESTABLISHING A CONSTRUCTION CONTINGENCY OF \$6,600 AND AUTHORIZING THE DIRECTOR OF ENGINEERING/CITY ENGINEER TO NEGOTIATE AND EXECUTE CHANGE ORDER(S) IN AN AGGREGATE AMOUNT NOT TO EXCEED THE CONSTRUCTION CONTINGENCY OF \$6,600 FOR THE WRIGLEY-FORD CREEK REPAIR PROJECT, PROJECT NO. 3700

WHEREAS, on June 21, 2016, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the Wrigley-Ford Creek Erosion Repair Project, Project No. 3700 (“Project”), which provides for the repair of creek bank erosion damage to the riparian mitigation area at Wrigley-Ford Creek sustained during the December 2014 winter storms; and

WHEREAS, the Engineer’s Estimate for the base bid Project work is approximately \$59,500.00; and

WHEREAS, the Project was advertised and one (1) sealed bid proposal was received on July 27, 2016. The lowest responsible bidder submitting a responsive bid is Preston Pipelines, Inc., with a bid in the amount of \$66,600.00; and

WHEREAS, no bid protest was filed with the City within five (5) days of the bid opening as set forth in the project plans and specifications; and

WHEREAS, sufficient funds to award the Project are available in the previously approved Project budget; and

WHEREAS, in accordance with State law, staff recommends the City Council authorize the City Manager to award to and execute a construction contract with Preston Pipelines, Inc., as the lowest responsible bidder submitting a responsive bid for the Project; and

WHEREAS, due to the Project’s tight completion schedule and the associated need for staff to respond swiftly to unanticipated construction conditions in order to limit potential claims or risk to the City, staff recommends the City Council authorize the Director of Engineering/City Engineer to negotiate and execute change order(s) in an amount not to exceed the construction contingency of \$6,600.00 established for this Project, which is approximately ten (10) percent of the total contract value.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby awards the construction contract to and authorizes the City Manager to execute a construction contract and related documents with the lowest

responsible bidder, submitting a responsive bid, Preston Pipelines, Inc., for the Project in the amount of \$66,600.00.

3. The City Council hereby established a construction contingency in the amount of \$6,600.00 for the Project, and the Director of Engineering/City Engineer is hereby authorized to negotiate and execute contract change order(s) for the Project in an aggregate amount not to exceed the construction contingency of \$6,600.00.

PASSED AND ADOPTED this _____ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney



CITY OF MILPITAS
 ENGINEERING DIVISION
 BID SUMMARY

***16B**

Project Name: Wrigley-Ford Creek Erosion Repair Project
Project No. : 3700
Bid Date: 07/27/16 @ 2:00 PM

BASE BID		Engineer's Estimate				Preston Pipelines, Inc.	
ITEM	DESCRIPTION	Qty.	UNIT	Unit Cost	Extension	Unit Cost	Extension
1	Mobilization (Max 5% of total base bid)	1	LS	\$2,500.00	\$2,500.00	2,400.00	\$2,400.00
2	Water Pollution Control Work	1	LS	\$5,000.00	\$5,000.00	2,200.00	\$2,200.00
3	Sheeting, Shoring & Bracing (for excavations 5 feet or deeper as required by Labor Code sec. 6705)	1	LS	\$5,000.00	\$5,000.00	1,000.00	\$1,000.00
4	Earthwork	1	LS	\$30,000.00	\$30,000.00	32,500.00	\$32,500.00
5	Seeding	1	LS	\$7,000.00	\$7,000.00	2,600.00	\$2,600.00
6	Irrigation Repair	1	LS	\$3,000.00	\$3,000.00	10,500.00	\$10,500.00
7	Demolition	1	LS	\$7,000.00	\$7,000.00	15,400.00	\$15,400.00
TOTAL					\$59,500.00		\$66,600.00
APPARENT LOW BIDDER							

List of Sub-contractors: No subcontractors

Construction Change Order Policy for Wrigley-Ford Creek Erosion Repair Project, Project No. 3700.

2007 City Council Approved Construction Change Order Policy

<u>Construction Award Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
Under \$50,000	\$5,000	\$7,500
Over \$50,000	10% of Award or \$25,000 whichever is small	15% of Award or \$100,000 whichever is smaller

Wrigley-Ford Creek Repair Project Change Order Policy

<u>Construction Award Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
\$66,600.00	N/A	\$6,660.00

Project No: 3700
Project Name: Storm Drain Deficiency

AMENDMENT No. 3
TO CONSULTING SERVICES AGREEMENT BETWEEN THE CITY
AND TRIPLE HS, INC. DBA H. T. HARVEY & ASSOCIATES

This Amendment is entered into this 6th day of September, 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 to provide mitigation monitoring and professional engineering services; and

WHEREAS, the parties entered into Amendment No.2 to the Agreement on February 16, 2016, to increase the compensation by the additional amount of Thirty Thousand Dollars (\$30,000), 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 Ten Thousand Dollars (\$10,000), for a new combined total compensation amount of One Hundred Fifty Eight Thousand Fifty Five Dollars (\$158,055), to allow CONSULTANT to provide professional engineering services involving pre-construction surveys for special status fish and wildlife species, nesting bird surveys, and a worker education program, required by the new permits, as described in Exhibit A-3, attached hereto;

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" is hereby amended to read as follows:

In consideration for Consultant's agreement to perform the additional scope of services set forth in Exhibit A-3, City hereby agrees to pay Consultant an amount not exceed (\$158,055) One Hundred Fifty-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-3. 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. Except as otherwise amended herein, all other provisions of the Agreement shall remain in full force and effect. From and after the date of this Amendment No. 3, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 3.

The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 3.

4. If any provision of this Amendment No. 3 shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Amendment No. 3 unless elimination of such provision materially alters the rights and obligations set forth herein.

This Amendment No. 3 is executed as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT
H. T. HARVEY & ASSOCIATES

Thomas C. Williams, City Manager

By: _____
Daniel Stephens, its
Authorized Agent

Steven Machida, Director of Engineering

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT A-3
Amendment 3
Scope of Services



**Proposed Scope of Services
Wrigley-Ford Creek Erosion Repair and Bank
Stabilization Project
Pre-Construction Surveys**

Proposal #8581

August 16, 2016

H. T. Harvey & Associates is pleased to provide this proposal to assist the City of Milpitas with the implementation of biological avoidance and minimization measures for the Wrigley-Ford Creek Erosion Repair and Bank Stabilization Project located on the eastern bank of Wrigley-Ford Creek, 1,700 feet downstream of the Wrigley-Ford Creek Bridge in Milpitas, California. It is our understanding that the Project includes the filling, stabilization, and re-contouring of eight erosional gullies, removal of sediment at the toe of the slope, and revegetation of the area. We further understand that the avoidance and minimization measures required under the Lake or Streambed Alteration Agreement (LSAA) issued by the California Department of Fish and Wildlife (CDFW) for the Project include preconstruction surveys for special-status wildlife species, a worker education class, and communication with CDFW. Our below scope is based upon the biological survey requirements in the LSAA. The specific tasks proposed are described below and a budget summarizing the proposed level of effort and costs of these tasks, as well as a fee schedule, are attached.

Task 1. Obtain Approval of Biologists' Qualifications

H. T. Harvey & Associates will prepare a summary of the qualifications of each biologist who will be proposed to work on the Project. At least 15 days prior to the onset of any construction related activities, we will submit to the CDFW, for approval, the names and credentials of biologists who would conduct activities pursuant to the LSAA.

Task 2. Prepare and Conduct Worker Environmental Awareness Program

H. T. Harvey & Associates will prepare a Worker Environmental Awareness Program (WEAP) and will present this training to construction crews and contractors. The training will include a brief review of listed species and other sensitive species/resources that may exist in the Project area [i.e., the western pond turtle (*Actinemys marmorata*), San Francisco common yellowthroat (*Geothlypis trichas sinuosa*), and nesting birds]. The training will include the life history, field identification, habitat requirements, and legal status for each species; locations of sensitive biological resources; limits of the Project work area; resource avoidance measures; permit conditions; and possible consequences for violations of State or Federal environmental laws. The training will include printed material and an oral training session by a qualified biologist.

The budget for this task includes the development of printed training materials and the initial presentation to Project personnel.

Task 3. Pre-Construction Survey for the Western Pond Turtle

No more than 48 hours prior to each phase of construction work within the Project area, a pre-construction survey for the western pond turtle will be conducted within the Project area by a qualified biologist. The survey will consist of walking the Project limits and all areas within the Project boundaries looking for western pond turtles. The biologist will investigate all potential areas that could be used by this species. Following the completion of the survey, we will prepare a brief written report summarizing the results. In the event that a western pond turtle is found, the budget for this task includes a minimal amount of time to coordinate with the California Department of Fish and Wildlife (CDFW), and to relocate the turtle(s).

Task 4. Pre-construction Survey for the San Francisco Common Yellowthroat and Other Nesting Birds

If construction of the Project is initiated during the typical avian nesting season (February 1 – September 15 as defined in the LSAA), an initial nesting bird survey will be conducted no more than 14 days prior to the initiation of construction activities and a final nesting bird survey will be conducted no more than 48 hours prior to construction. For the sake of efficiency, the second nesting bird survey will be conducted concurrently with the pond turtle survey (Task 3). An H. T. Harvey & Associates wildlife ecologist will assess the site to determine the presence of active bird nests protected by any applicable statutes (i.e., the Migratory Bird Treaty Act and California Fish and Game Code). The ecologist will search the entire work area thoroughly for any evidence of active bird nests, including nests, birds carrying materials or food, distraction displays, and other physical or behavioral evidence of nesting. Per the requirements of the LSAA, the survey will include all Project areas that may be impacted by construction as well as a 250-foot buffer (as access allows) for passerines, a 500-foot buffer for burrowing owls (*Athene cunicularia*) and other small raptors, and a 1,000 foot buffer for larger raptors for raptors and a 250-foot buffer for other species. Following completion of the survey, a brief letter report will be provided. If nesting birds are detected, we will include recommendations for how to deal with their presence during the proposed work.

Task 5. LSAA Permit Support

H. T. Harvey & Associates will assist the City by providing recommended written revisions to the LSAA for the project prepared by CDFW dated July 26, 2016. In the draft LSAA, CDFW proposed an additional 5 year monitoring period for the erosion repair area beyond the City's current monitoring commitment. The goal of our draft revisions will be to align the erosion repair project mitigation requirements with the Mitigation and Monitoring Plan (MMP) for the Wrigley, Ford, and Wrigley-Ford Creeks Maintenance to reduce the City's mitigation monitoring burden conditioned in the LSAA. This includes time to correspond with CDFW regarding the timing of project permits, make up to 2 rounds of edits to the draft LSAA, and attend up to 2 phone meetings with CDFW to resolve the terms of the LSAA permit.

Task 6. Additional Services

City will provide written direction and a budget for any additional service to be performed. Written authorization must be obtained from the City prior to the consultant beginning additional services. The City will not be responsible for additional work that the consultant performs prior to receiving written authorization.

Limitations/Assumptions:

In formulating our cost estimate, we assumed the following:

- A maximum of one WEAP training session will be required.
- A maximum of one western pond turtle preconstruction survey will be required.
- A maximum of two nesting bird surveys will be required.

If any additional training session or preconstruction services are desired, we would be happy to provide a proposal for these services or bill them on an hourly basis, upon the City's request.

EXHIBIT B-3
Amendment 3
Compensation



H. T. HARVEY & ASSOCIATES

Ecological Consultants

Project Name: Wrigley-Ford Creek Erosion Repair and Bank Stabilization Project – Proposal for Pre-construction

Proposal Number:

Date: August 16, 2016

Staff Time Estimates

Task	Personnel Hours by Task								HTH Cost by Task	HTH Direct Expenses (incl. 10% mark-up)	Total Project Cost
	Steve Rottenborn Principal, Wildlife Ecology	Ginger Bolen Associate Wildlife Ecologist	Govin Archbold Senior Restoration Ecologist	Mathew Timmer Wildlife Ecologist	Max Buscardo Principal, Restoration Ecology	Graphics/GIS	Support				
Task 1. Biologist Approvals	2	2	1	1	2				\$ 666	\$ 23	\$ 689
Task 2. Prepare WEAP				4		1			\$ 828	\$ 32	\$ 860
Task 3. Preconstruction survey for pond turtle	1	1	6	6		1			\$ 1,317	\$ 32	\$ 1,349
Task 4. Preconstruction survey for nesting birds	1	1	6	6					\$ 1,209	\$ -	\$ 1,209
Task 5. LSAA Permit Support			12		2				\$ 2,254	\$ -	\$ 2,254
Task 6. Additional services		1	8	16			1.25		\$ 3,639	\$ -	\$ 3,639
Total Labor Hours	2	6	20	33	2	2	3.25	267	Total Costs	\$9,913	Total Cost
TOTAL COST	\$ 442	\$ 1,104	\$ 3,020	\$ 4,422	\$ 442	\$ 216	\$ 267	\$ 87	\$87	\$10,000	