



City of Palo Alto

City Council Staff Report

(ID # 11152)

Report Type: Consent Calendar

Meeting Date: 5/11/2020

Summary Title: Amendment No. Three to Multi-Year Contract with Triple HS, Inc.

Title: Approval of an Exemption From Competitive Solicitation, Approval of Amendment Number 3 to Contract Number S16163031 With Triple HS Inc., dba H.T. Harvey & Associates, in the Amount of \$9,799 to Provide Further Professional Services, for a new Total Not-to-Exceed Amount of \$63,828 for the San Francisquito Creek Pump Station Riparian Mitigation Monitoring

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council:

1. Adopt an exemption from competitive solicitation by Council action as provided in PAMC Section 2.30.330 (regarding professional services agreements), based on Triple HS, Inc. dba H.T. Harvey & Associates, familiarity with the project and ability to perform the services; and
2. Approve and authorize the City Manager or his designee to execute Contract Amendment No. 3 to Contract No. S16163031 with Triple HS dba H.T. Harvey & Associates (Attachment A) to increase the compensation by \$9,799 to add further professional services associated with the San Francisquito Creek Storm Water Pump Station Riparian Mitigation Monitoring. The increase in compensation includes \$8,914 for basic services and \$885 for additional services, for a total not to exceed contract amount of \$63,828.

Background

The California Regional Water Quality Control Board issued regulatory permit 2006-400320 ("401 Certification") to the City of Palo Alto for the San Francisquito Creek Stormwater Pump Station and Outfall Project on June 12, 2008. A 401 Certification is a permit that regulates the discharges of fill and dredged material to water bodies that result from a project and defines the compliance measures and discharge limitations. The 401 Certification set forth mitigation requirements and a 10-year, long-term monitoring program of the on-site and off-site habitat

mitigation areas. Triple HS dba H.T. Harvey & Associates (“HT Harvey”) has been involved with the project for the past 13 years. In 2007, they prepared the pre-construction monitoring survey. Once the San Francisquito Creek Stormwater Pump Station project was completed in 2011, HT Harvey supported the City’s engineering consultant Schaaf and Wheeler in preparing the biological as-built report. Lastly, HT Harvey has monitored both sites and prepared the reports required by regulatory agencies since 2010.

On February 11, 2016, the City entered into contract S16163031 with HT Harvey to provide ecological consulting services for a monitoring program of the San Francisquito Creek Pump Station project’s habitat mitigation areas through Year 7. Monitoring Year 7 corresponds to calendar year 2016 for on-site mitigation and calendar year 2017 for off-site mitigation. The original amount of the contract was \$22,879 and did not require formal solicitation or Council approval as it was within contract approval authority of the City Manager.

On February 23, 2016, the City executed Contract Amendment No. 1 to correct typographical errors only. On December 17, 2018, City Council approved Contract Amendment No. 2 to provide monitoring for three additional years and extend the contract through Year 10. Amendment No. 2 increased the contract compensation by the amount of \$31,150, for a total contract not to exceed amount of \$54,029, and extended the term of the contract through December 31, 2021 ([Staff Report CMR# 9723](#)).

Discussion

The project’s pump station on-site mitigation area was impacted by the San Francisquito Creek Joint Powers Authority’s (SFCJPA) Lower San Francisquito Creek Flood Control Project during Year 7 of monitoring. On January 8, 2020, California Regional Water Quality Control Board (RWQCB) staff required the City to amend the existing 401 Certification to address the impacts of the SFCJPA’s project on the on-site mitigation area. HT Harvey will provide a complete 401 Certification application package, evaluate the mitigation area covered under the current 401 Certification, provide a formal assessment of the mitigation area impacted by the SFCJPA project, and provide a map to document where the mitigation for the pump station was transferred within the SFCJPA mitigation project. HT Harvey will submit the application package to the City. Staff will then submit these reports directly to RWQCB for review. This work is scheduled to be completed by September 2020.

The current professional services contract with HT Harvey, Contract No. S16163031, is valid through December 31, 2021, so no additional time is needed. Since an amendment to the 401 Certification permit is now required, staff requests that the contract be amended to include these services and increase the contract compensation by \$9,799 in relation to those added services. Based on HT Harvey’s knowledge of the sites and the history of the project, and their experience reporting for this project, staff is requesting an exemption from competitive solicitation by Council action pursuant to PAMC 2.30.330.

This contract is on the City’s professional services template, which permits the City to terminate

without cause/for convenience by providing written notice to the contractor. In the event the City finds itself facing a challenging budget situation, and it is determined that City resources need to be refocused elsewhere, the City can terminate for convenience. Other options include termination due to non-appropriation of funds or amending the contract to reduce the cost, for example, by reducing the scope of work. The contract may also be temporarily suspended by written notice of the City Manager.

Resource Impact

Funding for the current contract and the contract increase is budgeted in the Stormwater Management Fund In-House Maintenance Budget.

Policy Implications

This recommendation does not represent any changes to existing City policies.

Stakeholder Engagement

Stakeholder engagement is not required for this contract amendment.

Environmental Review

The project implements a mitigation measure identified in the Mitigated Negative Declaration (MND) for the San Francisquito Creek Storm Water Pump Station Project adopted by the Director of Planning and Community Environment on April 5, 2007, in accordance with the California Environmental Quality Act (CEQA). Therefore, the project is within the scope of and consistent with the MND.

Attachments:

- Attachment A: Contract S16163031 Amendment No. 3 with HT Harvey

**AMENDMENT NO. 3 TO CONTRACT NO. S16163031
BETWEEN THE CITY OF PALO ALTO AND
TRIPLE HS, INC., dba H.T. HARVEY & ASSOCIATES**

This Amendment No. 3 (this "Amendment") to Contract No. S16163031 (the "Contract" as defined below) is entered into as of April 21, 2020 by and between the **CITY OF PALO ALTO**, a California chartered municipal corporation ("CITY"), and TRIPLE HS, INC., dba H.T. HARVEY & ASSOCIATES, a California Corporation, located at 983 University Avenue, Bldg. D, Los Gatos, CA 95032 ("**CONSULTANT**"). CITY and CONSULTANT are referred to collectively as the "Parties" in this Amendment.

RECITALS

A. The Contract (as defined below) was entered into by and between the Parties on February 11, 2016, for professional services to assist the City with its long-term mitigation monitoring requirements mandated by regulatory permitting agencies for the San Francisquito Creek Storm Water Pump Station ("Project"); and

B. The Parties now wish to amend the Contract in order to (1) increase the compensation from Fifty Four Thousand Twenty-Eight Dollars and Ninety-Four Cents (\$54,028.94) to a new not to exceed amount of Sixty Three Thousand-Eight Hundred Twenty Eight Dollars (\$63,828) an increase of Nine Thousand Seven Hundred Ninety-Nine dollars (\$9,799.00), (2) to expand scope of services to include the tasks detailed in Exhibit "A-1" added here, as detailed in this Amendment.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the Parties agree:

SECTION 1. Definitions. The following definitions shall apply to this Amendment:

- a. **Contract.** The term "Contract" shall mean Contract No. S16163031 between CONSULTANT and CITY, dated February 11, 2016, as amended by:

Amendment No.1, dated February 23, 2016, and
Amendment No.2, dated November 26, 2018.

- b. **Other Terms.** Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

SECTION 2. Section 1, "SCOPE OF SERVICES" of the Contract is hereby amended to read as follows:

“CONSULTANT shall perform the Services described in the attached Exhibit “A”, Exhibit “A-1” and Exhibit “A-2”, in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of the CITY.”

SECTION 3. Section 4, “NOT TO EXCEED COMPENSATION” of the Contract is hereby amended to read as follows:

“The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, Exhibit “A-1” and Exhibit “A-2”, including both payment for professional services and any therein-specified reimbursable expenses, shall not exceed Eight Thousand Nine Hundred Fourteen dollars (\$8,914.00), per Exhibit “C” (COMPENSATION) and/or Exhibit “C-3” (COMPENSATION FOR AMENDMENT No. 3). In the event Additional Services (defined below) are authorized, the total compensation for Services, Additional Services and reimbursable expenses shall not exceed Nine Thousand Seven Hundred Ninety-Nine dollars (\$9,799.00), per Exhibit “C” and/or Exhibit “C-3” as applicable. Subject to Exhibit “C” and/or Exhibit “C-3” as applicable, the applicable rates and schedule of payment are set out at Exhibit “C-1” (HOURLY RATE SCHEDULE), Exhibit “C-2” (HOURLY RATE SCHEDULE, AMENDMENT No. 2) and/ or Exhibit “C-4” (HOURLY RATE SCHEDULE FOR AMENDMENT No. 3) as applicable, each of which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C” and/or Exhibit “C-3” as applicable. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. “Additional Services” shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit “A”, Exhibit “A-1” and/or Exhibit “A-2” as applicable.”

SECTION 4. Exhibits. The following exhibit(s) to the Contract is/are hereby amended or added, as indicated below, to read as set forth in the attachment(s) to this Amendment, which is/are hereby incorporated in full into this Amendment and into the Contract by this reference:

- a. Exhibit “A-2” entitled “SCOPE OF SERVICES FOR AMENDMENT No. 3”, ADDED.
- b. Exhibit “B” entitled “SCHEDULE OF PERFORMANCE”, AMENDED, REPLACES PREVIOUS.
- c. Exhibit “C-3” entitled “COMPENSATION FOR AMENDMENT No. 3”, ADDED.
- d. Exhibit “C-4” entitled “HOURLY RATE SCHEDULE FOR AMENDMENT No. 3”, ADDED.

SECTION 5. Legal Effect. Except as modified by this Amendment, all other provisions of the Contract, including any exhibits thereto, shall remain in full force and effect.

SECTION 6. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are fully incorporated herein by this reference.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

SIGNATURES OF THE PARTIES

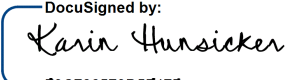
IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment effective as of the date first above written.

CITY OF PALO ALTO

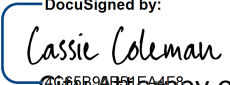
TRIPLE HS, INC, dba H.T. HARVEY & ASSOCIATES

Contracts Administrator (Contract under \$25k)

Officer 1

By: 
Name: Karin Hunsicker
Title: CEO

APPROVED AS TO FORM:


City Attorney or designee
(Contract over \$25k)

Contracts Administrator
(Checklist Approval)

Attachments:

- Exhibit "A-2" entitled "SCOPE OF SERVICES FOR AMENDMENT No. 3" (ADDED)
- Exhibit "B" entitled "SCHEDULE OF PERFORMANCE" (AMENDED, REPLACES PREVIOUS)
- Exhibit "C-3" entitled "COMPENSATION FOR AMENDMENT No. 3" (ADDED)
- Exhibit "C-4" entitled "HOURLY RATE SCHEDULE FOR AMENDMENT No. 3" (ADDED)

EXHIBIT "A-2"
SCOPE OF SERVICES FOR AMENDMENT No. 3
(ADDED)

In addition to the Services detailed in Exhibit "A," and Tasks 1-3 detailed in Exhibit "A-1," under this Exhibit "A-2" Scope of Services, Amendment No. 3, Consultant will complete Task 4, as detailed below.

Task 4. RWQCB 401 Water Quality Certification Application Package.

Consultant will prepare a water quality certification/waste discharge requirement application to submit to the Regional Water Quality Control Board (RWQCB), as an amendment to the existing certification for site number 02-43-C0554, dated June 12, 2008. The RWQCB requested that the standard new application format be used, noting that this would be amendment to the existing certification. This process will trigger generation of a California Integrated Water Quality System (CIQWS) number.

The Consultants will prepare a complete application package which includes Form R2C502-E and provide additional materials, such as a project description for the work done at the pump mitigation site by the San Francisquito Creek Joint Power Authority (SFCJPA), summary of previous environmental studies, a formal assessment of impacts to the pump station mitigation site from the SFCJPA project, and a map showing specifically where mitigation for the pump station was transferred to within the SFCJPA's larger mitigation project. The submittal will also include all copies of the CEQA documents, all correspondence with other agency staff, and project drawings from the SFCJPA's project in this location. In addition, the RWQCB requires a processing fee for handling the application, to be paid by the City.

This scope of services includes limited time for coordination with City staff and SFCJPA flood control project staff to request information and guidance. Time for one site visit or one in-person meeting with Consultant is included, as RWQCB staff may wish to visit the site during processing. Additional site visits or in person meetings can be accommodated for additional scope.

The RWQCB will now require alternative analyses for projects, with the level of effort of analysis to be determined by the impact levels of the project. Because this impacts to the mitigation site encroach on RWQCB jurisdiction, we expect a moderate to low, but not non-zero level of effort will be required to document and explain the eventual preferred project was selected against other potential projects.

The Consultant will submit a first-review administrative draft of RWQCB permit package to the City for review and comment. After incorporation of any changes, the package will be submitted to the RWQCB. We will maintain regular contact with the RWQCB to monitor processing of the permit application, until such time that our budget limit has been reached, at which time we anticipate the City would take over permit processing. Time has been included to respond to comments received on the draft application and to generate a final report and process the permit application, however such comments are assumed to be minor and extensive comments may require additional scope.

Limitations/Assumptions

- The application fee will be paid by the City once it is determined during the course of application drafting.
- In response to City requests, this scope of work assumes that a potentially significant amount of coordination, either with SFCJPA or the RWQCB, would be conducted directly by the City. Consultant will assist with coordination and processing up to our budget limit.

Deliverables

- Completed application form 401
- Associated attachment documents that provide summary of SFCJPA project impacts and mitigation assigned or available to be assigned to the pump station project. This package of materials will include project description information, history of both projects, maps, site photos, and prior permits and documents for the SFCJPA project.
- Completed dredge fill fee calculator
- Printed versions and submittal of hard copy via fed ex and electronic attachments via ftp server
- Team and agency communications to budget limit

EXHIBIT "B"
SCHEDULE OF PERFORMANCE, AMENDMENT No. 3
 (AMENDED, REPLACES PREVIOUS)

CONSULTANT shall perform the Services so as to complete each milestone within the completion by date specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the applicable notice to proceed (NTP).

Milestones **Completion By:**

Exhibit "A" Tasks:

- | | |
|---|--------------------------------|
| 1. Maintenance Recommendations Memo (On- & Off-site) | September 30, 2016 (Completed) |
| 2. Annual Monitoring Report (On-site)
Channel Stability Monitoring | December 31, 2016 (Completed) |
| 3. Maintenance Recommendations Memo (On- & Off-site) | September 30, 2017 (Completed) |
| 4. Annual Monitoring Report (Off-site) | December 31, 2017 (Completed) |
| 5. Maintenance Recommendations Memo (On- & Off-site) | September 30, 2018 (Completed) |

Exhibit "A-1" Tasks:

- | | |
|--|--------------------------------|
| Task 1a. Off-Site Conditions Memorandum | January 31, 2019 (Completed) |
| Task 1b. Vegetation Maintenance Recommendations | June 30, 2019 (Completed) |
| Task 1c. On-site Channel Stability Monitoring | June 30, 2019 (Completed) |
| Task 2a. On-site Vegetation Monitoring Year 10 | September 30, 2019 (Completed) |
| Task 2b. Off-site Vegetation Maintenance Recommendations | June 30, 2020 |
| Task 3a. Off-site Vegetation Monitoring Year 10 & Report | December 31, 2020* |

*Report will be submitted by City to regulatory agencies in December of 2020. Consultant will remain "on call" for Additional Services to city through **December 31, 2021**, in case of regulatory agency further requests/orders following such agencies' review of the report.

Exhibit "A-2" Tasks:

- | | |
|---|--------------------|
| Task 4. Prepare RWQCB 401 Water Quality Certification Package | September 30, 2020 |
|---|--------------------|

EXHIBIT "C-3"
COMPENSATION FOR AMENDMENT No. 3
(ADDED)

The CITY agrees to compensate the CONSULTANT for Services detailed in Exhibit "A-2", performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as Exhibit "C-4", Exhibit "C-1" and/or Exhibit "C-2", as applicable, up to the not to exceed budget amount for each task set forth below.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, and the total compensation for Additional Services do not exceed the amounts set forth in Section 4 of this Agreement.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
<u>Exhibit "A-2" Tasks:</u>	
Task 4 (Prepare RWQCB 401 Water Quality Certification Application Package)	\$8,848.00
<u>Compensation for Services under Exhibit "A-2":</u>	
Sub-total Basic Services	\$8,848.00
Reimbursable Expenses	\$66.00
Total Basic Services and Reimbursable Expenses	\$8,914.00
Additional Services	\$885.00
<i>Maximum Total Compensation</i>	<i>\$9,799.00</i>

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are: **\$66.00**.

A. Travel outside the San Francisco Bay area, including transportation and meals, will be

reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than **\$0** shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide Additional Services (as defined in Section 4, "Not to Exceed Compensation") of this Agreement only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit "C-1" and/or Exhibit "C-4", as applicable. The Additional Services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's project manager and CONSULTANT prior to commencement of the services. Payment for any Additional Services is subject to all requirements and restrictions in this Agreement.

EXHIBIT "C-4"
HOURLY RATE SCHEDULE FOR AMENDMENT No. 3
(ADDED)

Effective January 1, 2020

The hourly rate schedule in this Exhibit "C-4" only applies to the Services provided under Exhibit "A-2" Task 4.

Principal, Plant Ecology	\$260
Principal, Restoration Ecology	\$260
Senior Restoration Ecologist	\$197
Restoration Ecologist	\$154
Plant Biologist	\$118
Senior GIS Analyst	\$145
Technical Support	\$94

Certificate Of Completion

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Time Zone: (UTC-08:00) Pacific Time (US & Canada)	250 Hamilton Ave
	Palo Alto , CA 94301
	greg.pustelnik@cityofpaloalto.org
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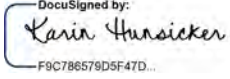
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Signer Events

Karin Hunsicker
 khunsicker@harveyecology.com
 CEO
 H. T. Harvey & Associates
 Security Level: Email, Account Authentication
 (None)

Signature

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Cassie Coleman
 Cassie.coleman@cityofpaloalto.org
 Assistant City Attorney
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 City of Palo Alto
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Vicki Thai Vicki.Thai@cityofpaloalto.org Security Level: Email, Account Authentication (None)		
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