

**AMENDMENT NO. 3**  
**TO THE PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN THE CITY OF MILPITAS AND**  
**WEST YOST ASSOCIATES**  
**FOR**  
**DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS**  
**EMISSIONS CONTROL FACILITY**

This Amendment No. 3 is entered into as of \_\_\_\_\_ (“Effective Date”), by and between the City of Milpitas, a municipal corporation (hereinafter referred to as “City”), and **West Yost Associates**, a California corporation (hereinafter referred to as “Consultant”). City and Consultant are sometimes jointly referred to as “Parties” in this Amendment No. 3.

**RECITALS:**

**WHEREAS**, on November 21, 2018, the Parties entered into a Professional Services Agreement for Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility, for the not-to-exceed compensation amount of \$98,000.00 and with a term period of November 21, 2018 through November 20, 2019 (the “Agreement”); and

**WHEREAS**, on June 12, 2019, the Parties entered into Amendment No. 1 to the Agreement, adding additional design services to the Scope of Work, increasing the compensation amount by \$36,340.00, and extending the term period expiration date for one year through November 20, 2020; and

**WHEREAS**, on December 14, 2020, the Parties entered into Amendment No. 2 to the Agreement, extending the term period expiration date from November 20, 2020 through May 20, 2021, and replacing Exhibit B-1, Schedule of Charges/Payments, and Exhibit C, Activity Schedule, with updated Exhibits B-2 and C-1, accordingly; and

**WHEREAS**, the Parties now desire to further amend the Agreement to add additional construction engineering and inspection services, to increase the compensation amount by \$250,000.00 to cover these additional services for a new total compensation amount of \$384,340.00, to extend the term period expiration date from May 20, 2021 through June 30, 2022, and to amend Exhibit A-1, Scope of Services, Exhibit B-2, Schedule of Charges/Payments, and Exhibit C-1, Activity Schedule, as specified in Exhibits A-2, B-3, and C-2, accordingly.

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

1. Section 2 Compensation, letter b, is deleted in its entirety and replaced with the following:

“b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Three Hundred and Eighty-Four Thousand Three Hundred and Forty Dollars (\$384,340.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.”

2. Section 5 Term is deleted in its entirety and replaced with the following:

“5. Term

The term of this Agreement shall be from **November 21, 2018** through **June 30, 2022**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant’s performance at the end of each year and cancel all or part of the Agreement.”

3. Exhibit A-1, entitled “Scope of Services,” is hereby amended to add “Scope of Services for Construction Engineering and Inspection Services,” as specified in Exhibit A-2, attached hereto and incorporated herein by this reference.
4. Exhibit B-2, entitled “Schedule of Charges/Payments-(Revised December 2020),” is hereby amended to add “Construction Engineering and Inspection Services Schedule of Charges/Payments,” as specified in Exhibit B-3, attached hereto and incorporated herein by this reference.
5. Exhibit C-1, entitled “Activity Schedule-(Revised December 2020),” is hereby amended to add “Construction Engineering and Inspection Services Schedule,” as specified in Exhibit C-2, attached hereto and incorporated herein by this reference.
6. All other provisions of the Agreement not amended by this Amendment No. 3 shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 3  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MILPITAS  
AND WEST YOST ASSOCIATES  
FOR  
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS  
EMISSIONS CONTROL FACILITY**

CITY OF MILPITAS

WEST YOST ASSOCIATES

*Approved By:*

\_\_\_\_\_  
Steven G. McHarris, City Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

\_\_\_\_\_  
Title

*Approved:*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Walter C. Rossmann,  
Risk Manager/ Finance Director

*Approved As to Content:*

\_\_\_\_\_  
Tony Ndah, Public Works Director

**EXHIBIT A-2**  
**SCOPE OF SERVICES FOR CONSTRUCTION ENGINEERING AND INSPECTION SERVICES**

**ENGINEERING SERVICES DURING CONSTRUCTION**

The following is a list of the key tasks necessary to perform the proposed Engineering Services During Construction Scope of Services, each is further described below:

- Task 6. Pre-Construction Meeting
- Task 7. Submittal Reviews
- Task 8. Responses to RFIs
- Task 9. Design Clarifications
- Task 10. Progress Meetings and Site Visits
- Task 11. Record Drawings
- Task 12. Startup and Performance Testing Services
- Task 13. Project Management

**Task 6. Pre-Construction Meeting**

This task will involve participation of key design team members in the pre-construction meeting with the City, the City's CM, and Contractor. It is anticipated that the meeting will be held at the Milpitas Main Lift Station and that the CM will develop the agenda and materials for this meeting and will be developing meeting notes.

**Task 6 Deliverables**

- No deliverable will be provided for this task

**Task 7. Submittal Reviews**

West Yost will review shop drawings, product data, and samples provided by the City's CM for conformance with the design concepts and general compliance with the Contract Documents. Submittal reviews will be provided on West Yost's standard review response form, modified to suit City's standard submittal disposition codes. For budgeting purposes, a total of 90 hours of engineering staff time has been assumed for this task and assumes approximately 30 individual submittal reviews (20 initial submittals and 10 resubmittals) at a rate of approximately 3 hours per submittal. A list of submittals that West Yost anticipates to review and submittals that West Yost anticipates the City will review is included in this exhibit.

**Task 7 Deliverables**

- Submittal review comments

**Task 8. Responses to RFIs**

RFIs submitted by the Contractor will be reviewed and necessary guidance will be provided to the Contractor on interpretation of the Contract Documents. West Yost will respond to formal RFIs that are provided to West Yost by the City's CM. Responses to RFIs will be provided on West Yost standard response form. For

budgeting purposes, a total of 38 hours of engineering staff time has been assumed for this task, equivalent to 15 individual RFI responses at a rate of approximately 2.5 hours per RFI.

Task 8 Deliverables

- RFI responses

### **Task 9. Design Clarifications**

If required for unforeseen conditions or other reasons, West Yost will prepare up to two design clarifications of the Contract Drawings. Design clarifications may include narrative descriptions, revised Contract Drawings, and/or revised specifications. A total of 24 hours of engineering and drafting staff time has been assumed for this task.

Task 9 Deliverables

- Narrative descriptions, revised Contract Drawings, and/or revised specifications

### **Task 10. Progress Meetings and Site Visits**

This task includes participation by phone in construction progress meetings during the course of construction to facilitate communication between West Yost, the City, the City's CM, and the Contractor. This task also includes time for two site visits by design team members at periodic times during construction to observe the construction work and/or meet with the construction team. Such site visits will take place at the request of the City. For budgeting purposes, it has been assumed that a representative from West Yost will attend up to 15 progress meetings by teleconference. All meetings and site visits are assumed to have a duration of 1 hour each.

Task 10 Deliverables

- No deliverable will be provided for this task

### **Task 11. Record Drawings**

West Yost will provide modifications to the design plans based upon a single, red-lined mark-up set provided by the City. It is anticipated that the City will provide a set of drawings with red-lined markups that indicate the changes that were made through the course of construction. It is assumed that the CM will be responsible for checking that the Contractor is taking necessary steps throughout the course of construction to document record drawing information in the redline markups. It is assumed that all record drawing information will be included in the redline markups without the need for separate instructions, interpretations, or separate sheets that are attached to the drawings or provided separately of the drawing set.

Task 11 Deliverables

- Project record drawings

### **Task 12. Startup and Performance Testing Services**

This task includes oversight of startup and performance testing activities for the new odor control system. As part of this work, West Yost will attend the pre-test

coordination meeting by phone, review draft testing protocol, review testing calculations and spreadsheets, and review a summary report that documents quality control and testing results compared with specification requirements.

Task 12 Deliverables

- Review comments on testing protocol and results

### **Task 13. Project Management**

This task includes internal communication and documentation necessary to execute the ESDC activities described above. This task also includes assisting with monthly invoicing, project planning, quality control and Project administration. This task includes management of West Yost's subconsultants assigned to the City's project.

Task 13 Deliverables

- Monthly invoices

## **INSPECTION SCOPE OF SERVICES**

The following is a list of the key tasks necessary to perform the proposed Inspection Scope of Services, each is further described below:

- Task 14. Pre-Construction Phase
- Task 15. Construction Phase
- Task 16. Other Direct Costs

### **Task 14. Pre-Construction Phase**

#### Pre-Construction Conference / Notice to Proceed

West Yost will attend and participate in the preconstruction conference conducted by the City. We assume the City will prepare and issue the construction contract Notice to Proceed (NTP), Pre-construction meeting agenda, and meeting summary.

#### *Pre-Construction Documentation of Conditions*

West Yost will coordinate a day and time to walk the pump station site to photo document the preconstruction conditions of the site with the General Contractor (GC). The photos will be used to document the condition of the site prior to construction commencing.

Task 14 Deliverables

- Photos of the site prior to construction

### **Task 15. Construction Phase**

#### Progress Meetings

West Yost inspection staff will attend weekly or bi-weekly progress meetings with the GC, City staff, and other members of the project team to review and provide updates on the overall progress, coordination, and communication related to safety, submittals, Requests for Information (RFI)s, changes, progress payments, coordination with pump station operations, progress schedules, and quality control/assurance.

#### Requests for Information

West Yost's inspection staff will participate in the resolution/response to RFIs written by the GC that are related to constructability only.

### Quality Control/Inspection

West Yost will provide part-time quality assurance inspection of the GC's performance of the work. This will include confirming compliance with the contract plans, specifications, approved submittals, applicable RFI responses, and approved change orders. If work is observed or tested to be in non-compliance with the contract a verbal notice followed by a Non-Compliance Notice (NCN) will be issued to the GC.

Inspection reports will be prepared in Microsoft Word and issued to the City's construction manager (CM) by the end of each week in Portable Document Format (pdf). The reports will contain a summary of the work performed, important discussions needing to be documented, and photos of the work performed.

### Progress Payments

West Yost will review the GC's monthly progress payment application and determine if the amount being requested by the GC is accurate and consistent with the amount of work performed. The values will be negotiated with the GC prior to reaching agreement, if necessary and will culminate with a recommendation to the City to approve the payment request.

### As-Built Record Drawings

The GC's as-built record drawings will be reviewed by the inspector at the end of each month as part of the progress payment process.

### Site Safety

West Yost will provide safety related equipment to its project staff such as hard hats, safety vests, safety glasses, gloves, ear protection, etc. West Yost will conduct bi-weekly safety meetings with its field staff and report any incidents to the City if they occur on the jobsite. West Yost will also monitor the safety program and practices of the GC to confirm that they are providing a safe work site for our staff members as well as those of the City.

### Materials Testing

West Yost's materials testing subconsultant will perform standard materials testing quality assurance sampling and testing of soil and concrete placement. The tests will include soil classification, moisture density curves, and in-place density testing using a nuclear density gage. Concrete sampling will consist of slump measurement and temperature. Concrete samples will be collected, temporarily stored in the field, taken back to the laboratory for curing and compression tested at 7-day and 28-day strengths. Included in this scope is the coordination with the materials testing subconsultant and the review, logging, and transmittal of the test reports to the GC and City for their records and acceptance.

### Testing, Startup, and Commissioning

West Yost will attend all startup meetings, witness the testing of the odor control system that includes the performance and operational testing, and will coordinate startup activities with the City’s plant operations staff.

Punchlist and Final Walk Through

West Yost will arrange a final inspection once the GC requests Substantial Completion. The inspection will create a final punchlist of work items remaining to be completed. The punchlist will be transmitted to the GC with the decision on the substantial completion request. The remainder of the contract will be to confirm that the items on the punchlist have been addressed and any other remaining deliverables are received.

Task 15 Deliverables

- Provide input to construction related RFIs
- Inspection reports and NCNs, when applicable
- A signed-off progress payment application for each month the GC submits a payment request for processing
- Delivery of the inspector’s as-built record drawings
- Summary of bi-weekly safety tailgate meetings, and any incident report generated by the GC
- Test reports generated by our subconsultant on concrete or soils sampled.
- Generate final punchlist and a Certificate of Completion

**Task 16. Other Direct Costs**

Included in this task are costs associated with transportation to and from the project site.

**ANTICIPATED LIST OF SUBMITTALS TO BE REVIEWED**

<b>Submittal</b>	<b>Specification</b>	<b>Reviewer</b>
Geotextile Fabric	02071	WY
Controlled Low Strength Material	02081	City
Compressive Strength Test results	02081	WY
Site Preparation	02200	City
Site Preparation - Shop Drawings	02200	City
Control Points & Stability Measurements	02200	City
Earthwork	02200	City



Trenching	02320	City
Aggregate Base Course Material	02722	City
Asphalt Paving	02740	City
Cast-In-Place Concrete - Shop Drawings	03301	WY/WY Sub
Cast-In-Place Concrete -Product Data	03301	WY Sub
Grout	03600	City
Anchor Bolts	05501	WY/WY Sub
High Performance Coatings	09960	WY
Warning Signs	10020	City
General Requirements for Equipment	11000	WY
Equipment Mounting	11002	WY/WY Sub
Biological Oder Control System - O&M Manual	11060	WY/WY Sub
Biological Oder Control System - Foul Air Fan	11302	WY/WY Sub
Biological Oder Control System - Control Panel	11302	WY Sub
Biological Oder Control System - Motor	11302	WY/WY Sub
Mist and Grease Eliminator	11303	WY
Fiberglass Reinforced Plastic Ductwork	13235	WY
Piping Systems	15050	WY
Pipe Hangers and Supports	15060	WY/WY Sub
Piping Identification	15076	City
Piping Appurtenances	15095	WY
Piping Seismic Restraints	15097	WY/WY Sub
Valves	15110.1, 15114	WY
Piping Connections	15122	WY
Piping Insulation	15250	WY

Drains and Cleanouts	15440	WY
Testing Pipelines	15951	City
Electrical	16000	WY Sub

**EXHIBIT B-3  
CONSTRUCTION ENGINEERING AND INSPECTION SERVICES  
SCHEDULE OF CHARGES/PAYMENTS**

Estimated Project Hours and Budget

Engineering Services During Construction		
Task	Level of Effort, hours	Estimated Budget
Task 6. Pre-Construction Meeting	8	\$ 1,878
Task 7. Submittal Reviews	90	\$ 35,659
Task 8. Responses to RFIs	38	\$ 10,092
Task 9. Design Clarifications	24	\$ 5,615
Task 10. Progress Meetings and Site Visits	46	\$ 13,393
Task 11. Record Drawings	75	\$ 15,932
Task 12. Startup and Performance Testing Services	18	\$ 3,776
Task 13. Project Management	38	\$ 19,893
<b>Subtotal</b>	<b>337</b>	<b>\$ 106,238</b>
Inspection Services		
Task 14. Preconstruction Phase	10	\$ 1,569
Task 15. Construction Phase	829	\$ 136,249
Task 16. ODCs (Transportation)		\$ 5,944
<b>Subtotal</b>	<b>839</b>	<b>\$ 143,762</b>
<b>Total Amendment Hours and Budget</b>	<b>1,176</b>	<b>\$ 250,000</b>

## 2021 Billing Rate Schedule

(Effective January 1, 2021 through December 31, 2021)\*



POSITIONS	LABOR CHARGES (DOLLARS PER HOUR)
<b>ENGINEERING</b>	
Principal/Vice President	\$307
Engineering/Scientist/Geologist Manager I / II	\$291 / \$304
Principal Engineer/Scientist/Geologist I / II	\$263 / \$279
Senior Engineer/Scientist/Geologist I / II	\$236 / \$247
Associate Engineer/Scientist/Geologist I / II	\$202 / \$216
Engineer/Scientist/Geologist I / II	\$162 / \$188
Engineering Aide	\$95
Administrative I / II / III / IV	\$83 / \$105 / \$126 / \$139
<b>ENGINEERING TECHNOLOGY</b>	
Engineering Tech Manager I / II	\$302 / \$304
Principal Tech Specialist I / II	\$277 / \$287
Senior Tech Specialist I / II	\$254 / \$266
Senior GIS Analyst	\$230
GIS Analyst	\$217
Technical Specialist I / II / III / IV	\$162 / \$185 / \$208 / \$232
Technical Analyst I / II	\$116 / \$139
Technical Analyst Intern	\$94
Cross-Connection Control Specialist I / II / III / IV	\$121 / \$131 / \$147 / \$164
CAD Manager	\$183
CAD Designer I / II	\$142 / \$160
<b>CONSTRUCTION MANAGEMENT</b>	
Senior Construction Manager	\$294
Construction Manager I / II / III / IV	\$179 / \$192 / \$204 / \$258
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$157 / \$174 / \$194 / \$202
Apprentice Inspector	\$142
CM Administrative I / II	\$76 / \$102
Field Services	\$202

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc. will be billed at actual cost plus 15%.
- Mileage will be billed at the current Federal Rate and Travel will be billed at cost.
- Subconsultants will be billed at actual cost plus 10%.
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.
- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

## 2021 Billing Rate Schedule

(Effective January 1, 2021 through December 31, 2021)\*



### Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80 / day
Hydrant Pressure Gauge	\$10 / day
Hydrant Pressure Recorder, Standard	\$40 / day
Hydrant Pressure Recorder, Impulse (Transient)	\$55 / day
Trimble GPS – Geo 7x	\$220 / day
Vehicle	\$10 / day
Water Flow Probe Meter	\$20 / day
Water Quality Multimeter	\$185 / day
Well Sounder	\$30 / day

**EXHIBIT C-2**  
**CONSTRUCTION ENGINEERING AND INSPECTION SERVICES SCHEDULE**

The proposed level of effort and budget for each of the tasks described above is shown in Table 1. The fee estimate was based on the following criteria and assumptions:

- Project start - May 20, 2021
- Project duration – 165 working days (pending award of General Construction Contract)
- Project completion – June 30, 2022
- Part-time inspection
- Submittals - 30
- RFIs - 15
- Design clarifications – 2