

CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

**CONTRACT FOR PROFESSIONAL SERVICES**

This Contract is made and entered into on the 22<sup>nd</sup> day of October, 2015, by and between the City of Tempe, an Arizona municipal corporation (“City”), and **Carollo Engineers, Inc.**, a Delaware corporation (“Consultant”).

City engages Consultant to perform professional services for a project known and described as **Presedimentation, Flocculation, and Chemical Process Maintenance – South Tempe Water Treatment Plant**, Project No. **3205911B** (“Project”).

**1. SERVICES OF CONSULTANT**

Consultant shall perform the following professional services to City in conformance with applicable professional standards and in accordance with the degree of care and skill that a registered professional in Arizona would exercise under similar conditions:

- 1.1. Consultant shall provide design services, as described in Exhibit “A” attached.
- 1.2. Consultant has assigned Mark Gross as the project manager for this Contract. Prior written approval by City is required in the event Consultant needs to change the project manager. Consultant shall submit the qualifications of the proposed substituted personnel to City for approval prior to any substitution or change.
- 1.3. Consultant shall prepare and submit a detailed opinion of probable cost of the Project.
- 1.4. Consultant shall follow and comply with the Arizona Utility Coordinating Committee’s Public Improvement Project Guide and the City’s Utility Permit and Construction Manual, latest revisions, as directed by City.
- 1.5. Consultant shall prepare plans and technical specifications per the requirements of the applicable chapters of the City’s Engineering Design Criteria Manual, latest revision, and the Maricopa Association of Governments (MAG) Uniform Standard Details for Public Works Construction as amended by City. All plans shall be prepared on CADD as required by City. The final original plans shall be submitted on 3 ml double matte black line mylar and shall be 24” x 36” in size.
- 1.6. Consultant shall submit all final construction documents in both hard copy and electronic format. Plans shall be MicroStation or AutoCAD compatible and all other documents shall be Microsoft Office compatible. The software version used shall be compatible to current City standards. Other support documents, for

example, structural calculations, drainage reports and geotechnical reports, shall be submitted in hard copy only.

- 1.7. Consultant shall obtain all necessary permits and licenses required for the performance of its work. Failure of Consultant to obtain said permits prior to the commencement of its work shall constitute a breach of this Contract.
- 1.8. Consultant shall perform the work in a manner and at times which do not impede or delay City's operations and/or functions.
- 1.9. Consultant shall be solely responsible for any repair, replacement, remediation and/or clean-up of any damage done by Consultant including any impairment of access to City or other lawful invitees, by such work performed on this Project.

**2. TERM OF CONTRACT**

Consultant shall complete all services within 90 (ninety) calendar days of the date appearing on the "Notice to Proceed" issued by City. In the event delays are experienced beyond the control of Consultant, the schedule may be revised as determined by City in its sole discretion, and pursuant to Section 3, Consultant's Compensation.

**3. CONSULTANT'S COMPENSATION**

- 3.1. The method of payment for this Contract is payment by installments. Total compensation for the services performed shall not exceed \$126,192.00, unless otherwise authorized by City.
- 3.2. Payment for this Contract shall be based on the following Budget Schedule:

<u>Task Description</u>	<u>Method</u>	<u>Amount</u>
Design Services	Hourly, Not to Exceed	\$118,692.00
<b>Subtotal Task Amount:</b>		<b>\$118,692.00</b>
<u>Allowances</u>	<u>Method</u>	<u>Amount</u>
Sub-consultant Services	Not to Exceed	\$4,000.00
Permit Fees	Not to Exceed	\$3,000.00
Printing and Scanning	Not to Exceed	\$500.00
<b>Subtotal Allowances Amount:</b>		<b>\$7,500.00</b>
<b>Total Compensation Not to Exceed:</b>		<b>\$126,192.00</b>

- 3.3. City shall pay Consultant by installments, each installment based upon monthly progress reports and related, detailed invoices submitted by Consultant. Submittals shall be based on the Budget Schedule and shall include supporting

documentation for all Allowances. If Budget Schedule includes an Allowance for reimbursable expenses, in no event will payment exceed actual cost. Invoices shall include job titles and hourly rates when applicable. Hourly rates are established in the attached Exhibit "A" incorporated hereby by this reference and are in effect for the entire Contract term unless City provides written authorization for an hourly rate increase. Consultant shall not exceed any of the specified budget amounts for any Task or Allowance without prior written authorization from City. City may provide written authorization for the transfer of budget amounts between any of the Tasks or Allowances provided the total Contract amount does not exceed the amount indicated in Section 3.1.

- 3.4. If detailed invoice(s) and progress report(s) are approved by City, installment payments will be made within thirty (30) days after City's approval.
- 3.5. Consultant acknowledges and agrees that invoices shall be submitted to City for review and approval no more than sixty (60) days after work or services have been performed. City reserves the right to deny in whole or in part, payment to Consultant, including but not limited to, fees and expenses contained in any invoice not received by the City within sixty (60) days of the date such work or services were performed. This in no way shall be construed to waive or diminish City's rights and remedies for otherwise withholding funds under Arizona law.

#### **4. CITY'S RESPONSIBILITIES**

- 4.1. City shall designate a project manager during the term of this Contract. The project manager has the authority to administer this Contract and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by City on any aspect of the work shall be directed to the project manager.
- 4.2. City shall review requests for information related to the Project by Consultant and will endeavor to provide a prompt response to minimize delay in the progress of Consultant's work. City will also endeavor to keep Consultant advised concerning the progress of City's review of the work. Consultant agrees that City's inspection, review, acceptance or approval of Consultant's work shall not relieve Consultant of its responsibility for errors or omissions of Consultant or its subconsultant(s).
- 4.3. Unless included in Consultant's services as identified in Section 1, City may furnish with or without charge, upon Consultant's reasonable request, the following information to the extent it is within City's possession or control:
  - 4.3.1. One copy of its maps, records, laboratory tests, survey ties, and benchmarks, or other data pertinent to the services. However, Consultant shall be solely responsible for searching the records and requesting specific drawings or information and independently verifying said

information.

4.3.2. Available City data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.

4.3.3. When required, title searches, legal descriptions, detailed ALTA Surveys, and environmental assessments.

## **5. TERMINATION AND DEFAULT**

- 5.1. City shall be entitled to terminate this Contract at any time, in its discretion. In addition, City may terminate this Contract for default, non-performance, breach or convenience, or abandon any portion of the Project for which services have not been fully or properly performed by Consultant. Termination shall be commenced by delivery of written notice delivered to Consultant, personally or by certified mail at 4600 E. Washington St, Suite 500, Tempe, Arizona 85034. Termination shall be effective upon fourteen (14) days of delivery of notice to Consultant. In addition, this Contract may be terminated pursuant to A.R.S. § 38-511.
- 5.2. Upon the occurrence of Consultant's default, non-performance or breach of the Contract, City may recover any and all damages permitted by law or in equity against Consultant, in addition to termination of the Contract, including but not limited to compensatory damages, together with all costs and expenses as set forth in Section 12 herein.
- 5.3. In the event of Consultant's default, non-performance or breach, City agrees to, before exercising any right or remedy available to it, give Consultant written notice of the default, non-performance or breach. For the thirty (30) days following such notice, Consultant shall have the right to cure such default, non-performance or breach.
- 5.4. If Consultant fails to cure, immediately after receiving notice of termination from City, Consultant shall discontinue performance under this Contract and proceed to close said operations under this Contract. Consultant shall submit a detailed breakdown of completed work to City for evaluation. City shall have the right to inspect Consultant's work to analyze the services completed. Payment to Consultant shall be determined by City upon approval or disapproval of the services completed as of the date of delivery of notice of termination, and pursuant to Section 5.9.
- 5.5. Within ten (10) days of receipt of notice of termination as set forth herein, Consultant shall deliver to City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by Consultant under the Contract, entirely or partially completed, together with all unused materials supplied by City.

- 5.6. In the event of such termination or abandonment, Consultant shall be paid only for those services performed in a good and workmanlike manner, in accordance with all plans, specifications and governmental requirements completed prior to receipt of said notice of termination, subject to approval by City. To the extent permitted by this Contract, such payment may include reimbursable expenses then incurred by Consultant, in City's sole discretion.
- 5.7. If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by Consultant as determined and approved by City based upon the scope of work set forth in Exhibit "A." However, in no event shall the fee exceed that set forth in Section 3 of this Contract.
- 5.8. City shall make a determination as to approval or denial of any requested final payment within sixty (60) days after Consultant has delivered the last of the completed items and the final appraisal has been submitted to City.
- 5.9. The parties agree that in the event of any damages suffered by City as a result of any inexcusable delay, default, non-performance or breach by Consultant, Consultant agrees to reimburse City ten percent (10%) of the Contract amount per Section 3.1 for damages caused by its delay. This sum may be deducted from Consultant's payment or anticipated payment for failure to deliver and/or perform as specified. No premium will be awarded to Consultant for delivery and/or performance within the Contract term. Waiver by City of any of the provisions contained in this Section 5.9, or by way of the extension of the Contract term, shall in no way be deemed to waive or diminish City's rights available by law or in equity under the Contract.

## 6. INSURANCE

Without limiting any obligations or liabilities, Consultant, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and with forms reasonably satisfactory to City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from City.

### 6.1. General Clauses

- 6.1.1. Additional Insured. The insurance coverage, except workers' compensation and professional liability, required by this Contract, shall name City, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded Consultant shall be primary insurance, and that any self insured retention and/or insurance coverage carried by City or its employees shall be excess coverage, and not contributory coverage to that provided by Consultant.

This provision and the naming of the City as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).

- 6.1.2. Coverage Term. All insurance required herein shall be maintained in full force and effect until services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so shall constitute a material breach of this Contract.
- 6.1.3. Primary Coverage. Consultant's insurance shall be primary insurance as respects City, and any insurance or self insurance maintained by City shall be in excess of Consultant's insurance and shall not contribute to it.
- 6.1.4. Claim Reporting. Consultant shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect City.
- 6.1.5. Waiver. The policies for workers' compensation and general liability shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of Consultant.
- 6.1.6. Deductible/Retention. The policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Consultant shall be solely responsible for deductible or self-insured retentions and City may require Consultant to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- 6.1.7. Policies and Endorsements. City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.
- 6.1.8. Certificates of Insurance. Prior to commencing services under this Contract, Consultant shall furnish City with certificates of insurance, or formal endorsements as required by the Contract, issued by Consultant's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract by referencing the Project number and/or Project name and shall provide for not less than thirty (30) days advance written notice by certified mail to City of cancellation or termination of insurance.

6.1.9. Subconsultants/Contractors. Consultant shall include all subconsultants and subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant and subcontractor.

6.2. Workers' Compensation. Consultant shall carry workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of the services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case services under this Contract are subcontracted, Consultant shall require all subconsultant(s) to provide workers' compensation and employer's liability to at least the same extent as provided by Consultant.

6.3. Automobile Liability. Consultant shall carry commercial/business automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of Consultant services. Coverage will be at least as broad as coverage Code 1 "any auto" (Insurance Service Office policy form CA 0001 1/87 or any replacements thereof). Such coverage shall include coverage for loading and unloading hazards.

6.4. Commercial General Liability. Consultant shall carry commercial general liability insurance with a combined single limit of not less than \$1,000,000. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office policy form CG 0002 1-11-88 or any replacement thereof.

In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a "severability of interests" provision (also known as "cross liability" and "separation of insured").

6.5. Professional Liability. Consultant retained by City to provide the engineering services required by the Contract will maintain professional liability insurance covering errors and omissions arising out of the services performed by Consultant or any person employed by it, with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims, or 10% of the construction budget, whichever is larger. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of services as evidenced by annual certificates of insurance.

- 6.6. Property Coverage – Valuable Papers. Consultant shall carry property coverage on all-risk, replacement cost, agreed amount form with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of Consultant used in the completion of this Contract.

## **7. HEALTH INSURANCE REQUIREMENTS**

- 7.1. Consultant must certify that it has or will offer health insurance to all eligible employees working on services set forth in this Contract prior to the performance of any work or services. An affidavit certifying such offering must be signed in a form approved by City. All required health insurance must be maintained during the entire time of the Contract with City. Health insurance pursuant to this Section 7 is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.
- 7.2. The health insurance requirements herein shall apply to all of Consultant's eligible employees directly involved with the services set forth in this Contract, including support and administrative personnel.
- 7.3. Any and all complaints concerning violations of the health insurance requirements shall be filed, in writing, with the City's Public Works Department, within thirty (30) days from discovery of a potential violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.
- 7.4. Penalties for failing to comply with this Section 7 include, but are not limited to the following: Consultant may be barred from bidding on, or entering into any Public Works contract with City for a period of three (3) years from the execution of the Contract.
- 7.5. All Consultants subject to the health insurance requirements shall post in English, notice of the health insurance requirements at their office and at the job site.

## **8. WORK FOR HIRE AND OWNERSHIP OF DELIVERABLES**

- 8.1. Consultant shall ensure that all the results and proceeds of Consultant's and any and all work on the Project and any related projects, including that of all agents, employees, officers, and contractors, shall be owned by City, including the copyright thereto, as work for hire. In the event, for any reason, such results and

proceeds are not deemed work for hire, Consultant shall be deemed hereby to have assigned to City all of its right, title and interest in such results and proceeds and content to City, without limitation.

- 8.2. All work products (electronically or manually generated), including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Contract, are the property of City and are to be delivered to City on the particular type of storage media on which they are stored (e.g. CD, thumb drive, etc.) before the final payment is made to Consultant. City shall retain ownership of these original works. If approved in writing by City, Consultant may retain the originals and supply City with reproducible copies of the work.

## **9. CONFLICT OF INTEREST**

- 9.1. Consultant agrees to promptly disclose any and all financial and/or economic interest in the property, or any property affected by the work, or the Project itself other than as set forth herein, existing prior to the execution of this Contract. Further, Consultant agrees to promptly disclose any financial or economic interest in the Project property or any property affected by the work, if Consultant gains such interest during the course of this Contract.
- 9.2. If Consultant gains any financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract at the sole discretion of City.
- 9.3. Consultant shall not engage the services on this Contract of any present or former City employee who was involved as a decision-maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this Contract.
- 9.4. Consultant agrees that it shall not perform services on this Project for any other contractor, subcontractor, or any supplier, other than City. In addition, Consultant shall not negotiate, contract, or make any agreement with a contractor, subcontractor, or any supplier with regard to any of the work under this Contract, or any services, equipment or facilities to be used on this Project other than with City.

## **10. COVENANT AGAINST CONTINGENT FEES**

Consultant affirms that it has not employed or retained any company or person, other than a bona fide employee working for Consultant to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the

award or making of the Contract. For breach or violation of this clause, City may terminate this Contract without liability, or in its discretion may deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

## **11. INDEMNIFICATION**

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, or arising out of, the negligent acts, errors, mistakes or omissions in the work, services, or professional services of Consultant, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services Consultant may be deemed legally liable in the performance of this Contract, or any breach of the Contract. Consultant's duty herein shall arise in connection with any and all claims for damage, loss, liability and/or expenses attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of any person or property including loss of use resulting therefrom. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

## **12. DISPUTE RESOLUTION**

In the event of a dispute concerning or in any way connected to the Contract or subject Project, the parties agree that the unsuccessful party shall pay to the prevailing party a reasonable sum for attorneys' fees, including taxable and non-taxable costs, fees, costs and disbursements of experts, professionals, paralegals, whether at trial, appeal and/or in bankruptcy court, all of which will be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. In addition, should City retain and/or utilize legal counsel as a result of a breach by Consultant of any term, covenant or provision of this Contract, in addition to paying any recovery owed to City and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, Consultant shall reimburse City for reasonable attorneys' fees, taxable and non-taxable costs and disbursements, incurred by City in enforcing Consultant's obligations, whether or not a legal action is commenced, including but not limited to the cost of preparing and presenting default notices, demand letters and similar non-judicial enforcement activities.

## **13. ADDITIONAL SERVICES**

Additional services which are outside the scope of basic services contained in this Contract shall not be performed by Consultant without prior written authorization from City, at City's sole discretion. Additional services, when authorized by an executed contract or an amendment to this Contract shall be compensated for by a fee mutually agreed upon between City and Consultant.

#### 14. PROHIBITION ON ASSIGNMENT

This Contract and all duties and obligations of Consultant set forth in this Contract shall not be assignable except by prior written consent of City, and such prohibition shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of Consultant.

#### 15. MISCELLANEOUS PROVISIONS

- 15.1. Lawful Presence in the United States. Pursuant to A.R.S. §1-502, any individual/sole proprietor who applies for local public benefits by signing this Contract shall also sign a sworn affidavit (Exhibit B) and present one of the documents listed on the affidavit to verify lawful presence in the United States. This Contract shall not be fully executed by the City if the individual/sole proprietor fails to sign the affidavit and present one of the listed documents.
- 15.2. Equal Opportunity. City is an equal opportunity, affirmative action employer. Consultant hereby covenants for itself, its employees, agents, assigns and all persons claiming under or through it, that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, creed, religion, ancestry, national origin, physical or mental disability, age, sex, gender, sexual orientation, gender identity, marital status, or veteran status with regard to discharging obligations under this Contract. Consultant covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. Consultant agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting for the provisions of this clause.
- 15.3. Antidiscrimination. Consultant shall not refuse to hire or employ or bar or discharge from employment any person, or discriminate against such person in compensation, conditions, or privileges of employment because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status. Consultant shall provide a copy of its antidiscrimination policy to City to confirm compliance with this requirement or attest in writing to compliance (Exhibit C).
- 15.4. Legal Compliance. Consultant agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards

Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. Consultant acknowledges that a breach of this warranty is a material breach of this Contract and Consultant is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all consultants, subconsultants and sub-subconsultants performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Consultant. Consultant hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

- 15.5. Specially Designated Nationals and Blocked Persons List. Consultant represents and warrants to City that neither Consultant nor any affiliate or representative of Consultant (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 (“Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

Consultant further agrees to include the provisions set forth in Sections 15.1 through 15.4 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

- 15.6. Effective Date. This Contract shall be in full force and effect only when it has been approved by the City Council of the City of Tempe, Arizona and when executed by the duly authorized City officials and the duly authorized agent of Consultant.
- 15.7. Governing Law. This Contract shall be governed and interpreted by the laws of the State of Arizona.
- 15.8. Exhibits. All exhibits attached to this Contract are made a part of and are incorporated into, this Contract. If any inconsistencies exist between this Contract and any exhibit hereto, the terms of this Contract shall govern.
- 15.9. Force Majeure. Any prevention, delay or stoppage of this Project for a cause beyond the reasonable control of Consultant due to acts of God, acts of war or terrorism, fire or other casualty, shall, notwithstanding anything to the contrary contained herein, excuse the performance of Consultant, for a period equal to such prevention, delay or stoppage. For purposes of this Section 15.9, a cause shall not

be deemed beyond a party's control if it is within the control of such party's agents, employees, assigns, contractors or subcontractors.

- 15.10. Entire Agreement. This Contract contains all of the agreements of the parties with respect to the Project and related matters, and no prior agreement, negotiations, postings, offerings, or understanding pertaining to any such matter shall be effective for any purpose unless expressly contained herein.
- 15.11. Consultant's Good Standing. Consultant hereby warrants and represents that it is a Delaware corporation, licensed to do business in the state of Arizona and currently in good standing, and that it is not now in violation of any agreement, instrument, contract, law, rule or regulation by which Consultant is bound.
- 15.12. Independent Contractor. Nothing contained in this Contract shall be deemed or construed by the parties hereto or otherwise, to create the relationship of principal and agent, partnership, joint venturer, employer and employee, or any association between City and Consultant. Consultant is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to Consultant hereunder or for any and all services or materials provided by or rendered to Consultant hereunder in connection with the work set forth in this Contract.
- 15.13. Severability. If any provision of this Contract shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and every other term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 15.14. Time is of the Essence. Time is of the essence in this Contract and each and every provision herein, except as may expressly be provided in writing by City.
- 15.15. No Waiver. No breach or default hereunder shall be deemed to have been waived City, except by a writing to that effect signed on behalf of City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after written notice thereof and demand by City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of City.
- 15.16. Survival. Any and all representations, obligations, indemnities, warranties, covenants, conditions and agreements contained in this Contract which are expressed as surviving the expiration or earlier termination of this Contract, or by their nature, are to be performed, observed or survive, in whole or in part, after

the termination or expiration of this Contract term, shall survive the termination or expiration of this Contract.

- 15.17. Retention of Records. City, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Contract. Consultant will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or five (5) years following termination of this Contract.
- 15.18. Antitrust Violations. City and Consultant recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by City. Therefore, Consultant assigns to City any and all claims for such overcharges. Consultant in all subcontracts shall require all subcontractors to likewise assign all claims for overcharges to City.
- 15.19. Headings. The heading use in this Contract is for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 15.20. No Construction Against Drafting Party. Each party acknowledges that it has had an opportunity to review the Contract with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.
- 15.21. Notices to Parties:

All notices pursuant to this Contract shall be made in writing and delivered or mailed by certified mail to the parties at the following addresses:

CITY:

Andy Goh, City Engineer  
City of Tempe  
Public Works/Engineering Dept.  
P.O. Box 5002  
Tempe, AZ 85280

CONSULTANT:

Mark J. Gross

(Printed Name of Signatory)  
Carollo Engineers, Inc.  
4600 E. Washington Street, Ste 500  
Phoenix, Arizona 85034

- 15.22. Non-Appropriation of Funds. If funds appropriated by the City Council or otherwise allocated to perform the work becomes unavailable for payment by City under this Contract, City may delay the work for a period up to six (6) months, after which date if no funds are legally available, City may terminate the Contract at City's sole option. In case of any such delay by City, Consultant may suspend performance of work or services as applicable. However, nothing herein shall be construed to allow termination of the Contract by Consultant for such delay.
- 15.23. GIS Data Disclaimer. THE CITY OF TEMPE DOES NOT WARRANT THE ACCURACY, COMPLETENESS, CONDITION, SUITABILITY,

PERFORMANCE, OR CURRENCY OF THE GIS DATA PROVIDED UNDER THIS CONTRACT. AREAS DEPICTED BY GIS DATA ARE APPROXIMATE, AND NOT GUARANTEED TO BE ACCURATE TO STANDARDS FOR MAPPING, SURVEYING OR ENGINEERING. THIS DATA IS FOR ILLUSTRATIVE PURPOSES ONLY AND SHOULD NOT BE RELIED UPON FOR SITE-SPECIFIC PURPOSES. THE DATA HEREIN IS SUBJECT TO CONSTANT CHANGE AND MAY NOT BE COMPLETE, ACCURATE OR UP-TO-DATE. THE CITY OF TEMPE IN NO WAY ASSUMES LIABILITY OR RESPONSIBILITY FOR ANY INCORRECT DATA OR ANY INFORMATION PROVIDED HEREIN. THE CONSULTANT ACKNOWLEDGES AND AGREES THAT THE CITY OF TEMPE ASSUMES NO LIABILITY FOR DAMAGES INCURRED DIRECTLY OR INDIRECTLY RESULTING FROM INCOMPLETE, INCORRECT OR MISSING INFORMATION; INCLUDING ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE. **BY WAY OF THE SIGNATURE ON THIS CONTRACT, THE CONSULTANT ASSUMES ALL LIABILITY FOR ANY AND ALL DEPENDENCE AND/OR RELIANCE UPON THIS INFORMATION AND ASSUMES ALL RESPONSIBILITY RELATING THERETO. ANY AND ALL EXPRESSED OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PURPOSE ARE SPECIFICALLY AND EXPRESSLY DISCLAIMED.** CONSULTANT SHOULD NOT RELY UPON THE GIS DATA WITHOUT PROPER FIELD VERIFICATION FOR ANY PURPOSE.

[SIGNATURE PAGE TO FOLLOW]

**PRESED, FLOC, and Chemical Process Maintenance  
South Tempe Water Treatment Plant  
Project No. 3205911B**

DATED this 22<sup>nd</sup> day of October, 2015.

CITY OF TEMPE, ARIZONA

By: \_\_\_\_\_  
Mayor

By: [Signature]  
Public Works Director

ATTEST:

Recommended By:

\_\_\_\_\_  
City Clerk

[Signature] P.E.  
Deputy PW Director/City Engineer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**Consultant warrants that the person who is signing this Contract on behalf of Consultant is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.**

CONSULTANT  
Carollo Engineers, Inc.

[Signature]  
Signature

Mark J. Gross      DAVID C SOBECK  
Printed Name

Vice Pres.      SR. VICE PRESIDENT  
Title

86-0899222  
Federal I.D. No./Social Security No.

9/30-10/9/15

Memorandum



City of Tempe

Date: March 12, 2014

To: File

From: Andy Goh, P.E., Deputy Public Works Director/City Engineer

Subject: Delegating Authority

In the event of an absence from work due to vacation or illness, the individuals listed below will be given authority to execute Engineering documents in my absence. An email will be produced identifying the dates in which the delegation has been authorized.

I authorize the following individuals to execute documents as outlined below:

Donna Hancock, P.E., CIP Design and Construction Manager

- All documents relating to the Capital Improvement Program
- All documents relating to the other City Engineer functions with the exception of Personnel matters

Gregg Kent, P.E., Land Services Manager

- All documents relating to Land Services
- All documents relating to the other City Engineer functions with the exception of Personnel matters

Wendy Springborn, MBA, Engineering Services Manager

- All documents relating to Procurement
- All documents relating to the other City Engineer functions with the exception of signing/sealing documents

Tom Wilhite, P.E., Infrastructure Manager

- All documents relating to Private Development and Utility Plan approval and permitting
- All documents relating to the other City Engineer functions with the exception of Personnel matters

Andy Goh, P.E.  
Deputy Public Works Director/City Engineer

# EXHIBIT A



**Exhibit A  
City of Tempe, AZ  
STWTP Asset Maintenance Design**

## SCOPE OF WORK

**August 24, 2015**

### GENERAL

The following Scope of Work describes the services that Carollo Engineers, Inc. (CONSULTANT) will provide for the City of Tempe (CITY) South Tempe Water Treatment Plant (STWTP) Asset Maintenance Design project. The goal of the project is to perform maintenance activities on several process areas to maintain good plant performance, using the same Construction Manager at Risk (CMAR) that will perform the filters rehabilitation work. The CONSULTANT's scope for this project is assumed to be performed in conjunction with the Filters Rehabilitation Design Project.

### Work Items Summary

The asset maintenance items for the project include the following:

- Replace Presedimentation Basin No. 1 Sludge Collector motor and gear drive. If possible the gear drive will be relocated to above the walkway grating similar to Presedimentation Basin No. 2. CONSULTANT will also review costs for rebuilding versus replacing the gear drive and motor. Also provide new impressed current cathodic protection system, to replace the existing impressed current cathodic protection system.
- Replace Sedimentation Basin 4A and 4B Sludge Collectors motors and gear drives. Also provide new cathodic protection system to replace the existing impressed current cathodic protection system.
- Assess and touch up/repair coatings on sludge collector equipment in all basins (12 basins). This includes Presedimentation Basin Nos. 1 and 2, Backwash Water Clarifier Nos. 1 and 2, and Final Sedimentation Basin Nos. 1A/1B through 4A/4B. CONSULTANT will contract with the coatings specialist subconsultant used on previous projects at the plant to assess the coatings and help develop a coatings repair plan.
- Assess the condition of and specify replacement as needed of Flocculation Basin Nos. 1A/1B - 4A/4B drive basins paddle wheel shaft bearings, and align shafts if needed. Plant staff has observed that Basin 1A has a bent shaft and a vibration problem. The bearings were last replaced in 2009.
- Replace NaOCl distribution and vent piping from the generation room to the individual feed points. The existing piping has multiple repair joints, and is aged/weathered leading to constant leak repairs by plant staff.
- Assess for replacement or repair two emergency pond slide gates and actuators. The existing gates leak excessively, however it may be possible to replace the seals on the existing gates. The existing gates are equipped with electric actuators, but if new gates

*SSS*

are installed a manual hand wheel operator is preferred by plant staff, because the gates are operated very infrequently.

- Replace the existing NaOCl generation system chillers (two units).
- Repair/replace the secondary sedimentation basins blow down valves and gear drives (8 each). The existing valves are aged and leaking.
- Install a new copper sulfate feed system, utilizing a tote, day tank, and chemical metering pump that discharges to the plant inlet at the bar screens. A small concrete masonry unit screen wall will be used to shield the system from the east. Chemical feed piping and electrical conduits will be surface mounted.
- Repair the Sedimentation Basins effluent troughs grout at 10 locations. Grout is spalling out from between the troughs and the effluent channel wall. Plant staff has identified the 10 locations needing repairs.
- Repair loose or missing grout at the Flocculation Basins at the hydraulic wall column supports. Plant staff has identified the locations where grout is missing or needs repair.
- Assess and replace the Filter No. 4 Filter to Waste valve and actuator. The existing valve leaks.

Timing of the work at the STWTP will coincide to the extent possible with the plant shutdown schedule. Inspection or assessment of the sludge collector's coatings and other submerged repair items will require temporary shutdowns of the associated basins.

A summary of the tasks for this project is listed below. The project fee is attached as Exhibit B.

### CONSULTANT'S SERVICES

#### **Task 100 – Project Management and Meetings**

**Task 101: Project Management** - The CONSULTANT will provide project management services during the project, including maintaining the project design schedule and budget, and providing invoice reports with the monthly invoices. The CONSULTANT will also maintain an Action Items and Decisions Log during the project. The purpose of this log is to document progress on action items, record major project decisions, and document CITY staff review comments on project deliverables and how the CONSULTANT addresses each review comment.

**Task 102: Meetings** - The CONSULTANT will conduct three project meetings. These meetings will be attended by the CITY's and CONSULTANT's key team members, and the CMAR. The CONSULTANT will provide an agenda and meeting minutes. The meetings will include:

- **Kick-off Meeting** - the purpose of the kick-off meeting is to confirm the work items and locations with plant staff, and to gather plant staff input on the configuration of the new copper sulfate feed system. A plant walk around will be conducted after the kick-off meeting to review the works items, with the CONSULTANT's key discipline engineers.
- **Preliminary Design Review** - review project rehabilitation items and design criteria. It is assumed that this Preliminary Design Review meeting will be held in conjunction with the Filters Rehabilitation preliminary design review meeting.
- **90% Design Submittal Review**. It is assumed that this Preliminary Design Review meeting will be held in conjunction with the Filters Rehabilitation preliminary design review meeting.

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## **Task 200 – Preliminary Design**

**Task 201: Preliminary Design TM** - The CONSULTANT will develop a brief draft Preliminary Design TM prior to the Preliminary Design Review meeting, and review the TM contents with the CITY at the Preliminary Design Review Meeting. The Preliminary Design TM will include a brief narrative of the proposed improvements, design criteria, and a preliminary Engineer's cost estimate. The Preliminary Design TM will also be submitted to the MCESD as part of the Approval to Construct application, focusing on permitting requirements for the new copper sulfate feed system. Other items in the project are assumed to be considered maintenance work and should not require permitting from MCESD.

## **Task 300 – Detailed Design**

**Task 301: 90% Design** - The CONSULTANT will prepare detailed design and construction documents for review by the CITY. Drawings for the 90% design will be prepared in 11"x17" format.

Specifications will be prepared using the CONSULTANT's standard specifications and typical details where applicable. The CITY'S standard front-end documents will be furnished and used to supplement the CONSULTANT's technical specifications.

**Task 302: Agency Review Design and Permitting** - The CONSULTANT will incorporate the CITY's comments from the 90% submittal in Task 301 into an Agency Review Submittal (approximately 95% design). The Agency Review sets will be submitted to MCESD as part of the Approval to Construct permit, if needed. The CONSULTANT will provide 11"x17" drawing sets to MCESD and for their review. The CONSULTANT will also pay the permit fees to MCESD under an allowance.

It is assumed that a City of Tempe Building Permit or other permits will not be required for the project works items, except the copper sulfate feed system. The copper sulfate feed system may require a City Building Department. A coordination meeting with the Building Department, and obtaining a permit if needed, is assumed in the scope. It is also assumed that the CITY will pay building permit fees, if required. *PERMIT*

**Task 303: Quality Management** - The CONSULTANT will provide quality management and constructability reviews for the Preliminary Design TMs and the 90% submittals.

**Task 304: Prepare Final Construction Documents** - Bid documents based on the MCESD Review submittals with incorporation of comments received from the CITY and/or MCESD will be prepared, sealed, and signed by a professional engineer. The CONSULTANT will provide final For Construction set of drawings in a 22"x34" format on mylar to the CITY. It is assumed the CITY will reproduce specifications and drawings for bidding or other internal or external use as needed. Electronic files (.pdf) of the final design documents will also be provided to the CITY. *AUTOCAD*

**Task 305: Prepare Engineers' Cost Estimate** - The CONSULTANT will provide an Engineer's Estimate of Cost for the construction documents.

## **Task 400 –Coordination with CMAR**

**Task 401: Coordination with CMAR** – The CITY intends to contract with a Construction Manager at Risk (CMAR), to provide design phase services including maintenance of plant operations

*KSS*

(MOPO) and cost estimating services, and then during construction will provide all services required of a general contractor. The CONSULTANT will coordinate with the CMAR during design to incorporate a contractor's perspective and input to the project. The CMAR will also assist with developing budgetary costs for project elements. The CITY will administer the negotiation phase of the Guaranteed Maximum Price with the CMAR. The CONSULTANT will coordinate with the CMAR including:

- Solicit CMAR input during design development as appropriate;
- Provide input to MOPO(s) plan and schedule;
- Provide assistance with long-lead procurement activities;
- Evaluate alternative systems suggested by CM at Risk;
- Respond to constructability review comments;
- Assist City with review of the subcontractor/supplier bid and selection process.

The manhours included in this task in Exhibit B are reduced and assume that the Task 400 hours in the Filter Rehab Design - Bidding Assistance scope can be included in this effort.

**Task 500 – Construction Phase Services (TBD)**

Construction phase services may be provided by the CONSULTANT, and developed in a future scope of work and task order.

**SCHEDULE**

The estimated design duration for the project is twelve weeks. The Final Construction Documents deliveries assume a two-week turnaround of comments from the MCESD and City of Tempe Building Department (if needed). The schedule of the deliverables is:

<b>Deliverable</b>	<b>Schedule</b>
Preliminary Design TM	Four weeks from Notice to Proceed (NTP)
90% Design	Eight weeks from NTP
Agency Review Submittal	Ten weeks from NTP
Final Construction Documents	Twelve weeks from NTP

**PROJECT ASSUMPTIONS**

1. CONSULTANT has assumed that the bid package will be delivered as a single package. Multiple packages will not be provided.
2. CONSULTANT has assumed that conformed documents are not part of this project.
3. For the most part, new drawings will not be provided showing the work. Existing plant Record Drawings will be edited to show the work, as a layer over existing .pdf, or as a photo with callouts.

**ESTIMATE OF EFFORT AND COST**

The estimated effort and cost for this Scope of Work is summarized in Exhibit B. Direct expenses as noted in Exhibit B will be paid by the CITY with no markups.

*KSS*



**EXHIBIT B**  
**AFFIDAVIT DEMONSTRATING LAWFUL**  
**PRESENCE IN THE UNITED STATES**

ARS §§1-501 and 502 require completion of the form to apply to the City for a local public benefit (defined as a grant, contract or loan). You must demonstrate through the presentation of one of the following documents that you are lawfully present in the United States.

**LAWFUL PRESENCE IN THE UNITED STATES CAN BE DEMONSTRATED BY**  
**PRESENTATION OF ONE (1) OF THE DOCUMENTS LISTED BELOW.**

Please present the document indicated below to the City. If mailing the document, attach a copy of the document to this Affidavit. (If the document may not be copied, present the document in person to the City for review and signing of the affidavit.)

- \_\_\_\_\_ 1. An Arizona driver license issued after 1996.  
Print first 4 numbers/letters from license: \_\_\_\_\_
- \_\_\_\_\_ 2. An Arizona non-operating identification License.  
Print first 4 numbers/letters: \_\_\_\_\_
- \_\_\_\_\_ 3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.  
Year of birth: \_\_\_\_\_: Place of birth: \_\_\_\_\_
- \_\_\_\_\_ 4. A United States Certificate of Birth abroad.  
Year of birth: \_\_\_\_\_: Place of birth: \_\_\_\_\_
- \_\_\_\_\_ 5. A United States passport.  
Print first 4 numbers/letters on Passport: \_\_\_\_\_
- \_\_\_\_\_ 6. A foreign passport with a United States Visa.  
Print first 4 numbers/letters on Passport \_\_\_\_\_  
Print first 4 numbers/letters on Visa \_\_\_\_\_
- \_\_\_\_\_ 7. An I-94 form with a photograph.  
Print first 4 numbers on I-94: \_\_\_\_\_
- \_\_\_\_\_ 8. **A United States Citizenship and Immigration Services Employment Authorization Document (EAD).**  
Print first 4 numbers/letters on EAD: \_\_\_\_\_
- \_\_\_\_\_ 9. **Refugee travel document.**  
Date of Issuance: \_\_\_\_\_ Refugee Country: \_\_\_\_\_
- \_\_\_\_\_ 10. **A United States Certificate of Naturalization.**  
Print first 4 digits of CIS Reg. No.: \_\_\_\_\_
- \_\_\_\_\_ 11. **A United States Certificate of Citizenship.**  
Date of Issuance: \_\_\_\_\_ Place of Issuance: \_\_\_\_\_
- \_\_\_\_\_ 12. **A tribal Certificate of Indian Blood.**  
Date of Issuance: \_\_\_\_\_ Name of Tribe: \_\_\_\_\_
- \_\_\_\_\_ 13. **A tribal or Bureau of Indian Affairs Affidavit of Birth.**  
Year of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

**I DO SWEAR OR AFFIRM UNDER PENALTY OF LAW THAT I AM LAWFULLY PRESENT**  
**IN THE UNITED STATES AND THAT THE DOCUMENT I PRESENTED ABOVE AS**  
**VERIFICATION IS TRUE.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business/Company (if applicable)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

Date: \_\_\_\_\_

\_\_\_\_\_  
City, State, Zip Code

OFFICE USE ONLY: EMPLOYEE NAME: \_\_\_\_\_

EMPLOYEE NUMBER: \_\_\_\_\_

**ALL VIOLATIONS OF FEDERAL IMMIGRATION LAW SHALL BE REPORTED TO 1-866-347-2423.**



**EXHIBIT C  
AFFIDAVIT OF COMPLIANCE WITH TEMPE CITY CODE  
CHAPTER 2 ARTICLE VIII SECTION 2-603(5)**

Per Tempe City Code Chapter 2 Article VIII Section 2-603(5), it is unlawful for a City vendor or City contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

City vendors and contractors shall provide a copy of their antidiscrimination policy to City to confirm compliance with this requirement or attest in writing to compliance.

- CONTRACTOR means any person who has a contract with the City.
- VENDOR means a person or firm in the business of selling or otherwise providing products, materials, or services.

CONTRACTOR/VENDOR, select one:

X Current copy of antidiscrimination policy attached

OR

\_\_\_\_\_ I hereby certify \_\_\_\_\_ (contractor/vendor) to be in compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5).

Michelle Cannon  
Signature

Date: 10/2/2015

Michelle Cannon  
Print Name

Director of Employee Services  
Title

Carollo Engineers, Inc.  
Company



# **Employee Practices Manual**

**Human Resources  
Revised January 1, 2015**

## EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION 201

*REVISION DATE: March 24, 2014*

Carollo Engineers is an equal employment opportunity employer and makes employment decisions on the basis of merit. The Company's policy prohibits unlawful discrimination based on race, color, creed, gender, religion, marital status, age, national origin, or ancestry, status as a protected veteran, physical or mental disability, medical condition including genetic characteristics, sexual orientation, gender identity, parental and/or caregiver status, domestic partner status or any other consideration made unlawful by federal, state or local laws. It also prohibits unlawful discrimination based on the perception that anyone has any of those characteristics, or is associated with a person who has or is perceived as having any of those characteristics. All such discrimination is unlawful.

Carollo Engineers, including the Board of Directors and CEO, is committed to compliance with all applicable laws providing equal employment opportunities. This commitment applies to all persons involved in the operations of the Company and prohibits unlawful discrimination by any employee of the Company, including management and co-workers.

---

### REASONABLE ACCOMMODATION

To comply with applicable laws ensuring equal employment opportunities to qualified individuals with a disability, including the Americans with Disabilities Act (ADA) Carollo Engineers will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or an employee unless undue hardship would result.

Any applicant or employee who requires an accommodation in order to perform the essential functions of the job should contact the Human Resources Manager and request such an accommodation. The individual with the disability should specify what accommodation he or she needs to perform the job. The Company will then conduct an investigation to identify the barriers that interfere with the equal opportunity of the applicant or employee to perform his or her job. The Company will identify possible accommodations, if any, that will help eliminate the limitation. If the accommodation is reasonable and will not impose an undue hardship, the Company will make the accommodation.

---

### AFFIRMATIVE ACTION

Carollo is committed to the EQUAL EMPLOYMENT OPPORTUNITY POLICY above and as part of the Affirmative Action plan will:

- recruit, hire, upgrade, train and promote in all job classifications without regard to race, color, creed, gender, religion, marital status, age, national origin, or ancestry, status as a protected veteran, physical or mental disability, medical condition including genetic characteristics, sexual orientation, gender identity, parental and/or caregiver status, domestic partner status;
- encourages all current employees regardless of position to refer others for employment;

- **base employment decisions on the principles of Equal Employment Opportunity and with the intent to further the company's commitment to affirmative action and workplace diversity;**
- **ensure that all other personnel actions such as compensation, benefits, company-sponsored training, educational tuition assistance, social and recreational programs, shall be administered without regard to race, color, creed, gender, religion, marital status, age, national origin, or ancestry, status as a protected veteran, physical or mental disability, medical condition including genetic characteristics, sexual orientation, gender identity, parental and/or caregiver status, domestic partner status;**
- **take affirmative action to ensure that minority group individuals, women, protected veterans, and qualified persons with a disability are introduced into the workforce and that these employees are encouraged to aspire for promotion and are considered, as promotional opportunities arise; and**
- **ensure that employees and applicants are not subjected to intimidation and/or harassment, threats, coercion, or discrimination because they have filed a complaint, assisted or participated in an investigation or any other activity, or opposed any act or practice made unlawful by Section 503, as amended at 41 CFR Part 60-741 and VEVRAA, as amended at 41 CFR Part 60-300.**

Employees are invited to self-identify their race, gender, veteran status, and disability status at any time to the Human Resources department. A copy of the Section 503/VEVRAA Affirmative Action Plan for disabled individuals and veterans is available for review by employees and applicants by contacting Human Resources.

**See Also:**

[Unlawful Harassment and Hostile Work Environment 202](#)

CITY OF TEMPE  
TEMPE, ARIZONA  
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT  
REGARDING  
HEALTH INSURANCE

Phoenix, Arizona  
Date 10/2/15

**Presedimentation, Flocculation, and Chemical Process Maintenance – South Tempe Water Treatment Plant  
Project No. 3205911B**

I hereby certify that Carollo Engineers, Inc. (name of company) currently has, and all of its major subcontractors/sub-consultants, defined as doing work in excess of \$30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company: Actna

Type of Insurance (PPO, HMO, POS, INDEMNITY): PPO

Policy No.: 883584

Policy Effective Date (MM/DD/YY): 1/1/15

Policy Expiration Date (MM/DD/YY): 12/31/15

Signed and dated at Phoenix, AZ, this 2<sup>nd</sup> day of October, 2015.

Carollo Engineers, Inc.  
General Contractor/Prime Consultant

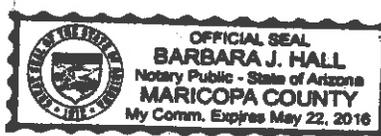
By: [Signature]

STATE OF ARIZONA            )  
                                          ) SS  
COUNTY OF MARICOPA    )

SUBSCRIBED AND SWORN to before me this 2<sup>nd</sup> day of October, 2015.

[Signature]  
Notary Public

My commission expires:  
May 22, 2016



## **City of Tempe**

### **Guidelines for Implementation of Health Insurance**

These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of \$30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of \$30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.
2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120<sup>th</sup> day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.
3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.
4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.
5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.
6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Director, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Director may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.
7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.

8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.



## NOTICE OF CANCELLATION TO DESIGNATED ENTITY(S) (Including Nonpayment of Premium)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART

### SCHEDULE

Name of Designated Entity	Mailing Address or Email Address	Thirty (30) Days Notice
City of Tempe Public Works/Engineering Dept. P.O. Box 5002 Tempe AZ 85280		

*Information required to complete this Schedule, if not shown above, will be shown in the Declarations.*

If we cancel this policy for any reason, including nonpayment of premium, we will give written notice of such cancellation to the Designated Entity(s) shown in the Schedule. Such notice may be delivered or sent by any means of our choosing. The notice to the Designated Entity(s) will state the effective date of cancellation.

Unless otherwise noted in the Schedule above, such notice will be provided to the Designated Entity(s) no less than the number of days in advance of the effective date of cancellation that we are required to provide to the Named Insured for such cancellation. If the reason for cancellation is nonpayment of premium, however, we will provide ten days notice.

Such notice of cancellation is solely for the purpose of informing the Designated Entity(s) of the effective date of cancellation and does not grant, alter, or extend any rights or obligations under this policy.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.



Authorized Representative or  
countersignature (where required by law)

## Architects and Engineers

*The following policy language is from Commercial General Liability Coverage Forms*

The following are mandatory forms on the policy identified on the Certificate of Insurance:

### **421-0080(01 03) COMMERCIAL GENERAL LIABILITY SPECIAL BROADENING ENDORSEMENT**

#### **• Additional Insured by Contract, Agreement or Permit**

Under Section II-Who Is An insured, Paragraph 4.is added as follows:

4. a. Any person or organization with whom you agreed, because of a written contract, written agreement or permit to provide Insurance Is an insured, but only with respect to:

- (1) "Your work" for the additional Insured(s) at the location designated in the contract, agreement or permit; or
- (2) Premises you own, rent, lease or occupy.

This Insurance applies on a primary basis if that is required by the written contract, written agreement or permit.

- b. This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the "bodily injury", "property damage", "personal injury" or "advertising injury".

- (2) To any person or organization included as an Insured by an endorsement issued by us and made part of this Coverage Part.

- (3) To any person or organization included as an insured under item 2 of this endorsement

- (4) To any lessor of equipment:

- (a) After the equipment lease expires; or

- (b) If the "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of sole negligence of the lessor.

- (5) To any:

- (a) Owners or other interests from whom land has been leased which takes place after the lease for the land expires; or

- (b) Managers or lessors of premises if:

- (i) The occurrence takes place after you cease to be a tenant in that premises; or

- (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

#### **• Aggregate Limit Per location**

- (1) Under Section III - Limits of Insurance the General Aggregate Limit applies separately to each of your "locations Owned by or rented to you.

- (2) Under Section V - Definitions, definition 23. is added as follows:

23. "Location" means premises involving the same or connecting lots or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

### **CG 2503(05 09) DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT**

#### **• Aggregate Limit of Insurance (Per Project)**

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Designated Construction Projects:

Your projects away from premises owned by or rented to you

- A. For all sums which the Insured becomes legally obligated to pay as damages caused by "occurrences" under Section II - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that Limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:

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- a. Insured's;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence, Damage to Premises Rented to You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B. For all sums which the Insured becomes legally obligated to pay as damages caused by "occurrences" under Section 1 - Coverage A, and for all medical expenses caused by accidents under Section II - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project show in the Schedule above:
    1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
    2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
  - C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
  - D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or time tables, the project will still be deemed to be the same construction project.
  - E. The provisions of Section III - Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

**421-0452 (06 07) OTHER INSURANCE-PRIMARY AND NON-CONTRIBUTORY (ADDITIONAL INSURED)**

**• Additional Insured by Contract, Agreement or Permit Amended-Primary & Non-Contributory**

The following is added to Section IV - Commercial General Liability Conditions

**4. Other Insurance**

**a. Additional Insured's**

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under Section II - Who is An Insured, is primary and non-contributory, the following applies:

If other valid and collectable insurance is available to the Additional Insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

**1. Primary Insurance**

This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- I. For the sole negligence of the Additional insured;
- II. When the Additional Insured is an Additional Insured under another primary liability policy; or
- III. When 2. below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in 3. below.

**2. Excess Insurance**

This insurance is excess over:

**(1) All of the other insurance, whether primary, excess, contingent or on any other basis:**

- (a) That is fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
- (c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or
- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.

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When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the Insured's rights against all those other Insurers.

When this insurance is excess over other Insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- 1) The total amount that all such other insurance would pay for the loss in the absence of this Insurance; and
- 2) The total of all deductible and self-Insured amounts under all that other Insurance.

We will share the remaining loss, if any, with any other Insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**3. Method Of Sharing**

If all of the other Insurance permits contribution by equal shares, we will follow this method also under this approach each Insurer contributes equal amounts until it has paid its applicable limit of Insurance or none of the loss remains, whichever comes first.

If any of the other Insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each Insurer's share is based on the ratio of its applicable limit of Insurance to the total applicable limits of insurance of all Insurers.

**CG0001 (12 07) COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

• **Separation of Insured's**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this Insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**CG 2404 (05 09) WAIVER OF TRANSFER OF RIGHTS OF RECOVERY TO US**

• **Waiver of Subrogation**

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Person Or Organization:

Persons or organizations with whom you have a written contract executed prior to the "bodily injury" or "property damage," that requires you to waive your rights of recovery

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV- Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



Authorized Representative

12/31/2014  
Policy NO. ZHF894489204

**Name Insured:** Carollo Engineers, Inc.

**Additional Insured:** Any person or organization with whom the named insured agreed in a written contract to name as additional insured.

This Notice does not form a part of the insurance contract.

No coverage is provided by this Notice, nor can it be construed to replace any provisions of the policy (including its endorsements). If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) shall prevail.

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