

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

**CONTRACT FOR PROFESSIONAL SERVICES
POST-DESIGN**

This Contract is made and entered into on the 17th day of December, 2015, by and between the City of Tempe, an Arizona municipal corporation (“City”), and Carollo Engineers, Inc., an Denver corporation (“Consultant”).

City engages Consultant to perform professional services for a project known and described as **Filter Rehabilitation – Johnny G. Martinez Water Treatment Plant and South Tempe Water Treatment Plant and Plant Maintenance – South Tempe Water Treatment Plant, Phase I, GMP I, Project No. 3205881A** (“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 post-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 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.
- 1.4. Consultant shall perform the work in a manner and at times which do not impede or delay City’s operations and/or functions.
- 1.5. 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 one hundred eighty (180) 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 \$78,267.00, unless otherwise authorized by City. This fee includes an allowance of \$1,000.00 for reimbursable expenses, which in no event will ever be more than actual cost.

3.2. Payment for this Contract shall be based on the following Budget Schedule:

<u>Task Description</u>	<u>Method</u>	<u>Amount</u>
Post-Design Services	Hourly, Not to Exceed	\$77,267.00
	Subtotal Task Amount:	\$77,267.00
<u>Allowances</u>	<u>Method</u>	<u>Amount</u>
Reimbursable Expenses	Not to Exceed	\$1,000.00
	Subtotal Allowances Amount:	\$1,000.00
	Total Compensation Not to Exceed:	\$78,267.00

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 Street, Suite 500, Phoenix, 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 standard 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 Gross
(Printed Name of Signatory)
Carollo Engineers, Inc.
4600 E. Washington Street
Suite 500
Phoenix, AZ 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]

**Filter Rehabilitation – Johnny G. Martinez Water Treatment Plant and South Tempe Water Treatment Plant and Plant Maintenance – South Tempe Water Treatment Plant, Phase I, GMP I
Project No. 3205881A**

DATED this 17th day of December, 2015.

CITY OF TEMPE, ARIZONA

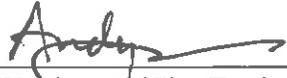
By: _____
Mayor

By: _____
Public Works Director

ATTEST:

Recommended By:

City Clerk



Deputy PW Director/City Engineer

APPROVED AS TO FORM:

AM

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

Mark J. Gross Lisa M. Freestone

Printed Name

Vice President Vice President

Title

86-089922

Federal I.D. No./Social Security No.



November 9, 2015
9476A.20

EXHIBIT A

Mr. Phil Brown, P.E.
City of Tempe
Public Works/Engineering
31 East 5th Street, Tempe, AZ 85281

Subject: Filter Rehabilitation for the JGMWTP, City No. 3205881A
Engineering Services During Construction, Scope of Work

Dear Mr. Brown:

The attached scope and fee defines the engineering services during construction (ESDC) that will be provided by Carollo Engineers, Inc. (CONSULTANT) to the City of Tempe (CITY) for the Filter Rehabilitation Project for the Johnny G. Martinez Water Treatment Plant (JGMWTP), for the first phase of work as noted in Hunter Contracting's for Guaranteed Maximum Price (GMP). Hunter Contracting is the Construction Manager at Risk (CMAR) for the project.

A detailed scope of services is attached as Exhibit A, and a fee breakdown is included as Exhibit B. A summary of the costs noted in Exhibit B includes:

- Time and material services not to exceed (without authorization); \$77,267
- Direct pass-through allowance for printing and scanning; \$1,000
- Total contract cost: \$78, 267

The anticipated contract duration is 5 months based on the CMAR's preliminary schedule. A list of project deliverables along with the delivery schedule is included in Exhibit A.

Please contact me if any additional information is required.

Sincerely,

CAROLLO ENGINEERS, INC.

Mark Gross, P.E.
Vice President

cc: file



**Exhibit A
City of Tempe, AZ
JGMWTP Filter Rehabilitation Project
Engineering Services During Construction
City Project No. 3205881A
9476A.20**

SCOPE OF WORK

November 9, 2015

GENERAL

The following Scope of Work describes the engineering services during construction (ESDC) that Carollo Engineers, Inc. (CONSULTANT) will provide for the City of Tempe's (CITY) JGMWTP Filter Rehabilitation project.

CONSULTANT'S SERVICES

Task 500 – ESDC Services

The CITY selected Hunter Contracting to serve as the Construction Manager at Risk (CMAR) for the project. The CMAR has reviewed the construction drawings and specifications for the filters rehabilitation project, providing inputs and recommendations to the CITY, and provided a Guaranteed Maximum Price (GMP) to the CITY. Based on the CITY's budget and as noted in the CMAR's five-month schedule and GMP, the following items in the design package will be performed:

- Install eight new access manholes
- Install eight new filter effluent valves
- Install four new venturi flowmeters
- Remove media from Filter No. 8, and replace media (pending inspection of underdrains)
- Repair spalling on filter troughs.

Replacement of the filter media in the remaining filters and other work items including replacing the surface wash agitators will be provided in a separate GMP by the CMAR. The CONSULTANT will also provide a separate proposal to the CITY for ESDC for the remaining work, this scope of ESDC is for the work noted above.

The CONSULTANT will provide the following ESDC for this scope:

Task 501: Construction Progress Meetings - The CONSULTANT will attend weekly construction progress meetings. It is assumed that there will be 20 meetings during construction, over a five month total construction time-frame. These meetings will be attended by the CONSULTANT's key team members necessary to conduct the meeting and to answer questions regarding the details of the project.

EB
11/10/15

Task 502: Inspections – The CONSULTANT will provide periodic special inspection services during construction of the project. It is assumed that the CONSULTANT will provide inspection services for the work items noted above, and will witness the start-up of the plant to assist staff to monitor for leaks from the new manholes, the venturis, valves, and associated piping. The CONSULTANT will also inspect the placement of new filter media, along with skimming of filter fines and backwashing Filter No. 8 for compliance with the technical specifications. It is assumed that the frequency of the inspections will average two inspections per week which is 40 inspections over a five month construction schedule.

Task 503: RFIs, Design Clarifications, Change Orders, and Pay App Reviews – The CONSULTANT will respond to requests for information, design clarifications, and change orders as appropriate and as requested by the CITY. It is assumed that there will be no more than six RFI's, two design clarifications and two change orders in total. The CONSULTANT will also review five monthly Applications for Payment from the CMAR.

Task 504: Submittal Review – The CONSULTANT will review and evaluate shop drawings, samples, test results, and other data provided by the CMAR. It is assumed that there will be no more than ten shop drawing, samples, and test results in total.

Task 505: Record Drawings – The CONSULTANT will prepare record drawings, denoting changes made during construction. The record drawings will be based on the redlined drawings from the CMAR.

Task 506: Final Completion Inspection – The CONSULTANT will perform a final inspection in order to develop a punch list to provide the CMAR prior to project close-out.

SCHEDULE

The construction duration for the project will be approximately five months from date of Notice to Proceed, based on the CMAR's preliminary construction schedule provided to the City with the GMP.

PROJECT ASSUMPTIONS

1. CONSULTANT has assumed that conformed bidding documents are not part of this project.
2. CONSULTANT assumes delivery of record drawings will be in mylar format.
3. CONSULTANT assumes no MCESD or CITY permitting is required.
4. Additional ESDC services by the CONSULTANT for other work in the design package including replacing filter media in the remaining filters (Nos. 1 - 7), surface agitator arms, and other remaining work items will be addressed in a separate scope.

ESTIMATE OF EFFORT AND COST

The estimated effort and cost for this Scope of Work is summarized in the Attachment. The total labor costs for ESDC services, as described herein, are time and materials not to exceed. Allowances and direct expenses as noted in the Attachment will be paid by the CITY as direct expenses with no markups.

Exhibit B

Fee Proposal

**Engineering Services During Construction
JGMWTP Filter Rehabilitation Project**

9476A.20

City of Tempe

City Project No. 3205881A

November 9, 2015

TASKS	Carollo Labor-Hours						Total Man Hours Per Task	Budget Per Task
	Senior PM/QM	Engineer VII	Engineer V	Senior Inspector/Project Represent.	CADD Designer	Word Processing /Clerical		
Task 500 - Engineering Services During Construction								
Task 501 - Weekly Progress Meetings (20)	26		26	26			78	\$14,786
Task 502 - Special Inspections (40)	16	12	80	80			188	\$32,468
Task 503 - RFIs, Design Clarifications, Change Orders, Pay Apps	8	4	12	12	8	4	48	\$8,192
Task 504 - Submittal and Test Results Review	8	12	40	40		4	64	\$12,141
Task 505 - Record Drawings	4	4	8	6	20		42	\$6,868
Task 506 - Final Completion Inspection	2			16			18	\$2,812
Subtotal Task 200	64	32	166	140	28	8	438	\$77,267
TOTAL LABOR HOURS	64	32	166	140	28	8	438	
Hourly Rates	\$245.15	\$221.81	\$178.45	\$145.10	\$135.10	\$95.08		
TOTAL LABOR COSTS	\$15,689.60	\$7,097.76	\$29,622.70	\$20,314.00	\$3,782.66	\$760.60		\$77,267
Subconsultants								
							Subtotal Subconsultants	\$0
							Total Subconsultants	\$0
Allowances/Direct Expenses								
							Printing & Scanning	\$1,000
							Total Expenses	\$1,000
							TOTAL PROJECT COSTS	\$78,267



EB
11/10/15

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:

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).



 Signature

Date: 11/16/15

Angie Keezer

 Print Name

Associate Vice President

 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 11/16/15

**Filter Rehabilitation – Johnny G. Martinez Water Treatment Plant and South Tempe Water Treatment Plant and Plant Maintenance – South Tempe Water Treatment Plant, Phase I, GMP I
Project No. 3205881A**

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: Aetna

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

Policy No.: 883584

Policy Effective Date (MM/DD/YY): 01/01/15

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

Signed and dated at Carollo Engineers, this 16 day of November, 2015.

[Signature]

General Contractor/Prime Consultant

By: Angie Keezer

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN to before me this 16 day of NOVEMBER, 2015.

Barbara J. Hall
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 120th 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.

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 II - 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 I—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 II—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 (1207) 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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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)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

A. The following is added to SECTION II – LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured:

Additional Insured if Required by Contract

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, such person or organization is an "insured"; but only to the extent that such person or organization qualifies as an "insured" under paragraph A.1.c. of this Section.

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, the most we will pay on behalf of such additional "insured" is the lesser of:

- (1) The Limits of Insurance for liability coverage specified in the written contract, written agreement or written permit; or
- (2) The Limits of Insurance for Liability Coverage shown in the Declarations applicable to this Coverage Part.

Such amount shall be part of and not in addition to the Limits of Insurance shown in the Declarations applicable to this Coverage Part. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

B. The following is added to SECTION IV – BUSINESS AUTO CONDITIONS, Paragraph B. General Conditions, subparagraph 5. Other Insurance:

Primary and Non-Contributory

If you agree in a written contract, written agreement or written permit that the insurance provided to a person or organization who qualifies as an additional "insured" under SECTION II – LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured, subparagraph Additional Insured if Required by Contract is primary and non-contributory, the following applies:

The liability coverage provided by this Coverage Part is primary to any other insurance available to the additional "insured" as a Named Insured. We will not seek contribution from any other insurance available to the additional "insured" except:

- (1) For the sole negligence of the additional "insured"; or
- (2) For negligence arising out of the ownership, maintenance or use of any "auto" not owned by the additional "insured" or by you, unless that "auto" is a "trailer" connected to an "auto" owned by the additional "insured" or by you; or
- (3) When the additional "insured" is also an additional "insured" under another liability policy.

C. This endorsement will apply only if the "accident" occurs:

1. During the policy period;
2. Subsequent to the execution of the written contract or written agreement or the issuance of the written permit; and
3. Prior to the expiration of the period of time that the written contract, written agreement or written permit requires such insurance to be provided to the additional "insured".

D. Coverage provided to an additional "insured" will not be broader than coverage provided to any other "insured" under this Coverage Part.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

Carollo Engineers, Inc.

NOTICE OF CANCELLATION TO DESIGNATED ENTITY(S)

INSURED: Carollo Engineers, Inc.

POLICY NO.: ADFA48696300

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
BUSINESS AUTO COVERAGE FORM
BUSINESSOWNERS COVERAGE FORM

SCHEDULE

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

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

If we cancel this policy for any reason other than 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.

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.

Failure to provide notice in accordance with the terms of this endorsement does not:

- Alter the effective date of policy cancellation;
- Render such cancellation ineffective;
- Grant, alter, or extend any rights or obligations under this policy; or
- Extend the insurance beyond the effective date of cancellation.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT – CA

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless otherwise stated.

**This endorsement effective on 12/31/2014
forms a part of Policy No. WDF895749906**

at 12:01 am standard times

of the Massachusetts Bay Insurance Company

issued to: Carollo Engineers, Inc.

Premium (if any) \$ _____



Authorized Representative

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2.000% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

ANY PERSON OR ORGANIZATION WITH WHOM YOU AGREE IN WRITING TO WAIVE YOUR RIGHT TO RECOVER AGAINST THEM. YOU MUST AGREE TO THIS WAIVER PRIOR TO THE DATE OF LOSS

Job Description: Projects as on file with the insured

WC 252 040 84

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IT IS HEREBY UNDERSTOOD AND AGREED THAT THIS POLICY SHALL NOT BE CANCELLED BY THE COMPANY WITHOUT 30 (THIRTY) DAYS WRITTEN NOTICE, TO THE ASSURED, EXCEPT THAT IN THE EVENT OF NON-PAYMENT OF PREMIUM THIS POLICY MAY BE CANCELLED WITHIN 10 (TEN) DAYS WRITTEN NOTICE.

Certificate Holder:

City of Tempe
Public Works/Engineering Dept.
P.O. Box 5002
Tempe AZ 85280

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements or limitation of the policy other than as above states.

(Completion of the following, including countersignature, is required to make this endorsement effective only when it is issued subsequent to preparation of the Policy.)

Effective 12/31/2014 this endorsement forms a part of Policy No. WDF895749906

Issued to Carollo Engineers, Inc.

By Massachusetts Bay Insurance Company

Date of Issue

Countersigned by 
Authorized Representative of the Company

331-0230 1003

Page 1 of 1



PROFESSIONAL LIABILITY AND POLLUTION
INCIDENT LIABILITY INSURANCE POLICY

For All the Commitments you Make

INSURED: Carollo Engineers, Inc.
Policy AEH288354410

Effective 7/4/2015

Endorsement Number

NOTICE ENDORSEMENT -
CANCELLATION OR NON-RENEWAL

We agree with you that your Policy is amended to include the following additional provisions.

1. Your Policy will not be:

XX Cancelled by us until we provide at least:

10 days prior written notice if we cancel your Policy for Non-payment of Premium;

30 days prior written notice if we cancel your Policy for The following reasons:

Any reason other than non-payment of premium.

 Non-renewed by us until at least days prior written notice is given to the person or entity named in 2. below.

2. Person or Entity:

City of Tempe
Public Works/Engineering Dept.
P.O. Box 5002
Tempe AZ 85280

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown above.

By Authorized Representative James F. Willging
(No signature is required if issued with the Policy or if it is effective on the Policy Effective Date)

James F. Willging

Countersigned by Authorized Representative

256423

(Ed. 10/05)