

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 27th day of October, 2016, 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 **Plant Maintenance – South Tempe Water Treatment Plant, Phase 3, GMP 4**, 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 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 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.
- 1.4. 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.
- 1.5. 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.

- 1.6. Consultant shall perform the work in a manner and at times which do not impede or delay City's operations and/or functions.
- 1.7. 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 by December 23, 2016. 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 \$140,505.00, 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 | \$139,505.00 |
| | Subtotal Task Amount: | \$139,505.00 |
| | | |
| <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: | \$140,505.00 |

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 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 based upon the criteria outlined in 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. Boycott. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Contract/Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.
- 15.6. 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 15.6 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

- 15.7. 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.
- 15.8. Governing Law. This Contract shall be governed and interpreted by the laws of the State of Arizona.
- 15.9. 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.
- 15.10. 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 15.10, 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.

- 15.11. 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.
- 15.12. 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.
- 15.13. 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.
- 15.14. 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.
- 15.15. 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.
- 15.16. 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.
- 15.17. 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.

- 15.18. 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.
- 15.19. 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.
- 15.20. 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.
- 15.21. 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.
- 15.22. 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:

Marilyn DeRosa
Interim 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 St., Suite 500
Phoenix, AZ 85034

- 15.23. 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.
- 15.24. 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]

Plant Maintenance – South Tempe Water Treatment Plant, Phase 2, GMP 4
Project No. 3205911B

3/25

DATED this _____ day of _____, 2016.

CITY OF TEMPE, ARIZONA

By: _____
Mark W. Mitchell, Mayor

By: [Signature]
Public Works Director

ATTEST:

Recommended By:

Brigitta M. Kuiper, City Clerk

[Signature]
Deputy PW Director/Interim City Engineer
FOR

APPROVED AS TO FORM:

Judith R. Baumann, 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 LISA M. FREESTONE

Mark J. Gross
Printed Name VICE PRESIDENT

Vice President
Title

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



Exhibit A

City of Tempe, AZ

STWTP Asset Maintenance Project - GMP4

City Project No. 3205911B

Engineering Services During Construction

9476C.20

September 6, 2016

SCOPE OF WORK

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) above referenced 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 project, providing inputs and recommendations to the CITY, and provided a Guaranteed Maximum Price (GMP) to the CITY, GMP4. Based on the CITY's budget and as noted in the CMAR's schedule and GMP, the following work items will be performed:

GMP4

- Install new copper sulfate feed system
- Repair precast panel joints at floc basins
- Floc basins' flocculator bearing repairs
- Install new drives on Final Sed. Basins 4A & 4B
- Install new blowdown valves on final sed. basins

A small, handwritten mark or signature in the bottom right corner of the page, consisting of a stylized, cursive-like shape.

- Replace isolation slide gates for Emergency Storage Pond

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 the GMP4 work will be performed in conjunction with GMP3 (scoped under separate cover). Therefore, the effort required to attend the weekly meetings will be split between this scope for GMP4 and the scope for GMP3. It is assumed that the GMP4 work will take place over six months, or 24 weeks. This scope includes the effort for 12 construction progress meetings. 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.

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 or work items to assist staff. It is assumed that the frequency of the inspections will average one - two inspections per week which is around 36 inspections over a six 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 10 RFI's, three design clarifications and three change orders in total. The CONSULTANT will also review six 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 50 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 and to provide the CMAR prior to project close-out.

Task 507: Permitting – The CONSULTANT will obtain a MCESD Approval of Construction permit. The CONSULTANT will also provide assistance to the CMAR for obtaining City of Tempe Building Permit green tags.

SCHEDULE

The construction duration for the project will be approximately six months concurrently from date of Notice to Proceed, based on the CMAR's preliminary construction schedules provided to the City.

PROJECT ASSUMPTIONS

1. Conformed bidding documents are not part of this project.
2. Record drawings will be provided be in mylar format.

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.

57

Exhibit B
Fee Proposal
Engineering Services During Construction
STWTP Asset Maintenance Project - GMP4
9476C.20
City of Tempe
City Project No. 3205991AB
September 6, 2016

| 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 (12) | 16 | 16 | 16 | 16 | | | 48 | \$9,098 | |
| Task 502 - Special Inspections (36) | 16 | 12 | 72 | 72 | | | 172 | \$29,880 | |
| Task 503 - RFIs, Design Clarifications, Change Orders, Pay Apps | 12 | 6 | 60 | 24 | 12 | 6 | 120 | \$20,654 | |
| Task 504 - Submittal and Test Results Review (50) | 32 | 60 | 180 | 24 | | 4 | 300 | \$57,137 | |
| Task 505 - Record Drawings | 4 | 4 | 16 | 8 | 40 | | 72 | \$11,288 | |
| Task 506 - Final Completion Inspection | 2 | | 16 | 16 | | | 18 | \$2,812 | |
| Task 507 - Permitting | 2 | | 24 | 24 | | 4 | 54 | \$8,536 | |
| Subtotal | 84 | 82 | 368 | 184 | 62 | 14 | 784 | \$139,505 | |
| TOTAL LABOR HOURS | 84 | 82 | 368 | 184 | 52 | 14 | 784 | | |
| Hourly Rates | \$245.15 | \$221.81 | \$178.45 | \$145.10 | \$135.10 | \$95.08 | | | |
| TOTAL LABOR COSTS | \$20,592.60 | \$18,188.01 | \$65,659.60 | \$26,588.40 | \$7,024.94 | \$1,331.05 | | \$139,505 | |
| Subconsultants | | | | | | | | | |
| Subtotal Subconsultants | | | | | | | | \$0 | |
| Total Subconsultants | | | | | | | | \$0 | |
| Allowances/Direct Expenses | | | | | | | | | |
| Printing, Scanning, and Courier | | | | | | | | \$1,000 | |
| Total Expenses | | | | | | | | \$1,000 | |

TOTAL PROJECT COSTS \$140,505



83

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 of fifteen (15) or more employees shall provide a copy of its antidiscrimination policy to the city's procurement officer to confirm compliance with this article. Employers having fourteen (14) or less employees may attest in writing to compliance with this article.

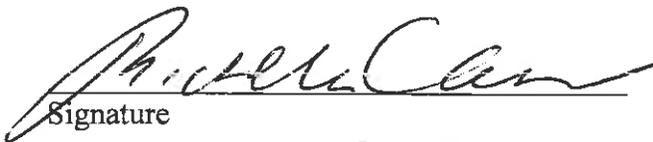
- CONTRACTOR means any person who has a contract with the City.
- VENDOR means a person or firm in the business of selling or otherwise providing products, materials, or services.

CONTRACTOR/VENDOR, select one:

 D 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

Michelle Cannon
Print Name

Carollo Engineers, Inc.
Company

Date: 10/07/2016

VP
Title



Employee Practices Manual

**Human Resources
Revised October 1, 2016**

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION 201

REVISION DATE: July 1, 2016

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, religious creed (including religious dress and grooming practices), ethnicity, color, ancestry, age (40 and over), genetic information, disability (mental and physical), medical condition (cancer/genetic characteristics & information), national origin (including language use restrictions), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender (including gender identity and gender expression), sexual orientation, marital status, familial status, parental status, domestic partner status, citizenship status, pregnancy (including perceived pregnancy, childbirth, breastfeeding or related medical conditions), military caregiver status, military status, veteran status, denial of Family and Medical Leave, or any other status protected by federal, state, or local law. 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 work with the applicant or employee to 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 Engineers 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, religious creed (including religious dress and grooming practices), ethnicity, color, ancestry, age (40 and over), genetic information, disability (mental and physical), medical condition (cancer/genetic characteristics & information), national origin (including language use restrictions), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender (including gender identity and gender expression), sexual orientation, marital status, familial status, parental status, domestic partner status, citizenship status, pregnancy (including perceived pregnancy, childbirth, breastfeeding or related medical conditions), military caregiver status, military status, veteran status, denial of Family and Medical Leave, or any other status protected by federal, state, or local law;
- 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, religious creed (including religious dress and grooming practices), ethnicity, color, ancestry, age (40 and over), genetic information, disability (mental and physical), medical condition (cancer/genetic characteristics & information), national origin (including language use restrictions), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender (including gender identity and gender expression), sexual orientation, marital status, familial status, parental status, domestic partner status, citizenship status, pregnancy (including perceived pregnancy, childbirth, breastfeeding or related medical conditions), military caregiver status, military status, veteran status, denial of Family and Medical Leave, or any other status protected by federal, state, or local law;
- 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 Human Resources. 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

UNLAWFUL HARASSMENT AND HOSTILE WORK ENVIRONMENT 202

REVISION DATE: November 1, 2011

UNLAWFUL HARASSMENT AND DISCRIMINATION

Carollo Engineers is committed to providing a work environment that is free of unlawful harassment and discrimination. The Company policy prohibits sexual harassment, harassment and discrimination based on race, religious creed (including religious dress and grooming practices), ethnicity, color, ancestry, age (40 and over), genetic information, disability (mental and physical), medical condition (cancer/genetic characteristics & information), national origin (including language use restrictions), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender (including gender identity and gender expression), sexual orientation, marital status, familial status, parental status, domestic partner status, citizenship status, pregnancy (including perceived pregnancy, childbirth, breastfeeding or related medical conditions), military caregiver status, military status, veteran status, denial of Family and Medical Leave, or any other status protected by federal, state, or local law. It also prohibits harassment 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 harassment is unlawful.* The unlawful harassment policy of the Company applies to all persons involved in the operation of Carollo Engineers and prohibits unlawful harassment by any Company employee, including management and co-workers, and third parties, such as applicants, vendors, subconsultants, contractors, and clients. This policy prohibits conduct that violates the letter or spirit of anti-harassment and anti-discrimination laws or conduct not aligned to the Company's values, policies, or behavioral expectations. This includes conduct in any work-related setting, whether on Company premises, during working time, or while participating in activities outside the workplace such as business-related social events and travel.

The Company will not tolerate such harassing conduct that affects tangible job benefits, interferes with work performance, or creates a hostile, intimidating, or offensive work environment. Further, it is a violation of this policy to engage in workplace bullying.

In compliance with certain state law and in accordance with established company policy, Carollo Engineers requires supervisory employees to complete two hours of unlawful harassment training every two years. This training is mandatory and is considered to be a condition of continued employment.

Prohibited unlawful harassment includes, but is not limited to, the following behavior:

Sexual Harassment

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and conduct of a sexual nature when:

- Submission to, or tolerance of, such behavior is made a condition of employment; or
- Submission to, tolerance of, or rejection of such behavior is used as the basis for a decision; or

- Such behavior interferes with an employee’s ability to perform his or her work, or creates an intimidating and hostile work environment.

Sexual harassment may be a single incident or a series of harassing acts. Inappropriate conduct that is sexually harassing in nature can involve individuals of the same or opposite sex, a supervisor (or manager) and subordinate, co-workers, an employee, or a non-employee (third party) such as a customer, contractor, vendor, or supplier.

Sexual harassment may result from a range of subtle to not-so-subtle conduct, depending on the circumstances. It can result from verbal, visual, or physical conduct. Examples of sexual harassment and similar inappropriate conduct prohibited by this policy include, but are not limited to:

1. Unwelcome sexual advances, demands, pressures, or requests for sexual acts or favors.
2. Making or threatening reprisals, whether explicitly or implicitly, after a negative response to sexual advances.
3. Repeated, unwanted sexual flirtations, advances, or propositions.
4. Unwelcome physical contact such as patting, grabbing, pinching, or brushing against another’s body.
5. Offensive visual conduct, including leering, making sexual gestures, or the display of sexually suggestive objects, pictures, cartoons, or posters.
6. Offensively suggestive or sexually explicit communications in any form, including but not limited to letters, notes, invitations, email, text messages, blogs, instant messaging, or voicemail.
7. Sexually-oriented verbal teasing or jokes, inquiries into one’s sexual experiences, or discussions of one’s sexual activities.
8. Graphic or degrading comments about an individual’s appearance or sexual activity.
9. Sexually explicit or offensive images in emails or other forms of electronic messaging.

The legal definition of sexual harassment is broad and, in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment.

Other Forms of Harassment

The following is a non-exhaustive list of additional behaviors based on a person’s upon race, religious creed (including religious dress and grooming practices), ethnicity, color, ancestry, age (40 and over), genetic information, disability (mental and physical, including HIV and AIDS), medical condition (cancer/genetic characteristics & information), national origin (including language use restrictions), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender (including gender identity and gender expression), sexual

orientation, marital status, familial status, parental status, domestic partner status, citizenship status, pregnancy (including perceived pregnancy, childbirth, breastfeeding or related medical conditions), military caregiver status, military status, veteran status, denial of Family and Medical Leave, or any other status protected by federal, state, or local law that will be considered harassment and are prohibited by this policy:

1. Derogatory comments, epithets, slurs, or jokes.
2. Posting or sharing derogatory materials such as posters, cartoons, drawings, or gestures.
3. Aggressive or unwelcome physical conduct such as assault, blocking normal movement, restraint, touching, or other physical interference.
4. Bullying behavior, including but not limited to threats, intimidation, coercion, ridicule, insults, or belittling.
5. Spreading false, vicious, or malicious rumors.
6. Other behavior that creates a workplace where an employee reasonably feels threatened, humiliated, intimidated or bullied in the workplace.
7. The gratuitous sabotage or undermining of a person's work performance.
8. Using blogs or social networking sites to harass, threaten, discriminate, or disparage against employees or anyone associated with or doing business with Carollo Engineers.

HOSTILE WORK ENVIRONMENT

Employees are expected to conduct themselves in an appropriate manner as judged by a reasonable person.

Employees have the right to conduct their work without disorderly or undue interference from other employees. The Company prohibits employees from violating this right of their co-workers.

The Company encourages a congenial work environment of respect and professionalism. Therefore, the Company prohibits employees from abusing, harming, or threatening to harm other employees, clients, vendors, visitors, or property belonging to any of these parties.

COMPLAINT PROCEDURE

You must report any violations of this policy that you experience or witness. If you believe in good faith that you have been subjected to, witnessed, or otherwise learned of discrimination or harassment (or any other conduct prohibited by this policy) by anyone, including supervisors, co-workers, suppliers, vendors, customers or other third parties, you must immediately report the incident. Verbal or written reports may be made as outlined below.

Supervisors or managers who receive reports or observe harassing conduct must immediately report it to the Human Resources Manager or Employee Services Director.

1. If an employee/applicant believes he/she has been subjected to any form of unlawful discrimination/harassment or hostile work environment, he/she must immediately notify the Human Resources Manager. The complaint should be as specific as possible and should include the names of the individual(s) involved and the names of any witnesses. All complaints will be kept confidential to the extent possible. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances.
2. Carollo Engineers will immediately undertake an effective, thorough, and objective investigation and attempt to resolve the situation. If the Company determines that unlawful discrimination/harassment has occurred or that the employee has been subject to a hostile work environment, effective remedial action, determined by the Office Manager, Risk Management Services or the Board of Directors, will be taken commensurate with the severity of the offense up to and including termination of employment. Appropriate action also will be taken to deter any future actions that violate this policy.
3. In cases involving unlawful harassment, a Company representative will advise all parties concerned of the results of the investigation.
4. Carollo Engineers strictly prohibits retaliation in any way against anyone who has lodged a harassment or discrimination complaint, has expressed a concern about harassment or discrimination, including sexual harassment, or has participated in a harassment or discrimination investigation. Therefore, the initiation of a complaint, in good faith, shall not under any circumstances be grounds for discipline. It is a violation of Company policy for an individual to be disciplined or otherwise disadvantaged because of good faith resort to the procedures in this policy for reporting sexual or other unlawful harassment or discrimination. Persons engaging in any form of retaliation will be subject to disciplinary action, up to and including termination.
5. The Company encourages all employees to report any incidents of harassment or hostile work environment forbidden by this policy immediately so that complaints can be quickly and fairly resolved. You can also report a violation through the ethics hotline (877-778-5463 Username Carollo, Password water) and/or the California Department of Fair Employment & Housing ("DFEH") and U.S. Equal Employment Commission ("EEOC").
6. You are not required to report to your supervisor, manager, or any other person engaging in the unwelcome behavior if that supervisor, manager, or other person is the subject of the report.

See Also:

[Equal Employment Opportunity and Affirmative Action 201](#)

[Communications and Confidentiality 608](#)

[Computer Use and Security 609](#)

[Conduct and Code of Ethics 610](#)

[ACKNOWLEDGMENT FORM](#)

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE

Phoenix, Arizona

Date 10/01/2016

Plant Maintenance – South Tempe Water Treatment Plant, Phase 3, GMP 4
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: Aetna

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

Policy No.: 88 3584

Policy Effective Date (MM/DD/YY): 1/01/2016

Policy Expiration Date (MM/DD/YY): 12/31/2017

Signed and dated at Carollo Engineers, this 1st day of October, 2016.

Michelle Canina
General Contractor/Prime Consultant

By: Michelle Canina

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN to before me this 1 day of OCTOBER, 2016.

Barbara J. Hall
Notary Public

My commission expires:
MAY 22, 2020



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.