



CITY OF MARTINEZ

CITY COUNCIL AGENDA

January 20, 2010

TO: Mayor and City Council

FROM: Tim Tucker, City Engineer

SUBJECT: Park Renovation Projects Design Contracts

DATE: January 12, 2010

RECOMMENDATION:

Adopt Resolution authorizing the City Manager to execute Landscape Architectural Consultant Services agreements with the firms of Borrecco-Kilian & Associates; Kluber & Associates; and Thomas Baak and Associates for on-call landscape architect services for the City's Measure H Projects not to exceed \$300,000 per firm.

BACKGROUND:

Design of the various Measure H Park Projects requires the assistance of qualified Landscape Architects. Staff recommended to the PRMCC that the Commission go through a competitive selection process and create a small pool of pre-selected, qualified Landscape Architects. This process is consistent with the City's Purchasing Policy.

Staff advertised for Statements of Qualified (SOQs) from six local Landscape Architects. Four firms submitted SOQ's and were interviewed by the Playground Subcommittee of the PRMCC. The PRMCC approved the Subcommittee's recommendation of the firms of Borrecco-Kilian & Associates; Kluber & Associates; and Thomas Baak and Associates comprise the pool of Landscape Architects.

Through the interview process it was determined that Borrecco-Kilian & Associates provided excellent comments and insight on the re-design issues for Rankin Park. Firm Partner, Brian Kilian, a local landscape architect, is also familiar with Rankin Park and worked on developing scope and budgets for the various Measure H park projects.

Likewise the Subcommittee was impressed with Kluber & Associates (Frank Kluber.) Frank is also a local Landscape Architect and provided great ideas on renovating Holiday Hills Park. One idea could involve using the Briones Environmental Studies Academy (Now called New Leaf) to design and restore the creek which runs through the site.

RESOLUTION NO. -09

AUTHORIZING THE CITY MANAGER TO EXECUTE LANDSCAPE ARCHITECTURAL SERVICES AGREEMENTS FOR CONSULTANT SERVICES WITH THE FIRMS OF BORRECCO-KILIAN & ASSOCIATES; KLUBER & ASSOCIATES; AND THOMAS BAAK AND ASSOCIATES FOR ON-CALL LANDSCAPE ARCHITECT SERVICES FOR THE CITY'S MEASURE H PROJECTS NOT TO EXCEED \$300,000 IN DESIGN COSTS PER FIRM

WHEREAS, in 2009 the City of Martinez requested statements of qualifications to provide a pool of consultants for on-call landscape architectural services for various Measure H park projects; and

WHEREAS, the City of Martinez received four Statements of Qualifications, and interviewed the consultants to determine the consultants best qualified for the work; and

WHEREAS, the City of Martinez determined that three firms, BORRECCO-KILLIAN & ASSOCIATES; KLUBER & ASSOCIATES; AND THOMAS BAAK AND ASSOCIATES are the best qualified to provide landscape architectural services for this work; and

WHEREAS, staff and the Park Recreation Marina and Cultural Commission recommend utilizing the professional services of these firms.

NOW, THEREFORE, BE IT RESOLVED that a the City Council authorize the City Manager execute agreements for Consultant Services with BORRECCO-KILLIAN & ASSOCIATES; KLUBER & ASSOCIATES; AND THOMAS BAAK AND ASSOCIATES for Landscape Architectural Services for the City's Measure H Park projects not to exceed \$300,000.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 20th day of January, 2010 by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

AGREEMENT FOR LANDSCAPE ARCHITECTURAL SERVICES

THIS AGREEMENT, made and entered into this _____ day of 20__, by and between the CITY OF MARTINEZ, hereinafter referred to as CITY, and _____, hereinafter referred to as ARCHITECT.

WHEREAS, CITY has approved a Citywide bond measure, Measure H, which provides funding for park and library improvement projects throughout the City; and

WHEREAS, CITY desires to retain the services of LANDSCAPE ARCHITECT (ARCHITECT) and ARCHITECT is willing to perform services as necessary to design one or more of the individual park improvement projects to be funded pursuant to Measure H (“Individual Park Project”).

NOW THEREFORE, CITY and ARCHITECT hereby agree as follows:

SPECIFIC PROVISIONS

1. PROJECT

This Project consists of providing landscape architectural and design services for Measure H Park Projects on a project by project basis in accordance with the scope of services (Exhibit “A”). As each Individual Park Project is authorized, this Agreement shall be amended to include a scope of services specific to each Individual Park Project which includes a project schedule, hourly rates and a maximum per project compensation and draft “As-Built” drawings utilizing information provided by the City and City’s construction contractor.

2. SCOPE OF SERVICES BY ARCHITECT

The services provided by ARCHITECT shall include: as stated in the proposal dated _____, incorporated herein by reference and Scope of Service attached as Exhibit "A". As each Individual Park Project is authorized, this Agreement shall be amended to include a scope of services specific to each project.

3. SCOPE OF SERVICES TO BE PROVIDED BY CITY

- a. Environmental impact processing and documents.
- b. Preliminary soils report.
- c. Advertise and award project.
- d. Construction inspection and "as-built" red-lined drawings.
- e. Assistance with utility coordination.
- f. “Opinion of Probable Costs” dated June 20, 2008 (Exhibit “B”)
- g. Coordinate all public hearings, public and workshops.

4. PAYMENT

a. Compensation

The total cost for services provided by ARCHITECT for the combined total of all projects which may be subject to this Agreement shall not exceed \$300,000. As each Individual Park Project is authorized, this Agreement shall be amended to include a maximum per project compensation for each Individual Park Project.

b. Time of Payment

Provided ARCHITECT is not otherwise in default under this Agreement, ARCHITECT shall be compensated monthly in arrears based upon the time spent during the previous month for which an itemized invoice shall be submitted. CITY agrees to pay ARCHITECT within thirty (30) days of receipt of monthly invoices.

However, all payments by CITY shall not exceed the proportion of the phase or task completed and payment for each phase or task shall not exceed that set forth in the scope of services for each individual task outlined as follows:

- a. Programming/Preliminary Design Phase
- b. Design Development Phase
- c. Construction Document Phase
- d. Construction Administration Phase

5. TIME OF COMPLETION

- a. The ARCHITECT shall commence work upon receipt of written direction to proceed from the CITY.
- b. The ARCHITECT shall perform the work described in paragraph 2 in accordance with the schedule set forth in the Scope of Services.

6. ARCHITECT and the CITY agree the schedule in the Scope of Services for each Individual Park Project represents their best estimates with respect to completion dates and both ARCHITECT and CITY acknowledge that departures from the schedule may occur. Therefore, both ARCHITECT and CITY will use reasonable efforts to notify one another of changes to the schedule, provided, however, that all changes to the schedule must be approved by the CITY.

7. ARCHITECT shall not be responsible for performance delays caused by others, or delays beyond ARCHITECT's control, and such delays shall extend, *protante*, the times for performance of the work by ARCHITECT.

* * *

GENERAL PROVISIONS

1. The status of ARCHITECT is that of independent contractor operating having control of his work and the manner in which it is performed. ARCHITECT is not considered to be an officer, an employee, or an agent of CITY. The CITY retains all rights of approval and discretion with respect to the undertakings contemplated by this Agreement. ARCHITECT, its officers, employees and agents shall not have any power to bind or commit the CITY to any decision or course of action, and ARCHITECT, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the CITY or that it or they have the power to bind or commit the CITY.

2. The ARCHITECT agrees that he/she/it has not employed or retained any company or person, other than a bona fide employee working solely for the ARCHITECT, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ARCHITECT, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul and cancel this Agreement without liability of any sort and/or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

3. All reports, drawings, calculations, plans, specifications, and other documents prepared or obtained pursuant to the terms of this Agreement shall be endorsed by ARCHITECT and delivered to and become the property of and/or all rights assigned to the CITY. In addition, data prepared or obtained under this Contract shall be made available, upon request, to the CITY. ARCHITECT shall prepare check prints as needed. The foregoing notwithstanding, said documents, plans, etc., are site specific for the applicable Individual Park Project and shall not be used for any other work without the consent of ARCHITECT.

4. ARCHITECT shall provide properly skilled professional and technical personnel to perform all services under this contract. The ARCHITECT shall not engage the services of any person or persons now employed by the CITY, except with the written permission of the CITY. Except as otherwise herein provided, the ARCHITECT shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of the CITY. In the event that the CITY, in writing, approves any assignment or subletting of this Agreement or the retention of subconsultant by ARCHITECT, the ARCHITECT shall provide to the CITY copies of each and every subconsultant contract prior to the execution thereof by the ARCHITECT and subconsultant.

5. In the event ARCHITECT will perform inspection services, CITY or authorized representatives of the CITY shall have the right to inspect the work of such services whenever such representatives may deem such inspection to be desirable or necessary. Inspections by the CITY do not in any way relieve or minimize the responsibility of ARCHITECT to conduct the

inspections ARCHITECT has expressly agreed to perform pursuant to this agreement. ARCHITECT shall be solely liable for said inspections performed by ARCHITECT. ARCHITECT shall certify in writing to the CITY as to the completeness and acceptability of each inspection of improvement or construction which ARCHITECT agrees to inspect hereunder.

6. ARCHITECT and his sub-consultants shall keep and maintain full and complete documentation and accounting records, including all records, employees' time sheets, and correspondence pertaining to the Project, and make such documents and records available for review and/or audit evaluation by representative of CITY at all reasonable times during the contract period and for at least four (4) years from the date of final payment hereunder and upon request (copies of pertinent reports and correspondence shall be furnished for the files of CITY).

7. ARCHITECT and ARCHITECT'S work and work product shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation, all applicable federal and state disabled access laws, rules and regulations, laws requiring licensing and non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.

Prevailing Wage Laws. ARCHITECT shall be required to pay prevailing wages as established under California law. The parties acknowledge and agree that the work covered by this Agreement is a "public work" as defined in Part 7, Chapter 1 of the California Labor Code.

8. Modifications to Agreement:

A The City Manager may authorize amendments to this Agreement to add individual Park Projects up to an individual costs of _____ and not to exceed the total aggregate cost set forth in Paragraph 4 of the Specific Provisions hereof.

B. As to Individual Park Projects, all changes and/or extra work shall be performed and paid for in accordance with the following:

a. Only the CITY Engineer or CITY Council may authorize extra and/or changed work. ARCHITECT expressly recognizes that other CITY personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of ARCHITECT to secure the Council's or CITY Engineer's authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and ARCHITECT thereafter shall be entitled to no compensation whatsoever for performance of such work.

b. If the ARCHITECT is of the opinion that any work s/he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, s/he shall promptly notify the CITY of the fact. The CITY shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes

extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide extra compensation to the ARCHITECT on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the CITY and the ARCHITECT. Such Supplemental Agreement shall be executed by the ARCHITECT and be approved by the CITY Manager.

c. In the event CITY determines that such work does not constitute extra work, ARCHITECT shall not be paid extra compensation above that provided herein and if such determination is made by CITY staff, said determination may be appealed to the CITY Council as long as a written appeal is submitted to the CITY Manager within five (5) days after the staff's determination is received by the ARCHITECT. Said written appeal shall include a description of each and every ground upon which ARCHITECT challenges the staff's determination. The CITY Manager's or CITY Engineer's decision shall be final.

9. CITY has relied upon the professional ability and training of ARCHITECT as a material inducement to enter into this Agreement. ARCHITECT shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of ARCHITECT'S work by CITY shall not operate as a waiver or release. ARCHITECT represents and warrants to CITY that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for ARCHITECT to practice its profession, and (b) it shall, at its sole cost, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for ARCHITECT to practice its profession. ARCHITECT shall indemnify and hold harmless the CITY from and against any and all claims or expenses caused or occasioned directly or indirectly by ARCHITECT'S failure to so perform.

10. ARCHITECT assumes all responsibility for damages of property or injury or death to persons caused by the negligent performance, errors or omissions of ARCHITECT, his/her agents or employees, or any equipment furnished under the Agreement or used by ARCHITECT, his/her agents and employees. To the maximum extent permitted by law, ARCHITECT shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses, including attorneys' fees and other defense costs, and liabilities of any nature that may be asserted by any person or entity including ARCHITECT arising out of, pertaining to or relating to, directly or indirectly, in whole or in part, the negligence, recklessness or willful misconduct of ARCHITECT, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control. This indemnify does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss arising from the sole negligence, willful misconduct or defects in design by CITY, or the CITY's agents, employees or independent contractors who are directly responsible to the CITY, or arising from the active negligence of the CITY. CITY agrees to provide ARCHITECT with reasonable notification of legal claims and/or lawsuits which CITY may receive and which CITY will request indemnification in under this paragraph.

11. Without limiting ARCHITECT'S indemnification provided hereunder, ARCHITECT shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance with insurers with a Best rating of no less than A:X111(Exhibit "C"):

a. Workers' Compensation insurance to cover its employees, and the ARCHITECT shall require all subconsultants similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subconsultant's employees. All Workers' Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the CITY.

In the event any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation Statutes, the ARCHITECT shall provide, and shall cause all subconsultants to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to CITY and shall provide that it will not be canceled without first giving thirty (30) days notice to CITY.

ARCHITECT'S Worker's Compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment."

b. Commercial general liability insurance including personal injury and property damage insurance for all activities of the ARCHITECT and its subconsultants arising out of or in connection with this contract, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, cross liability, X, C, U hazards, subcontractors named as additional insureds (inapplicable if no subcontractors or subconsultants), vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than \$1 million dollars combined, single limit personal injury and property damage for each occurrence. The completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by CITY. Each such policy shall be endorsed with the following language:

(1) The CITY OF Martinez is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(3) The insurance provided herein is primary and no insurance held or owned by the CITY of Martinez shall be called upon to contribute to a loss.

(4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the CITY of Martinez.

(5) This policy does not exclude explosion, collapse, underground excavation hazards or removal of lateral support.

c. Professional liability, errors and omissions insurance in an amount not less than \$1 million dollars. The professional liability insurance policy shall be endorsed with a provision stating that it may not be canceled without first giving thirty (30) days prior written notice to the CITY. The professional liability policy shall be written on an occurrence policy basis to cover any professional liability, errors or omissions made during the term of the policy. In the event ARCHITECT'S policy is a "claims made" policy only covering those claims made during the policy period, then ARCHITECT agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least ten (10) years after acceptance of the work.

(1) SUB-consultants providing professional services under this agreement shall be added to ARCHITECT'S policy as additional insured, or shall provide evidence of their own professional liability insurance which is acceptable to the CITY Attorney.

d. ARCHITECT shall submit to CITY documentation evidencing its required insurance signed by the insurance agent and companies named on the CITY OF Martinez forms, copies of which are attached as Exhibit "B". Any deductible or self-insured retentions must be declared to and approved by CITY. At the option of CITY insurer shall reduce or eliminate such deductible or self-insured retention as respects CITY, its officers and employees or ARCHITECT shall procure a bond guaranteeing payment of losses and related investigation, claims, administration and defense expenses.

12. The CITY shall furnish the ARCHITECT, to the extent that they are available, CITY standards, details, requirements, specifications, and regulations applying to the Individual Park Projects and other such information which may be helpful to the ARCHITECT in performance of its service. Any and all additional data necessary for design work shall be the responsibility of the ARCHITECT.

13. The CITY may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by ARCHITECT of the services required. Notice of termination of this Agreement shall be given in writing to ARCHITECT, and shall be sufficient and complete when same is deposited in the United States mail postage prepaid and certified, addressed as set forth in paragraph 18 of this Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by ARCHITECT. If CITY should terminate this Agreement, the ARCHITECT shall be compensated for all work satisfactorily performed prior to time of receipt of termination notice, and shall be compensated for materials

ordered by the ARCHITECT or his employees, or services of others ordered by the ARCHITECT or his employees prior to receipt of notice of termination whether or not such materials or final instruments of services of others have actually been delivered, provided that the ARCHITECT or its employees are not able to cancel such orders for materials or services of others. Compensation for the ARCHITECT in the event of termination shall be determined by the CITY Engineer in accordance with the percentage of project completed and agreed to by the ARCHITECT. In the event that this Agreement is terminated pursuant to this Paragraph, ARCHITECT shall not be entitled to any additional compensation over that provided herein; nor shall ARCHITECT be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY pursuant hereto. ARCHITECT may terminate this Agreement upon thirty (30) days written notice to the CITY only for good cause. ARCHITECT's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of the CITY's last payment shall be relinquished to the CITY. The CITY may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

14. Should the ARCHITECT fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. ARCHITECT shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage if any, sustained by CITY by virtue of the ARCHITECT'S breach of this Agreement.

15. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.

16. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by all parties to this Agreement.

17. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a repudiation of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

18. All notices permitted or required hereunder shall be addressed as follows:

If to the CITY:

City of Martinez
City Manager
525 Henrietta Street
Martinez, CA 94553

If to the ARCHITECT:

19. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

20. ARCHITECT shall provide assistance as necessary to resolve any questions on conflicts between plans and specifications prepared by ARCHITECT pursuant to this Agreement that may arise during the period of advertising for bids and shall issue any necessary addenda to the plans and specifications as requested. In the event ARCHITECT is of the opinion that CITY'S requests for addenda and assistance is outside the scope of normal services, the parties shall proceed in accordance with the provision of section 8 hereof.

21. In the event either party to this Agreement brings an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to attorney's and witness fees as well as other costs.

22. In the event any portion of the consideration to be paid to the ARCHITECT is derived from federal sources, the following provisions shall apply:

a. The ARCHITECT will comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49 Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

b. The ARCHITECT with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The ARCHITECT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. In all solicitations either by competitive bidding or negotiation made by

the ARCHITECT for work to be performed under a subcontract, including procurement of materials or equipment, each potential subARCHITECT or supplier shall be notified by the ARCHITECT of the ARCHITECT'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

d. The ARCHITECT will provide all information and reports required by the Regulations or orders, and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the ARCHITECT is in the exclusive possession of another who fails or refuses to furnish this information, the ARCHITECT shall so certify to the CITY as appropriate, and shall set forth what efforts he has made to obtain the information.

e. In the event of the ARCHITECT'S noncompliance with the nondiscrimination provisions of this contract, the CITY shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

(1) Withholding of payments to the ARCHITECT under the contract until the ARCHITECT complies;

(2) Cancellation, termination, or suspension of the contract, in whole or in part.

f. The ARCHITECT will include the provisions of paragraph "a" through "e" in every subcontract, including procurements of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued pursuant thereto. The ARCHITECT will take such action with respect to any Regulations, order, or instructions issued pursuant thereto. The ARCHITECT will take such action with respect to any subcontract or procurement as the CITY or its representative may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event ARCHITECT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the ARCHITECT may request the CITY to enter such litigation to protect the interest of the CITY, and, in addition, the ARCHITECT may request the United States to enter into such litigation to protect the interests of the United States.

Provisions of Subparagraph "f" shall not apply if ARCHITECT completed all the work covered by this contract without any subcontractor or subconsultant.

23. Time is of the essence in the completion of the work ARCHITECT is required to perform hereunder and in each of the provisions of this Agreement.

* * *

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written in the City of Martinez, California.

City of Martinez
A Municipal Corporation

By: _____
Mayor CITY

By: _____
ARCHITECT

APPROVED AS TO FORM:

By: _____
CITY ATTORNEY

Attach: Exhibits:

- A. Scope of Service
- B. "Opinion of Probable Cost" dated June 20, 2008
- C. Insurance certificates