



CITY OF MARTINEZ

CITY COUNCIL AGENDA March 16, 2011

TO: Mayor and City Council

FROM: City Engineer

SUBJECT: Water Treatment Plant Master Plan Consultant Agreement

DATE: February 28, 2011

RECOMMENDATION:

Adopt resolution authorizing the City Manager to execute a consultant services agreement for the design of the Water Treatment Plant Master Plan study not to exceed \$194,000.

BACKGROUND:

In 2005 the City completed a Water Master Plan Update (Dodson). The update found the plant capacity is sufficient to meet year 2020 projected demands. However, the plan recommended the City develop a water treatment plant (Plant) master plan (WTPMP) to evaluate the condition of the Plant assets and to analyze alternatives for any improvements at the Plant. The WTPMP will focus on assessment of the existing facilities conditions and the renewal and replacement needs at the Plant. Plant electrical, structural, mechanical equipment, treatment process and control and monitoring systems will be reviewed with special detail to the electrical and structural reviews. The study recommended assessment of power routing options to determine methods to provide necessary electrical service to the older sections of the Plant. In addition the existing treatment process shall be reviewed. Techniques to control bromate formation, a by-product of the water treatment process, will also be studied.

The City Council adopted the Water Treatment Plant Master Plan Study budget as part of the current Capital Improvement Program. The City solicited for Statements of Qualifications (SOQ) from qualified Professional Engineering firms to provide Civil Engineering Services for completing a Master Plan for the City of Martinez's Water Treatment Plant. The goal of this request for SOQ was to develop a pool of engineering firms specializing in water treatment from which to interview. A panel comprised of staff from Engineering, Public Works and the Water Treatment Plant interviewed four firms. The firms were evaluated on experience, personnel, project approach and schedule. The panel unanimously selected Carollo Engineers as the firm best meeting the City's needs. Staff has successfully negotiated a contract amount within the project budget. The attached resolution would authorize the City Manager to execute a consultant services agreement. It is anticipated the study will take six months to complete.

FISCAL IMPACT:

The project is funded under account C7021. There are sufficient funds in this account to complete the study.

Budget:

Contract	\$194,000
Scope Contingency	\$ 6,000
Project Administration	\$ 25,000
	\$225,000
Available Funding	\$225,000

Staff has included a small “Scope Contingency” in the budget to cover additional studies not currently foreseen. The Plant’s original construction dates back to the late 1940’s. In the event systems within the plant, not currently document, are encountered additional evaluations may be required.

ACTION:

Adopt resolution authorizing the City Manager to execute a consultant services agreement for the design of the Water Treatment Plant Master Plan study not to exceed \$194,000.



APPROVED BY: City Manager

RESOLUTION NO. -11

AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES AGREEMENT FOR THE DESIGN OF THE WATER TREATMENT PLANT MASTER PLAN STUDY NOT TO EXCEED \$194,000

WHEREAS, the City Council of the City of Martinez allocated \$225,000 for the Water Treatment Plant Master Plan Project (Study) with the adoption of the Five Year Capital Improvement Program and Biennial Budget; and

WHEREAS, it is necessary to hire a consultant with expertise in Civil Engineering specializing in water treatment plant design and operation; and

WHEREAS, staff solicited for qualified engineers and through a fair and equitable competitive interview process has recommended Carollo Engineers as being the most qualified firm to complete the Study.

NOW, THEREFORE, IT BE RESOLVED by the City Council of the City of Martinez, that the City Manager is authorized to execute a consultant services agreement for Water Treatment Plant Master Plan study in an amount not to exceed \$194,000 subject to approval of the City Attorney in form.

* * * * *

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 16th day of March, 2011 by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ



February 28, 2011

City of Martinez
Attn. Tim Tucker, City Engineer
525 Henrietta Street
Martinez, CA 94553

Re: Proposal for Engineering Services

Dear Mr. Tucker:

Carollo Engineers is pleased to submit a proposal to provide Engineering Services specializing in water treatment for the City's Water Treatment Plant Master Plan study. The project is generally described in the advertisement for Statements of Qualifications dated November 2010 provide by the City.

Attached is a "Scope of Work" with estimated hours per task, hourly rate schedule and compensation schedule. An updated project schedule will be provided to the City at the kick off meeting. Our proposal is to complete the tasks for a total fee not to exceed \$194,000 excluding reimbursable printing and miscellaneous costs. Reimbursable expenses which will be billed at actual costs plus a 10% administrative fee.

Our proposal includes an optional task of testing services to supplement the Visual Condition Assessment task.

Sincerely,

CAROLLO ENGINEERS

Ken Wilkins, PE
Senior Vice President

Exhibit A

Scope of Work for the Agreement

Between

**CITY OF MARTINEZ
(District)
and
CAROLLO ENGINEERS, INC.
(Consultant)
For**

Water Treatment Plant Master Plan Professional Services

INTRODUCTION

The City of Martinez has contracted Carollo Engineers to develop its Water Treatment Plant Master Plan (WTPMP). The objective of the study is to evaluate the condition of the plant and analyze alternatives for improvement. The WTPMP will focus largely on renewal needs of existing facilities. The WTPMP will also investigate the existing treatment processes and potential enhancements, including techniques to control bromate formation.

SCOPE OF WORK

TASK 1. REVIEW OF EXISTING INFORMATION

1.1 Conduct Kickoff Meeting

1.2 Obtain and Review Existing Information

Consultant shall develop an understanding of existing WTP facilities, previous studies, and work that has been completed at the WTP. Consultant will review the District's information regarding treated water facility work completed to date, including drawings, reports, and other material. All references used in the development of the WTPMP will be documented in a bibliographic list for inclusion in the final report. Consultant shall schedule and facilitate a project kickoff meeting with the City to review scope, budget, schedule, project objectives, deliverables, and other topics identified by City staff.

Task 1 Deliverables:

- Kickoff Meeting minutes
- Items to be included in Draft and Final WTP Master Plan Report
 - List of project references

TASK 2. EXISTING FACILITIES EVALUATION

2.1 Desktop Evaluations

2.1.1 Conduct ASCE 31 Seismic Evaluation Screening

Conduct a Tier 1 screening to identify potential areas of seismic concern. Employ the ASCE 31 Seismic Evaluation of Existing Buildings “benchmark” criteria and screen structures using the checklist approach. Develop evaluation criteria including performance objectives and seismic criteria. Review existing structural documents, such as drawings, specifications, calculations, geotechnical reports, and structural submittals provided by City to identify the structural assets that may require further seismic assessment.

2.1.2 Develop Process Piping Schematic

Reconcile all drawings and piping information onto one process piping schematic. Account for all flow paths and determine diameter, age, and material of all pipes. Identify any anomalies with the hydraulic profile and areas of high risk due to age and lack of redundancy.

2.1.3 Develop Asset Database

Develop an asset inventory at the appropriate level of detail for risk analysis and capital rehabilitation and replacement planning. Retain equipment identification numbers for all assets also listed in the COGZ maintenance software. Arrange assets in a functional hierarchy, retaining parallels with city databases to the extent feasible.

2.1.4 Conduct Power Analysis

From electrical service and load information gathered as part of Task 1 consultant shall evaluate the existing power supplies and loads. Information from this evaluation will be used in combination with the visual condition assessment in Task 2.2 to determine any deficiencies for current and future plant conditions. Also evaluated will be plant electrical system architecture and routings to assist with planning of future improvements.

2.1.5 Conduct Instrumentation and Controls Analysis

From instrumentation and telemetry information gathered as part of Task 1 consultant shall evaluate the existing instrumentation and controls systems at the treatment plant and the overall system architecture for remote telemetry. Information from this evaluation will be used in combination with the visual condition assessment in Task 2.2 to determine any deficiencies for current and future conditions.

2.2 Conduct Visual Condition Assessment

2.2.1 Prepare for Visual Condition Assessment

Prepare for the condition assessments with field sheets populated with data from the asset inventory. This data will include basic design and sizing criteria, age, capacity, and other information to better identify each asset.

2.2.2 Conduct Visual Condition Assessment

Conduct a multi-discipline visual condition assessment of the plant. The City will provide at least one or two experienced plant staff members knowledgeable in maintenance and operations history relevant to the discipline engineer’s observations. The condition assessment team will include mechanical, electrical/instrumentation, structural, and civil/process engineers. As needed, ultrasonic thickness measurements will be collected on exposed metal surfaces. The condition assessment team will evaluate the remaining useful service lives, condition, and other reliability-focused parameters for each asset.

2.2.3 Document Assessment Findings and Calculate Remaining Useful Life Estimates

Populate the results of the visual condition assessment into the asset database. Carollo will work with City staff to first establish original useful lives for the various assets based on industry standard guidelines, Carollo's project experience, and the institutional knowledge of City staff. Carollo will then utilize these useful life expectancies and findings from the condition assessment to develop estimates of remaining useful life for all assets. These estimates will serve as initial parameters for determining the optimal renewal timing, and they will be used to calculate a vulnerability score.

2.3 Optional Testing Services

2.3.1 Concrete Testing

As needed, Consultant will subcontract with concrete testing specialists. Tests will be used to determine the extent of deterioration and remaining strength of the concrete. These tests may include any of the following:

- Collection of concrete core samples to determine conclusively the compressive strength of the concrete.
- Rebound Hammer Tests to provide rapid assessment of the compressive strength of the concrete. The data from the rebound hammer test will be compared to the data from the concrete core samples.
- Sounding of the Concrete to indicate delaminations within the concrete walls of a structure.
- Penetration Measurements to determine the amount of damage that has occurred on the surface of the concrete.
- Collecting Concrete Samples for pH testing to assist in determining the extent of the chemical attack that is occurring on the structure.

2.3.2 Corrosion Testing

As needed, Consultant may subcontract with corrosion testing specialists. These tests may include camera or manned inspection of underground structures, structure-to-soil potential and structure-to-water potential, as well as tests of passive or active cathodic protection systems at the WTP.

2.4 Conduct Risk Assessment

2.4.1 Establish Criticality Scores

Carollo will work with the City to establish criticality, or consequence of asset failure, scores for the WTP assets in terms of the impact of failure to the environment, customers, health and safety, the ability to return the asset to service, and repair costs.

2.4.2 Calculate Risk Scores

Carollo will combine the criticality scores with the vulnerability scores determined from the useful life estimates to calculate risk. Assets will be sorted by risk to verify that known areas of concern are appropriately ranked. For assets with unknown condition, a risk score will be calculated with vulnerability based on age.

Task 2 Deliverables:

- Items to be included in Draft and Final WTP Master Plan Report
 - Asset database
 - Process piping schematic
 - Condition assessment findings

- Optional test results
- Risk scores

TASK 3. WTP PROCESS EVALUATION

3.1 Review Treatment Plant Performance

Consultant shall review of treatment plant hydraulics, unit process design and operation criteria, and treated water quality objectives (both regulatory requirements and City treatment goals as applicable).

3.2 Identify Improvement Options

Consultant shall identify and recommend improvements to hydraulic and unit process needs to meet current and future water demands, unit process upgrades to replace aging equipment, and unit process upgrades to meet finished water quality objectives. In completing the treatment plant process and operational evaluation, the consultant shall take into consideration City's identified treatment issues, desired reliability standards, and interrelated needs for R&R as defined in other tasks (e.g., there may be parallel need to upgrade the ozone system for both R&R and improved treatment process performance).

3.2 Conduct Treatment Workshop

A Treatment Workshop will be held to discuss treatment and quality needs, review current and potential future regulatory requirements, and develop possible improvements to meet the identified issues. The recommended improvements will be categorized for priority implementation (i.e., high, moderate or low priority) based on process or operational need, and linked to schedule milestones based on trigger dates or projected regulatory actions for implementation.

Task 3 Deliverables:

- Treatment Workshop meeting minutes
- Items to be included in Draft and Final WTP Master Plan Report
 - Recommended unit process and hydraulic upgrades.
 - Master plan site/facility layout.
 - Prioritized phased implementation plan and schedule.

TASK 4. DEVELOP RECOMMENDED PROJECTS AND COST ESTIMATES

4.1 Develop Project Alternatives

Consultant will identify recommended improvements for the plant across all disciplines, including R&R needs and treatment process improvement projects. Improvements will also be developed for remote telemetry into the WTP SCADA system. Where applicable, risk scores calculated in Task 2.4.2 will be shown for each project to aid in project prioritization. Planning level design criteria will be developed to provide basis of cost.

4.2 Estimate Project Costs

Conceptual level (+30% to -15%) capital cost estimates will be estimated for each project. Estimates will include direct and indirect cost factors. The basis of these estimates will be programmed into Carollo's CIP Tool.

4.3 Conduct Project Prioritization Workshop

Consultant will lead a Project Prioritization Workshop to review the initial recommendations for priority improvements. Consultant will work with City staff to develop additional project evaluation criteria as needed to screen and prioritize improvements by discipline and/or treatment process.

Task 4 Deliverables:

- Project Prioritization Workshop minutes
- Items to be included in Draft and Final WTP Master Plan Report
 - Replacement cost estimates
 - Long-term capital projects categorized in priority levels

TASK 5. FINAL REPORT

5.1 Develop Draft Summary Report

Consultant will complete a draft version of the WTPMP Summary Report. This plan will recommend and prioritize the rehabilitation and replacement improvements and treatment process improvements. The report will identify unit process and/or capacity needs to meet future demand and treatment requirements, including possible treatment process upgrades/enhancements that may be required to meet pending or future regulatory requirements. This report will also summarize a phased implementation plan consistent with the City's Capital Improvement Program projections and fiscal year budgets.

5.2 Develop Final Summary Report

Pursuant review by the City, Consultant will incorporate edits and issue the final version of the WTPMP Summary Report. The CIP Tool will be finalized and will be delivered to the City for future use.

Task 5 Deliverables:

- Draft Summary Report
- Final Summary Report
- CIP Tool with projects and planned implementation schedule and costs

PROJECT SCHEDULE

Consultant shall complete the work and deliver the summary reports by November 30, 2011. The following table outlines the key meetings and workshops to be held with the purpose of information gathering and decision-making. Additional meetings may be held as needed.

Meeting or Workshop	Discussion Points	Key Decisions
Kickoff Meeting	<ul style="list-style-type: none">• Project overview• Known issues/concerns at the facilities• Scoring criteria	<ul style="list-style-type: none">• Assessment scheduling
Field Visit	<ul style="list-style-type: none">• Facility review and condition assessment	<ul style="list-style-type: none">• N/A – Assessment only
Treatment Workshop	<ul style="list-style-type: none">• Regulations• Current treatment issues• Demand projections	<ul style="list-style-type: none">• Develop initial list of recommended improvements

Meeting or Workshop	Discussion Points	Key Decisions
Project Prioritization Workshop	<ul style="list-style-type: none"> • WTP and R&R needs • Project packaging • Project priorities 	<ul style="list-style-type: none"> • Determine treatment process and R&R project list • Determine short term and long term CIP plans



City of Martinez
Water Treatment Plan Master Plan
EXHIBIT C - COMPLETION SCHEDULE

Task Description	Target Completion Date	Estimated Work Duration	Compensation Schedule
1.0 Review of Existing Information 1.1 Conduct Kickoff Meeting 1.2 Obtain and Review Existing Documentation	29-Mar 29-Mar	March 17 - March 29 March 17 - March 29	Up to 100% by March 29 Up to 100% by March 29
2.0 Existing Facilities Evaluation 2.1 Desktop Evaluations 2.2 Visual Condition Assessment 2.3 Optional Testing Services 2.4 Risk Assessment	15-Apr 15-Apr TBD 15-Jun	March 17 - April 15 March 17 - April 15 April 15 - June 15	Up to 100% by April 30 Up to 100% by April 30 Up to 50% by April 30; 75% by May 31; 100% by June 30
3.0 WTP Process Evaluation 3.1 Review Treatment Plant Performance 3.2 Identify Improvement Options 3.3 Conduct Treatment Process Workshop	30-Apr 30-Jun 5-Jul	March 17 - April 15 April 1 - June 15 June 15 - July 5	Up to 50% by March 31; 100% by April 30 Up to 50% by April 30; 90% by May 30; 100% by June 30 Up to 75% by June 30; 100 percent by July 31
4.0 Develop Recommended Projects and Cost Estimates 4.1 Develop Project Alternatives 4.2 Estimate Project Costs 4.3 Conduct Project Prioritization Workshop	15-Aug 15-Aug 15-Aug	July 5 - August 15 June 15 - August 15 Augy 1 - August 15	Up to 50% by July 31; 100% by August 31 Up to 25% by June 31; 75% by July 31; 100% by August 31 Up to 100% by August 31
5.0 Final Reports 5.1 Draft Summary Report 5.2 Final Summary Report	15-Sep 30-Sep	August 1 - Sept 15 Sept 15 - Sept 30	Up to 50% by August 31; 100% by September 30 Up to 100% by September 30



Task Description	Ken PM	Chris APM	Rebecca PE	Mike SE	JD/Adam EE	ME	CAD	WP	Total Hours	Labor Cost	Other Direct Costs (ODC)		TOTAL
											Subs	Markup	
1.0 Review of Existing Information													
1.1 Conduct Kickoff Meeting	4	8	8					4	24	\$ 4,320		\$ 228	\$ 4,548
1.2 Obtain and Review Existing Documentation		16	24						40	\$ 7,368		\$ 380	\$ 7,748
Task 1.0 Review of Existing Information Subtotal =	4	24	32	0	0	0	0	4	64	\$ 11,688	\$ -	\$ 688	\$ 12,296
2.0 Existing Facilities Evaluation													
2.1 Desktop Evaluations	2	4	60	40	40				146	\$ 28,260		\$ 1,387	\$ 29,647
2.2 Visual Condition Assessment	2	8	40	12	12				74	\$ 13,684		\$ 703	\$ 14,387
2.3 Optional Testing Services	2	2	8	8	8				18	\$ 3,450	\$ 10,000	\$ 171	\$ 14,621
2.4 Risk Assessment	2	8	24	4	4			4	4	\$ 8,196		\$ -	\$ 8,196
Task 2.0 Existing Facilities Evaluation Subtotal =	6	22	132	64	56	0	0	4	238	\$ 53,790	\$ 10,000	\$ 2,281	\$ 67,051
3.0 WTP Process Evaluation													
3.1 Review Treatment Plant Performance	4	40							44	\$ 9,456		\$ 418	\$ 9,874
3.2 Identify Improvement Options	4	40	8	8	8			4	96	\$ 14,184		\$ 912	\$ 15,096
3.3 Conduct Treatment Process Workshop	4	16	4										
Task 3.0 WTP Process Evaluation Subtotal =	12	96	12	8	8	0	0	4	140	\$ 23,640	\$ -	\$ 1,330	\$ 24,970
4.0 Develop Recommended Projects and Cost Estimates													
4.1 Develop Project Alternatives	4	16	16	16	16				68	\$ 13,600		\$ 646	\$ 14,246
4.2 Estimate Project Costs	4	24	60	16	16				120	\$ 22,764		\$ 1,140	\$ 23,904
4.3 Conduct Project Prioritization Workshop	4	8	16	4	4			4					
Task 4.0 Develop Recommended Projects and Cost Estimates Subtotal =	12	48	92	36	36	0	0	4	188	\$ 36,564	\$ -	\$ 1,786	\$ 38,350
5.0 Final Reports													
5.1 Draft Summary Report	8	40	80	8	8			48	192	\$ 31,320		\$ 1,824	\$ 33,144
5.2 Final Summary Report	4	8	16	2	2			16	48	\$ 7,572		\$ 456	\$ 8,028
Task 5.0 Final Report Subtotal =	12	48	96	10	10	0	0	64	240	\$ 38,892	\$ -	\$ 2,280	\$ 41,172
6.0 PROJECT MANAGEMENT													
Task 6.0 Project Management Subtotal =	24	16	0	0	0	0	0	0	40	\$ 9,024	\$ -	\$ 380	\$ 9,404
TOTAL	64	232	232	54	54	0	0	76	672	\$ 119,808	\$ 0	\$ 6,384	\$ 194,000

PM Project Manager
 APM Assistant Project Manager
 PE Project Engineer
 SE Structural Engineer
 EE Electrical Engineer
 ME Mechanical Engineer
 CAD Computer-Aided Design Technician
 WP Word Processor

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into this _____ day of March, 2011 by and between the CITY OF MARTINEZ, hereinafter referred to as CITY, and Carollo Engineers, hereinafter referred to as CONSULTANT, whose address is 2700 Ygnacio Valley Rd., Suite 300, Walnut Creek, CA 94588. CONSULTANT hereby agree as follows:

SPECIFIC PROVISIONS

1. **DESCRIPTION OF PROJECT**

This Project consists of CONSULTANT developing a Water Treatment Plant Master Plan (Plan). The objective of the study is to evaluate the condition of the Martinez Water Treatment Plant (Plant) and analyze alternatives for improvements. The Plan will focus primarily on renewal needs of the Plant. The CONSULTANT shall develop a priority based 15-Year Capital Improvement Program and cost estimate. The Plan will also investigate treatment processes and potential enhancements, including techniques to control bromate formation.

2. **SCOPE OF SERVICES TO BE PROVIDED BY CONSULTANT**

The services provided by CONSULTANT shall include: The review of documentation and plans related to the Plant and visual condition assessment, review of the treatment process and the development of project alternatives as stated in the "Proposal for Engineering Services" dated February 28, 2011, incorporated herein by reference and attached as Exhibit A.

3. **SCOPE OF SERVICES TO BE PROVIDED BY CITY**

- a. Provide previous studies
- b. Provide existing plans, drawings, specifications and reports on Plant
- c. Provide information related to work completed to date at Plant
- d. Provide site access
- e. Provide financial information including revenue, expenditure, fund balance and water system improvement plan.
- f. Review and comments of memos and work products in accordance with project schedule.

4. PAYMENT

a. Compensation

The total cost for services provided by CONSULTANT shall not exceed \$194,000.

CITY agrees to pay CONSULTANT for the services specified on Exhibit B, "Engineering Services Cost Proposal".

b. Time of Payment

Provided CONSULTANT is not otherwise in default under this Agreement, CONSULTANT 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 CONSULTANT within thirty (30) days of receipt of monthly invoices.

However, payments by CITY shall not exceed the proportion of the phase or task completed and payment for each phase of task shall follow the "Completion Schedule", Exhibit C without prior approval of the City Engineer. In any case the total compensation shall not exceed \$194,000 unless approved in accordance with "General Provision 8 a" of this Agreement.

5. TIME OF COMPLETION

a. The CONSULTANT shall commence work upon receipt of written direction to proceed from the CITY.

b. The CONSULTANT shall perform the work described in paragraph 2 in accordance with the following schedule:

Service	Completion Date
Review of Existing Information	March 29, 2011
Existing Facility Evaluation	April 30, 2011
Plant Process Evaluation	July 31, 2011
Recommended Projects and Cost Estimates	August 31, 2011
Final Report	September 30, 2011

6. CONSULTANT and the CITY agree the schedule in Paragraph 5 above represents their best estimates with respect to completion dates and both CONSULTANT and CITY acknowledge that departures from the schedule may occur. Therefore, both CONSULTANT and CITY will use reasonable efforts to notify one another of changes to the schedule. Any proposed change in the schedule, including a change' based on the events described in Section 7,

immediately below, shall be delivered to the other party in writing. Any such proposed change by one party shall be subject to the approval of the other party; provided, however, that any such approval may not be withheld unreasonably. The person executing this Agreement on behalf of the CITY shall have the authority to agree to extensions proposed by the CONSULTANT.

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

GENERAL PROVISIONS

1. The status of CONSULTANT is that of an independent contractor operating having control of his/her work and the manner in which it is performed. CONSULTANT is not considered to be an officer, an employee, or an agent of CITY, nor shall he/she hold him/herself out as or represent that he/she is an officer, employee, or agent of the CITY.

2. The CONSULTANT agrees that he/she/it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, 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 CONSULTANT, 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 CONSULTANT and delivered to and become the property of and/or all rights assigned to the CITY with the exception of proprietary/copyrighted information (as in agreements for software services). In addition, data prepared or obtained under this Contract shall be made available, upon request, to the CITY. CONSULTANT shall prepare check prints as needed. The foregoing notwithstanding, said documents, plans, etc., are site specific for the subject project and shall not be used for any other work without the consent of CONSULTANT.

6. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services under this contract. The CONSULTANT 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 CONSULTANT shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of the CITY. Said consent may be withheld with or without reasons. In the event that the CITY, in writing, approves any assignment or subletting of this Agreement or the retention of sub-consultants by CONSULTANT, the CONSULTANT shall provide to the CITY copies of each

and every sub-consultant contract prior to the execution thereof by the CONSULTANT and sub-consultant.

7. CONSULTANT 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 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.

8. All changes and/or extra work shall be performed and paid for in accordance with the following:

- a. Only the City Engineer may authorize extra and/or changed work.

CONSULTANT expressly recognizes that other CITY personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of CONSULTANT to secure the City Engineer's prior, written 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 CONSULTANT thereafter shall be entitled to no compensation whatsoever for performance of such work.

- b. If the CONSULTANT is of the opinion that any work he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, he shall promptly notify City Engineer of the fact. The City Engineer 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 Engineer determines that such work does constitute extra work, the CITY shall provide compensation to the CONSULTANT on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the CITY and the CONSULTANT. Such Supplemental Agreement shall be executed by the CONSULTANT and be approved by the necessary CITY officials. The hourly rate for approved services shall be in accordance with Exhibit D, "Fee Schedule".
- c. In the event the City Engineer determines that such work does not constitute extra work, CONSULTANT 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 CONSULTANT. Said written appeal shall include a description of each and every ground upon which CONSULTANT challenges the staff's determination.

9. CITY has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. Consultant 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 payment for or acceptance of CONSULTANT'S work by CITY shall not operate as a waiver or release. CONSULTANT shall indemnify and hold harmless the CITY from and against any and all claims or expenses caused or occasioned directly or indirectly by CONSULTANT'S failure to so perform.

10. Consultant assumes all responsibility for damages to property or injury or death to persons caused by negligent acts, errors or omissions of CONSULTANT, his/her agents or employees, or any equipment furnished under the Agreement or used by CONSULTANT, his/her agents and employees. To the extent permitted by law, CONSULTANT 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 attorney fees and other defense costs or liabilities of any nature, that may be asserted by any person or entity including CONSULTANT arising or in any way connected with the negligent acts, errors, omissions or willful misconduct of CONSULTANT, his/her employees and agents in the performance hereunder and regardless of CITY's passive negligence. CITY agrees to provide CONSULTANT with reasonable notification of legal claims and/or lawsuits which CITY may receive and which CITY will request indemnification under this paragraph.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONSULTANT under Workers' Compensation disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by CONSULTANT.

11. Without limiting CONSULTANT'S indemnification provided hereunder, CONSULTANT 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 a Best rating of no less than A:VII.

- a. Workers' Compensation insurance to cover its employees, and the CONSULTANT shall require all sub-consultants 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 Worker's 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 the Contract is not protected under Workers' Compensation Statutes, the CONSULTANT shall provide, and shall cause all sub-consultants 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 the CITY.

CONSULTANT'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 CONSULTANT and its sub-consultants 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. The commercial general liability 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.
- c. Professional liability, errors and omissions insurance in an amount not less than \$2 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 policy. In the event CONSULTANT'S policy is a "claims made" policy only covering those claims made during the policy period, then CONSULTANT agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work.

- (1) SUB-CONSULTANTS providing professional services under this agreement shall be added to CONSULTANT'S policy as additional insured, or shall provide evidence of their own professional liability insurance which is acceptable to the CITY Attorney.
- d. CONSULTANT shall submit to CITY documentation evidencing its required insurances signed by the insurance agent and companies named on the CITY of MARTINEZ form, unless approved otherwise. 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 CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claims, administration and defense expenses.

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

13. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY within its sole discretion upon written notice to CONSULTANT. CONSULTANT may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause, including without limitation, CONSULTANT'S serious illness or material breach of this Agreement by the CITY. CONSULTANT'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the CITY, become its sole property and shall, at CONSULTANTS' expense, be delivered to the CITY or to any party the CITY may so designate. In the event of termination by CONSULTANT, CONSULTANT shall only be compensated for all work CONSULTANT satisfactorily performs prior to the time CONSULTANT delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY, CONSULTANT shall be compensated for all work satisfactorily performed prior to the time CONSULTANT receives the termination notice, and shall be compensated for all materials ordered by CONSULTANT, and services of others ordered by CONSULTANT prior to receipt of the CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to CONSULTANT or to the CITY, provided that CONSULTANT is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, CONSULTANT shall not be entitled to any additional compensation over that provided herein; nor shall CONSULTANT be entitled to payment for alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY pursuant to this section.

14. Should the CONSULTANT 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. CONSULTANT 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 CONSULTANT'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 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 or 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 breach 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. The services to be performed by CONSULTANT are intended solely for the benefit of the CITY. No person or entity not a signatory to this Agreement shall be entitled to rely on the CONSULTANT's performance of its services hereunder, and no right to assert a claim against CONSULTANT by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of CONSULTANT's services hereunder

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

If to the CITY:

Tim Tucker
City Engineer
City of Martinez
525 Henrietta Street
Martinez, CA 94553

If to the CONSULTANT:

Ken Wilkins
Carollo Engineers
2700 Ygnacio Valley Rd., Suite 300
Walnut Creek, CA 94588

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

Date: _____ By: _____
Philip Vince, City Manager

CONSULTANT is a corporation duly organized and validly existing and in good standing under the laws of the State of California, and is authorized to perform the services under this agreement. The corporate officer executing this agreement has been authorized and directed to do so by corporate resolution.

Date: _____ By: _____

Date: _____ By: _____

APPROVED AS TO FORM

By: _____
City Attorney

Attachments:

- Exhibit A - Proposal for Engineering Services
- Exhibit B - Engineering Services Cost Proposal
- Exhibit C - Completion Schedule
- Exhibit D - Fee Schedule
- Insurance Certificates