



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 13, 2016

Agenda Item 6J

Approvals:

City Manager MM

Dept. Head ES

Attorney _____

Finance JK

Department: Finance and Administrative Services
Prepared By: Thomas Rendina, Business Services Officer

Subject: *PROFESSIONAL SERVICES AGREEMENT WITH CAROLLO ENGINEERS, INC. FOR A COMPREHENSIVE COST-OF-SERVICE STUDY FOR THE CITY'S WATER UTILITY.*

Fiscal Impact: Yes. \$75,000 is budgeted in the Water Administration division (program 461) in the current fiscal year. A supplemental appropriation of \$12,000 will be required to complete the proposed Study.

Summary: Funding for a comprehensive Cost-of-Service Study for the City's Water utility was approved as part of the fiscal year 2016 budget. A Request for Proposal was issued in February and five firms submitted proposals to the City. Staff recommends the selection of Carollo Engineering, Inc. to perform the Water Cost-of-Service Study.

Background: A Cost-of-Service Study is performed to examine the cost of providing water services with the objective of maintaining fair and equitable rates so that users pay in proportion to the cost of service. Ordinarily, a study is performed every five to ten years. The City's most recent study was completed in 2012. However, several factors have dramatically impacted water operations and revenues, prompting staff to perform the study earlier:

- The Water Utility is not fully recovering the costs to operate the system
- Fund balances in the Water Depreciation Reserve, used to maintain the water utility infrastructure, have dropped below levels defined by Fiscal Policy
- Consumption patterns have changed significantly as a result of the historic drought in California
- Water consumption has been highly volatile in recent years
- Recent developments in case law, including new attention to cost correlation to peak demand and fixed standby costs
- Recent and potential State-mandated water rationing

Discussion: A comprehensive Cost-of-Service Study for the City's Water utility was approved as part of the fiscal year 2016 budget. The study will examine the cost to provide water services with the objective of developing a fair, equitable, and legally sound rate structure for water utility customers. Rates need to be adequate to recover the expenses of the enterprise fund, while ensuring that costs are equitably and legally allocated, so that rates correlate to the cost of services. The study will include multiple public workshops and City Council meetings to solicit input from the community to develop a rate structure and methodology to manage the water utility for the next five

to ten year timeframe. Data collection will begin in June and the first public workshop is anticipated to take place in July.

To perform the Cost-of-Service Study, staff prepared and distributed a request for proposals to twelve firms with water rate-setting experience. The project was budgeted for \$75,000, funded from the Water Operating fund. Proposals were received from five firms, ranging from \$56,700 to \$85,000.

Staff evaluated the written proposals, reviewed work experience, and conducted interviews with all five firms. Carollo was deemed most qualified to provide services for this project for a total cost not to exceed \$87,000. The contract amount increased from their original proposal amount based on an increase in consultant time to address additional issues identified and proposed by staff in connection with the interview process. Per City Policy No. 201-2-3 and State law, selection of professional engineering services contractors is based on qualifications only. Carollo presented the most comprehensive work plan. They were selected based on their experience working with other water agencies in Southern California, their significant work experience in conducting Cost-of-Service Studies, and specifically in the area of establishing water rate structures.

The contract award exceeds the original budget estimate for the Cost-of-Service Study by \$12,000. The increase is a result of expanding the scope of the original study established during the 2016 Budget process and an increase in workshops and meeting time to enhance public involvement.

Recommended

Action: STAFF RECOMMENDS THAT the City Council

1. Approve and authorize the Mayor to execute a Professional Services Agreement with Carollo Engineers, Inc. in the amount not to exceed \$87,000 for the Comprehensive Cost-of-Service Study, and
2. Approve a supplemental appropriation in the amount of \$12,000 to Other Professional Services (account number 052-461-43690) from the Water Operating Fund balance.

Attachments: Attachment I - Professional Services Agreement
Attachment II - Exhibit "A" - Scope of Services
Cost of Service Proposal is available at the City Clerk's Office
Proposals will be posted on the City's website

Notification:

PROFESSIONAL SERVICES AGREEMENT
FOR Water Cost of Service Study

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2016 (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and Carollo Engineers, Inc of 3150 Bristol Street, Suite 500, Costa Mesa, Ca 92626 hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional **consulting** services to be performed at or in connection with the City of San Clemente's Water Cost of Service Study.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until **the Scope of work defined in Exhibit "A" is completed**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement, CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work

Attachment I

to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY

reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed Eighty-Six Thousand and Twenty-Seven dollars and Zero cents (\$87,027.00), including all

amounts payable to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A “LICENSED DESIGN PROFESSIONAL” AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the “CONTRACTOR ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the “Liabilities”). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A “LICENSED DESIGN PROFESSIONAL”:

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR’s officers, agents, employees, representatives, or subcontractors [collectively, the “CONTRACTOR ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.

- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6
TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at 3150 Bristol Street, Suite 500, Costa Mesa, Ca 92626, and to the City of San Clemente, 100 Avenida Presidio, San Clemente, California 92672, Attention: Tom Rendina.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or

person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$_____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: _____
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: _____
Finance Authorization

("CONTRACTOR")

Contractor's License Number _____

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"

SCOPE OF SERVICES

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

Cost of Service Proposal
Dated March 2016

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)



I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.



I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____



I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: _____, 20____

Contracting Firm

By: _____

Title

Address



CITY OF SAN CLEMENTE: Water Cost of Service Study

SCOPE OF WORK

The proposed scope of work outlines our proposed approach for undertaking the Cost of Service and Water Rate Design Study.

TASK 1: PROJECT KICK-OFF AND IDENTIFY DATA REQUIREMENTS

Carollo will hold a project kick-off meeting with City staff. The meeting will outline key objectives, determine priorities, and, if necessary, modify the scope of work. Carollo will submit a detailed data request in advance of the meeting, which can be reviewed and discussed during this meeting.

As with any data-driven analysis, our approach begins with gathering the necessary cost and consumption data to complete the rate study. The City's existing and historical revenue and billing data will be analyzed as a proxy of future projections. However, past consumption or financials are not indicative of future results. This is especially true when developing and implementing new rate structures. Given the advancements in conservation efforts and other possible water demand/supply and financial factors, Carollo will build from our wealth of experience to provide greater context and perspective to the analyzed data and forecasts.

While Carollo envisions this project as a collaborative process with City staff, our goal is to provide a management plan that streamlines the process in order to adhere to the desired project schedule and to minimize time requirements placed on staff. However, throughout the process, Carollo will look to the City/staff to provide and share knowledge of the system, verify assumptions, and provide key input. Not only will this enhance the cost of service foundation of the analysis, but it will streamline the entire process.

TASK 2: DEVELOP COST-OF-SERVICE STUDIES

Carollo will develop a 10-year revenue requirement analysis and forecast for the City's water utility. The City's existing financial information will be analyzed and forecasted over a 10-year time horizon to determine the City's annual revenue needs, including long-term maintenance and replacement costs. Carollo will use the developed model to run multiple scenarios and sensitivity analyses to determine the scenario that best meets City's desired objectives.

Building from a foundation espoused by the AWWA, the calculated revenue requirements will then be allocated to each customer class based on a calculation of the City's specific capacity and treatment requirements by billable constituent. These billable constituents will likely include customer service, base water demand, peak water demand, and capacity. As various revenue and demand projections are analyzed, the cost of service analysis will evaluate the impacts of these various scenarios. The proposed rate structures will adhere to Proposition 218 requirements and sound cost of service, rate-making principles.

TASK 2.1 – POLICY REVIEW

Carollo believes that fiscal policies are a critical building block for any effective utility financial plan and rate study. Moreover, in presenting any proposed rate plan to the City Council, we know that it is critical to provide context for any rate increases or design modifications based on your fiscal policies. The City has developed sound fiscal and reserve policies that are the underlying basis for its credit rating. We will review and evaluate reserve policies and capital funding strategy with City staff, discussing the City's goals and potential rate impacts. A comparison of these policies and strategies to industry standards could help provide context in determining possible enhancements or changes that would benefit the utility's stakeholders and customers. As appropriate, we will work with City staff to refine its fiscal policies.

TASK 2.2 – FINANCIAL NEEDS FORECAST

At the heart of any utility rate study is a revenue requirement, which uses projected cash flows and debt service requirements to project potential revenue shortfalls. We will incorporate data elements collected throughout the Study process to develop a long-range financial forecast that projects operating expenditures; repair, replacement, and other capital needs; and offsetting revenues. The analysis will focus primarily on revenue sufficiency over the next 10 years.

Our evaluation of financial plans will consider the overall funding strategy including near- and long-term capital and operational needs, as well as potential customer usage changes due to modifications of the rate structures. The results of the revenue requirement will determine what levels of rate increases are necessary in order to promote the financial stability of the wastewater fund and to meet City's policy goals.

TASK 2.3 - CUSTOMER DATA ANALYSIS

Carollo will conduct a statistical analysis of your past historical billing and consumption records. Due to the variable nature of the water demands and the City's recent allotment reduction, it is important to evaluate a multi-year trend and determine potential revenue lulls during low-usage years. In addition to Excel, we will use advanced statistical software (IBM SPSS) to quickly and more efficiently analyze existing customer billing records and provide usable information, such as consumption breakpoints used in developing a recommendation. This step is essential to analyze potential inequities (i.e., the need for additional customer classes) and further drought or conservation impacts.

We will examine the usage data and calibrate billing records against actual rate revenues to prevent over or under estimation of the City's customer base. This is a critical step in setting appropriate and sufficient rates. In addition, we will perform sensitivity analyses related to uncertain factors, such as possible water rationing, or alternative growth scenarios. These results will flow through to the revenue requirements and funding analysis to determine potential impacts to revenues and overall revenue stability.

TASK 2.4 - ALLOCATION OF COSTS TO FUNCTIONAL CATEGORIES

Carollo will develop a cost allocation based on the City's unique system and consider the AWWA methodologies. Functional Allocation designates each budget item to a specific City functional categories, which is intended to translate each cost into a specific rate component. Given staff's thorough knowledge

of the water systems and history with the City, Carollo will rely on staff's input and support during the allocation process.

Those functional categories and their associated costs are allocated to the distinct customer classes based on each class' unique account, meter, and demand characteristics. A customer class consists of customers that commonly create or share responsibility for certain costs incurred by the utility. In the end, the revenue requirement has been allocated twice. First, to several broad functional categories intended to provide structure to the rates, and second, to each customer class to equitably reflect their share of each functional category's costs. Carollo will review and incorporate the City's current asset and accounting records.

Line-item expenditures will be allocated to customer service, base water usage, and peak water usage. As necessary to address specific customer factors or demands, Carollo will work with staff to create additional cost allocation factors. Finally, these costs will be assigned to fixed and variable categories in order to develop defensible monthly fixed charges.

TASK 3: RATE DESIGN FOR NORMAL & DROUGHT CONDITIONS

Carollo will evaluate and analyze emerging or expected future rate structures, technologies, and trends for water services that might impact or influence future rate structures, including how pricing and how those influences might effect of apply to the City. The evaluation will also provide an overview of known or potential risks, mandated drought restrictions, fixed vs. variable revenues and expenses, and costs associated with implementation.

Carollo has worked with many similarly sized and complex agencies in developing innovative rate structures that meet the unique needs of our clients. Complexity and sophistication must be balanced with stakeholder understanding and administrative ease and costs. We will meet with City staff to review and evaluate potential rate structure alternatives, such as budget-based rates, that promote an equitable allocation of costs among customer groups.

Carollo will also present the concept of Budget-Based Rate structures. While this alternative may not be preferred, it will be included in the overview of rate structure for thoroughness. This scope of work does not include design or implementation of budget-based rates as additional time, effort, and communication efforts would be required. Should the City decide to move forward with budget-based rates, it could be accommodated under a separate scope that defines the necessary level of effort.

TASK 3.1 - OVERVIEW OF RATE STRUCTURES

Carollo will develop an easy to understand matrix that outlines:

- Advantages and disadvantages of each rate alternative.
- Nexus between each rate structure, system costs, and overall equity between customer classes.
- Effect of rate structures on revenue stability.
- Ability and effectiveness of rate structures to meet the City's policy objectives.
- Administrative ease.
- Potential for legal challenges.

For each proposed rate structure, the matrix will illustrate both qualitative and quantitative advantages, including achievement of policy objectives and revenue risk. This approach allows City staff and stakeholders to choose the rate structures that best meet stated objectives and is critical in explaining the recommendations to the public-at-large. Issues such as added administrative costs, tie-backs to the City's connection fees, and revenue impacts will be illustrated in this matrix for straightforward communication.

Carollo's entire process will be designed to comply with Proposition 218 and relevant case law, including the Palmdale Water District, Castaic Lake Water Agency, and San Juan Capistrano cases.

TASK 3.2 – RATE DESIGN RECOMMENDATIONS

Carollo will prepare a rate design analysis for the water services that provides a clear, written overview of the basis upon which the rates are calculated, including an analysis of rate classes to eliminate and/or add classes as appropriate. As part of this review, Carollo will:

- Review composition and construction of customer classes, and recommend any changes following the customer data analysis in task 2.3.
- Provide clear documentation outlining how the recommended rate structure complies with all relevant regulations (namely Proposition 218), industry best practices, and agency policies.
- Assess external rate considerations, such as social and economic factors, ease of administering recommended rates, and the expense to implement the rates.
- Determine fiscal impacts of outlined scenarios, such as continued demand reductions or mandatory drought restrictions, capital project funding requirements, compliance with reserves and debt covenants, and expansion of the recycled water program.
- Forecast bill impacts of representative customers in each customer class, and present typical bill impacts for a minimum of 3 usage patterns per classification (low, medium, and high demand), showing how bills will be impacted following the proposed rate changes.
- Review and provide recommendations on the City's existing leak adjustment policies.
- Provide rate comparisons of neighboring and comparable utilities.
- Develop a matrix that details the pros and cons of making each change, and make a recommendation based on the best and most appropriate approach.

To account for the more detailed alternatives, Carollo will analyze the existing and planned infrastructure and system as it was designed and is being utilized to enhance equities and cost recovery. By creating a logical nexus between the infrastructure, its design, and use, Carollo can create a rate structure that complies with Proposition 218 and 26 and can be easily understood and communicated to the City Council and general public.

TASK 3.3 – RECYCLED WATER INTEGRATION

While this review does not entail a development of a Recycled Water Cost of Service Study, there are customers transitioning from potable to recycled water, which will require that some recycled water elements be evaluated. Carollo will:

- Review the recycled water rates.
- Evaluate the recycled water system either as part of, or as a separate entity from potable water system and rates.
- Explore the cost savings of onsite storage.
- Review the potential cost reduction on monthly fixed charge for recycled water customers.

This review will detail what costs are borne by potable customers versus recycled water customers to provide a clear delineation and definition of potable water rate costs.

TASK 4: MODEL DEVELOPMENT

Based on the collected data and feedback from the kick-off and subsequent meetings, Carollo will prepare a user-friendly tailored model in Microsoft® Excel to fit the City's expressed needs. Our model will allow us to include multiple "what-if" scenarios, which will let the City look at water supply costs, changes in demand, contract cost, etc. The four major components of the model consist of:

- 1) **Revenue Requirement.** Carollo will tailor this specifically around the City's line-item budget, which will include, but not be limited to, operations and maintenance, CIP, and debt.
- 2) **Customer Analysis.** In order to develop sound revenue forecasts and equitable customer allocations, the statistical analysis of customer usage and billing data is a critical component to the model development.
- 3) **Functional Allocation.** As addressed in Task 2.4, a cost allocation module will be built within each model to allocate costs specific to the utility, which will then be used to form the rate structures.
- 4) **Rate Design.** The current rate structures for the water utility will be reviewed and revised as outlined in Task 3.

Carollo will work with the City to develop a version of the model that works for your needs. The model is developed collaboratively with City staff throughout the study to provide constant feedback and input. The model will also serve as a complementary piece to the City's administrative record and Carollo's written report.

TASK 5: RATE REPORT

Draft and final study reports will be prepared to present the methodology, process, and findings of the Study, and its recommendations. This report will document the need for any rate increases, forecast a multi-year revenue requirement, present two rate scenarios for each division, outline an implementation plan for presenting and communicating utility costs and the proposed rate structures to rate payers and members of the public, and provide any supporting calculations as necessary. Comments on the draft report will be incorporated in a final report.

TASK 6: MEETINGS AND WORKSHOPS

Carollo will hold three (3) meetings with City Staff during the course of the project, including a Kickoff meeting and two workshops to review model development and gain input from City staff. One (1) public workshop and two (2) City Council presentations are proposed to discuss alternatives, findings, and policy or rate payer implications. To gain input from the City Council prior to public engagement, Carollo will hold a series of two-by-two meetings. This will allow for Council members to provide input and feedback while complying with the Brown Act. Carollo will assist City staff with the rate adoption process associated public hearings and attend at the request of the City. For added efficiencies, Carollo will hold additional progress meetings via WebEx.

PROJECT BUDGET

The proposed budget reflects the necessary level of effort to satisfy the requirements of proposition 218. The cost of service report will define the nexus between the system costs and the proportional recovery of those costs from system users. The proposed hours and overall budget is predicated on rate adoption for January 1, 2017 implementation. *Invoices will be provided monthly and the project is to be billed on a time and material basis.*

Task	Robb Grantham Project Director	Jeff Weishaar, P.E. Engineering Advisor	Mireca Rossam Project Manager	Analytical Support	Labor Cost	PLCE	Expenses	Total
	\$ 281	\$ 237	\$ 194	\$ 165		\$ 11.70		
Phase I - Cost of Service Analysis								
Task 1: Project Kick-off & Data Request	2.0	-	8.0	4.0	\$ 2,774	\$ 163	\$ -	\$ 2,937
<i>Kickoff meeting with staff, data request, and research/supporting analysis</i>								
Task 2: Financial Forecast and Cost of Service	8.0	5.0	48.0	66.0	\$ 23,635	\$ 1,485	\$ -	\$ 25,120
<i>Review and development of revenue requirements, functional allocations, and reserve policies</i>								
Task 2.1 Policy Review	1.0	1.0	6.0	2.0				
Task 2.2 Financial Needs Forecast	2.0	2.0	12.0	16.0				
Task 2.3 Customer Data Analysis	1.0		12.0	32.0				
Task 2.4 Cost Allocation Analysis	4.0	2.0	18.0	16.0				
Task 3: Rate Design Recommendations	7.0	-	28.0	40.0	\$ 13,999	\$ 877	\$ -	\$ 14,876
<i>Development and documentation of rate structure alternatives</i>								
Task 3.1 Overview of Rate Structures	2.0	-	12.0	6.0				
Task 3.2 Rate Design Recommendations	4.0		12.0	32.0				
Task 3.3 Recycled Water Integration	1.0		4.0	2.0				
Task 4: Model Development	-	-	6.0	24.0	\$ 5,124	\$ 351	\$ -	\$ 5,475
<i>Development of a tailored Financial Plan and Rate setting</i>								
Task 5: Study Report	8.0	2.0	24.0	32.0	\$ 12,658	\$ 772	\$ -	\$ 13,430
<i>Development of a defensible and cost of service based</i>								
Task 6: Meetings & Presentations	30.0	-	47.0	24.0	\$ 21,508	\$ 1,181	\$ 1,500	\$ 24,189
<i>Meetings and presentations (and development of related materials) in order to receive/develop staff and Council input and garner support for recommendation:</i>								
Presentations/Workshops(each)	8.0		8.0	4.0	\$ 4,460	\$ 234	\$ 500	\$ 5,194
Council 2x2 (per day)	8.0		8.0		\$ 3,800	\$ 187	\$ 500	\$ 4,487
Staff Meetings (each)	2.0		5.0	4.0	\$ 2,192	\$ 128	\$ -	\$ 2,320
Total	53.0	7.0	103.0	193.0	\$ 79,484	\$ 4,829	\$ 2,500	\$ 86,813

Deliverables: Rate Model (Excel) and Draft and Final Summary Cost of Service Report

Presentations: Assumes a total of 3 on-site presentations/workshops (1 Initial Public Workshop and 2 Council Presentations)

Council 2x2: Assumes a series of 2x2x1 meetings with the City Council in compliance with Brown Act. Assumes single day of meetings.

Staff Meetings: Assumes 3 working/review meeting with staff