

1 **CONSULTANT SERVICES AGREEMENT**

2 THIS AGREEMENT is entered into as of the 7th day of June, 2011, by and between the
3 CITY OF CALISTOGA, herein called the "City," and CONSOLIDATED CM, herein called the
4 "Consultant."

5 Recitals

6 WHEREAS, City desires to obtain construction services in connection with construction
7 of the 1.5 Million Gallon Mt. Washington Water Storage Tank, and

8 WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to
9 provide such services described in Section 3 of this Agreement; and

10 WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the
11 services described in Section 3 of this Agreement.

12 Agreement

13 NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree
14 as follows:

15 1. Incorporation of Recitals. The recitals set forth above, and all defined terms set
16 forth in such recitals and in the introductory paragraph preceding the recitals, are hereby
17 incorporated into this Agreement as if set forth herein in full.

18 2. Project Coordination.

19 A. City. The City Manager or his/her designee shall represent City for all
20 purposes under this Agreement. The City Manager or designee is hereby designated as the
21 Project Manager. The Project Manager shall supervise the progress and execution of this
22 Agreement.

23 B. Consultant. The Consultant shall assign David Lee to have overall
24 responsibility for the progress and execution of this Agreement for Consultant.

25 3. Scope and Performance of Services.

26 A. Scope of Services. Subject to such policy direction and approvals as the
27 City through its staff may determine from time to time, Consultant shall perform the services set
28 out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

29 B. Time of Performance. The services of Consultant are to commence no
30 sooner than June 8, 2011 and be completed not later than June 1, 2013. Consultant shall perform
31 its services in accordance with the schedule attached hereto as Exhibit B, and incorporated herein
32 by reference. Any changes to these dates in either this Section 3 or Exhibit B must be approved
33 in writing by the Project Manager.

34 C. Standard of Quality. City relies upon the professional ability of
35 Consultant as a material inducement to entering into this Agreement. All work performed by
36 Consultant under this Agreement shall be in accordance with all applicable legal requirements
37 and shall meet the standard of quality ordinarily to be expected of competent professionals in
38 Consultant's field of expertise.

39 4. Compensation and Method of Payment.

40 A. Compensation. The compensation to be paid to Consultant, including both
41 payment for construction services and reimbursable expenses, shall be at the rate and schedules
42 attached hereto as Exhibit B, and incorporated herein by reference. However, in no event shall
43 the amount City pays Consultant exceed Five Hundred Eighteen Thousand Six Hundred Eighty
44 Dollars (\$518,680.00). Payment by City under this Agreement shall not be deemed a waiver of
45 unsatisfactory work, even if such defects were known to the City at the time of payment.

46 B. Timing of Payment.

47 Consultant shall submit itemized monthly statements for work performed.
48 City shall make payment, in full, within thirty (30) days after approval of the invoice by the
49 Project Manager.

50 C. Changes in Compensation. Consultant will not undertake any work that
51 will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written
52 amendment to this Agreement.

53 D. Taxes. Consultant shall pay all taxes, assessments and premiums under
54 the federal Social Security Act, any applicable unemployment insurance contributions, Workers
55 Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes
56 or assessments now or hereafter in effect and payable by reason of or in connection with the
57 services to be performed by Consultant.

58 E. No Overtime or Premium Pay. Consultant shall receive no premium or
59 enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours
60 per work week, or work performed during non-standard business hours, such as in the evenings
61 or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on
62 a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it
63 is in the form of sick leave, administrative leave, or for any other form of absence.

64 F. Litigation Support. Consultant agrees to testify at City's request if
65 litigation is brought against City in connection with Consultant's work product. Unless the
66 action is brought by Consultant or is based upon Consultant's negligence, City will compensate
67 Consultant for the preparation and the testimony at Consultant's standard hourly rates, if
68 requested by City and not part of the litigation brought by City against Consultant.

69 5. Amendment to Scope of Work. City shall have the right to amend the Scope of
70 Work within the Agreement by written notification to the Consultant. In such event, the
71 compensation and time of performance shall be subject to renegotiation upon written demand of
72 either party to the Agreement. Consultant shall not commence any work exceeding the Scope of

73 Work without prior written authorization from the City. Failure of the Consultant to secure
74 City's written authorization for extra or changed work shall constitute a waiver of any and all
75 right to adjustment in the contract price or time due, whether by way of compensation,
76 restitution, quantum merit, etc. for work done without the appropriate City authorization.

77 6. Term. This Agreement shall commence upon its execution and shall continue in
78 full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as
79 provided herein.

80 7. Construction services. Consultant shall furnish City with every reasonable
81 opportunity for City to ascertain that the services of Consultant are being performed in
82 accordance with the requirements and intentions of this Agreement. All work done and all
83 materials furnished, if any, shall be subject to the Project Manager's inspection and approval.
84 The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the
85 Agreement as prescribed.

86 Construction services include, but are not limited to the following: Construction Inspection (e.g.
87 daily inspection and reports, document control/coordination, active communication with owner,
88 administration services, etc...), Special Inspection (Materials testing: e.g. concrete, soils, lab
89 tests, etc...), Geotechnical Engineer of Record, and Construction Management Services (e.g.
90 schedule review and updates, meetings, claims avoidance/special issues, estimating, etc...) for an
91 anticipated 20-month construction schedule.

92 8. Ownership of Documents. Title to all plans, specifications, maps, estimates,
93 reports, manuscripts, drawings, descriptions and other final work products compiled by the
94 Consultant under the Agreement shall be vested in City, none of which shall be used in any manner
95 whatsoever, by any person, firm, corporation, or agency without the expressed written consent of
96 the City. Basic reporting, notes, photos, minutes, and other data prepared or obtained under the
97 Agreement shall be made available, upon request, to City without restriction or limitations on their
98 use. Consultant may retain copies of the above-described information but agrees not to disclose or
99 discuss any information gathered, discussed or generated in any way through this Agreement
100 without the written permission of City during the term of this Agreement, unless required by law.

101 9. Employment of Other Consultants, Specialists or Experts. Consultant will not
102 employ or otherwise incur an obligation to pay other consultants, specialists, or experts for
103 services in connection with this Agreement without the prior written approval of the City. The
104 City understands there will be a sub-consultant that will provide testing and Geotechnical
105 Engineer of Record services.

106 10. Conflict of Interest.

107 A. Consultant covenants and represents that neither it, nor any officer or
108 principal of its firm, has, or shall acquire any investment, income, business entity, interest in real
109 property, or other interest, directly or indirectly, which would conflict in any manner with the
110 interests of City, hinder Consultant's performance of services under this Agreement, or be
111 affected in any manner or degree by performance of Consultant's services hereunder. Consultant
112 further covenants that in the performance of the Agreement, no person having any such interest

113 shall be employed by it as an officer, employee, agent, or subcontractor without the express
 114 written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the
 115 appearance of any conflicts of interest, with the interests of the City in the performance of the
 116 Agreement.

117 B. Consultant is not a designated employee within the meaning of the
 118 Political Reform Act because Consultant:

119 (1) will conduct research and arrive at conclusions with respect to its
 120 rendition of information, advice, recommendation, or counsel independent of the control and
 121 direction of the City or of any City official, other than normal contract monitoring; and

122 (2) possesses no authority with respect to any City decision beyond the
 123 rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. 18700(a)(2).

124 11. Liability of Members and Employees of City. No member of the City and no
 125 other officer, employee or agent of the City shall be personally liable to Consultant or otherwise
 126 in the event of any default or breach of the City, or for any amount which may become due to
 127 Consultant or any successor in interest, or for any obligations directly or indirectly incurred
 128 under the terms of this Agreement.

129 12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to
 130 defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City,
 131 its officers, agents, employees, volunteers, and servants, from and against any and all claims,
 132 demands, damages, costs, liabilities, or obligations brought on account of or arising out of any
 133 acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors
 134 undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful
 135 misconduct of City. The City has no liability or responsibility for any accident, loss, or damage
 136 to any work performed under this Agreement whether prior to its completion and acceptance or
 137 otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include
 138 the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation
 139 is not limited in any way by any limitation on the amount or type of damages or compensation
 140 payable by or for Consultant under Worker's Compensation, disability or other employee benefit
 141 acts or the terms, applicability or limitations of any insurance held or provided by Consultant and
 142 shall continue to bind the parties after termination/completion of this agreement.

143 13. Consultant Not an Agent of City. Consultant, its officers, employees and agents
 144 shall not have any power to bind or commit the City to any decision.

145 14. Independent Contractor. It is expressly agreed that Consultant, in the
 146 performance of the work and services agreed to be performed by Consultant, shall act as and be
 147 an independent contractor and not an agent or employee of City; and as an independent
 148 contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue
 149 to City's employees, and Consultant hereby expressly waives any claim it may have to any such
 150 rights.

151

152 15. Compliance with Laws.

153 A. General. Consultant shall use the standard of care in its profession to
154 comply with all applicable federal, state, and local laws, codes, ordinances, and regulations.
155 Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep
156 in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance
157 and approvals which are legally required for Consultant to practice its profession. Consultant
158 shall maintain a City business license. The City is not responsible or liable for Consultant's
159 failure to comply with any or all of the requirements contained in this paragraph.

160 B. Workers' Compensation. Consultant certifies that it is aware of the
161 provisions of the California Labor Code which require every employee to be insured against
162 liability for workers' compensation or to undertake self-insurance in accordance with the
163 provisions of that Code, and Consultant certifies that it will comply with such provisions before
164 commencing performance of the Agreement and at all times in the performance of the
165 Agreement.

166 C. Prevailing Wage. Consultant and Consultant's sub consultants (if any)
167 shall, to the extent required by the California Labor Code, pay not less than the latest prevailing
168 wage rates to workers and professionals as determined by the Director of Industrial Relations of
169 the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of
170 the applicable wage determination are on file at the City's Public Works Department office.

171 D. Injury and Illness Prevention Program. Consultant certifies that it is aware
172 of and has complied with the provisions of California Labor Code § 6401.7, which requires
173 every employer to adopt a written injury and illness prevention program.

174 E. City Not Responsible. City is not responsible or liable for Consultant's
175 failure to comply with any and all of its requirements under this section and Agreement.

176 F. Waiver of Subrogation. Consultant and Consultant's insurance company
177 agree to waive all rights of subrogation against City, its elected or appointed officials, officers,
178 agents, employees, and volunteers for losses paid under Consultant's workers' compensation
179 insurance policy which arises from the work performed by Consultant for the City.

180 16. Confidential Information. All data, documents, discussions or other information
181 developed or received by or for Consultant in performance of this Agreement are confidential
182 and not to be disclosed to any person except as authorized by the City, or as required by law.

183 17. Assignment; Subcontractors; Employees.

184 A. Assignment. Consultant shall not assign, delegate, transfer, or convey its
185 duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in
186 or to the same or any part thereof without the City's prior written consent. Any assignment
187 without such approval shall be void and, at the City's option, shall immediately cause this
188 Agreement to terminate.

189 B. Subcontractors; Employees. Consultant shall be responsible for
 190 employing or engaging all persons necessary to perform the services of Consultant hereunder.
 191 No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors
 192 are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their
 193 performance. Consultant shall give its personal attention to the fulfillment of the provisions of
 194 this Agreement by all of its employees and subcontractors, if any, and shall keep the work under
 195 its control. If any employee or subcontractor of Consultant fails or refuses to carry out the
 196 provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper
 197 manner, it shall be discharged immediately from the work under this Agreement on demand of
 198 the Project Manager.

199 18. Insurance.

200 A. Minimum Scope of Insurance.

201 (1) Consultant agrees to have and maintain, for the duration of this
 202 Agreement, a General Liability insurance policy insuring it and its firm to an amount not less
 203 than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the
 204 aggregate for bodily injury, personal injury, and property damage.

205 (2) Consultant agrees to have and maintain, for the duration of this
 206 Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not
 207 less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury
 208 and property damage.

209 (3) Consultant shall maintain professional errors and omissions
 210 liability insurance for protection against claims alleging negligent acts, errors, or omissions
 211 which may arise from Consultant's operations under this Agreement, whether such operations be
 212 by Consultant or by its employees, subcontractors, or sub consultants. The amount of this
 213 insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual
 214 aggregate basis.

215 (4) A Workers' Compensation and Employers' Liability policy written
 216 in accordance with the laws of the State of California and providing coverage for any and all
 217 employees of Consultant:

218 (a) This policy shall provide coverage for Workers'
 219 Compensation (Coverage A).

220 (b) This policy shall also provide required coverage for
 221 Employers' Liability (Coverage B).

222 (5) All of the following endorsements are required to be made a part of
 223 each of the required policies, except for the Professional Liability and Workers' Compensation
 224 and Employers' Liability policies, as stipulated below:

225 (a) "The City of Calistoga, its officials, officers, agents,
226 employees, and volunteers are hereby added as additional insured's, but only as respects work
227 done by, for, or on behalf of the named insured."

228 (b) "This policy shall be considered primary insurance as
229 respects any other valid and collectible insurance the City may possess, including any self-
230 insured retention the City may have, and any other insurance the City does possess shall be
231 considered excess insurance only and shall not contribute with it."

232 (c) "This insurance shall act for each insured and additional
233 insured as though a separate policy had been written for each. This, however, will not act to
234 increase the limit of liability of the insuring company."

235 (6) Consultant shall provide to City all certificates of insurance with
236 original endorsements effecting coverage required by this paragraph. Certificates of such
237 insurance shall be filed with City on or before commencement of performance of this
238 Agreement. City reserves the right to require complete, certified copies of all required insurance
239 policies at any time.

240 (7) Any failure to comply with reporting provisions of the policies
241 shall not affect coverage provided to City, its officials, officers, agents, employees, and
242 volunteers.

243 (8) Consultant's insurance shall apply separately to each insured
244 against whom a claim is made or suit is brought, except with respect to the limits of the insurer's
245 liability.

246 B. All Coverage's. Each insurance policy required shall provide that
247 coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return
248 receipt requested, has been given to City. Current certification of such insurance shall be kept on
249 file with the City Manager at all times during the term of this Agreement.

250 C. Acceptability of Insurers. Insurance is to be placed with insurers with a
251 Best's rating of no less than A:VII.

252 D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured
253 retentions must be declared to and approved by the City. At the City's option, Consultant shall
254 demonstrate financial capability for payment of such deductibles or self-insured retentions.

255 E. Verification of Coverage. Consultant shall furnish the City with original
256 Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required
257 herein.

258 19. Termination of Agreement; Default.

259 A. This Agreement and all obligations hereunder may be terminated at any
260 time, with or without cause, by the City upon 5-days' written notice to Consultant.

261 B. If Consultant fails to perform any of its obligations under this Agreement
262 within the time and in the manner herein provided or otherwise violate any of the terms of this
263 Agreement, in addition to all other remedies provided by law, City may terminate this
264 Agreement immediately upon written notice. In such event, Consultant shall be entitled to
265 receive as full payment for all services satisfactorily rendered and expenses incurred hereunder,
266 an amount which bears the same ratio to the total fees specified in the Agreement as the services
267 satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be
268 performed for such total fee; provided, however, that the City shall deduct from such amount the
269 amount of damages, if any, sustained by City by virtue of the breach of the Agreement by
270 consultant.

271 C. In the event this Agreement is terminated by City without cause,
272 Consultant shall be entitled to any compensation owing to it hereunder up to the time of such
273 termination, it being understood that any payments are full compensation for services rendered
274 prior to the time of payment.

275 D. Upon termination of this Agreement with or without cause, Consultant
276 shall turn over to the City Manager immediately any and all copies of studies, sketches,
277 drawings, computations, and other data, whether or not completed, prepared by Consultant or its
278 subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this
279 Agreement. Such materials shall become the permanent property of the City. Consultant,
280 however, shall not be liable for the City's use of incomplete materials nor for the City's use of
281 complete documents if used for other than the project contemplated by this Agreement.

282 20. Suspension. The City shall have the authority to suspend this Agreement and the
283 services contemplated herein, wholly or in part, for such period as it deems necessary due to
284 unfavorable conditions or to the failure on the part of the Consultant to perform any provision of
285 this Agreement. Consultant will be paid for satisfactory Services performed through the date of
286 temporary suspension.

287 21. Merger; Amendment. This Agreement constitutes the complete and exclusive
288 statement of the agreement between the City and Consultant and shall supersede all prior
289 negotiations, representations, or agreements, either written or oral. This document may be
290 amended only by written instrument, signed by both the City and Consultant. All provisions of
291 this Agreement are expressly made conditions.

292 22. Interpretation. This Agreement shall be interpreted as though it was a product of a
293 joint drafting effort and no provisions shall be interpreted against a party on the ground that said
294 party was solely or primarily responsible for drafting the language to be interpreted.

295 23. Litigation Costs. If either party becomes involved in litigation arising out of this
296 Agreement or the performance thereof, the court in such litigation shall award reasonable costs
297 and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the
298 court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do
299 so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

300

301 24. Time of the Essence. Time is of the essence of this Agreement.

302 25. Written Notification. Any notice, demand, request, consent, approval or
 303 communication that either party desires or is required to give to the other party shall be in
 304 writing and either served personally or sent by prepaid, first class mail. Any such notice,
 305 demand, etc. shall be addressed to the other party at the address set forth below. Either party
 306 may change its address by notifying the other party of the change of address. Notice shall be
 307 deemed communicated within 72 hours from the time of mailing if mailed as provided in this
 308 section.

309 If to City: City Clerk
 310 City of Calistoga
 311 1232 Washington Street.
 312 Calistoga, CA 94515

313 If to Consultant: Matt Scoble, Executive Vice President
 314 Consolidated CM
 315 180 Grand Avenue, Suite 1520
 316 Oakland, CA 94612
 317

318 26. Consultant's Books and Records.

319 A. Consultant shall maintain any and all ledgers, books of account, invoices,
 320 vouchers, canceled checks, and other records or documents evidencing or relating to charges for
 321 services, or expenditures and disbursements charged to the City and all documents and records
 322 which demonstrate performance under this Agreement for a minimum period of three (3) years,
 323 or for any longer period required by law, from the date of termination or completion of this
 324 Agreement.

325 B. Any records or documents required to be maintained pursuant to this
 326 Agreement shall be made available for inspection or audit, at any time during regular business
 327 hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated
 328 representative of any of these officers. Copies of such documents shall be provided to the City
 329 for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed
 330 upon, the records shall be available at Consultant's address indicated for receipt of notices in this
 331 Agreement.

332 C. The City may, by written request by any of the above-named officers,
 333 require that custody of the records be given to the City and that the records and documents be
 334 maintained in the City Manager's office.

335 27. Agreement Binding. The terms, covenants, and conditions of this Agreement
 336 shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and
 337 subcontractors of both parties.

338 28. Equal Employment Opportunity. Consultant is an equal opportunity employer
 339 and agrees to comply with all applicable state and federal regulations governing equal
 340 employment opportunity. Consultant will not discriminate against any employee or applicant for

341 employment because of race, age, sex, creed, color, sexual orientation, marital status or national
342 origin. Consultant will take affirmative action to ensure that applicants are treated during such
343 employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or
344 national origin. Such action shall include, but shall not be limited to, the following:
345 employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or
346 termination; rates of pay or other forms of compensation; and selection for training, including
347 apprenticeship. Consultant further agrees to post in conspicuous places, available to employees
348 and applicants for employment, notices setting forth the provisions of this nondiscrimination
349 clause.

350 29. City Not Obligated to Third Parties. The City shall not be obligated or liable for
351 payment hereunder to any party other than the Consultant.

352 30. Waiver. No failure on the part of either party to exercise any right or remedy
353 hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

354 31. Severability. If any one or more of the provisions contained herein shall for any
355 reason be held to be invalid, illegal or unenforceable in any respect, then such provision or
356 provisions shall be deemed severable from the remaining provisions hereof, and such invalidity,
357 illegality, or unenforceability shall not affect any other provision hereof, and this Agreement
358 shall be construed as if such invalid, illegal, or unenforceable provision had not been contained
359 herein.

360 32. Exhibits. The following exhibits are attached to this Agreement and incorporated
361 herein by this reference:

362 A. Exhibit A: Scope of Work

363 B. Exhibit B: Schedule & Compensation

364 33. Execution. This Agreement may be executed in several counterparts, each of
365 which shall constitute one and the same instrument and shall become binding upon the parties
366 when at least one copy hereof shall have been signed by both parties hereto. In approving this
367 Agreement, it shall not be necessary to produce or account for more than one such counterpart.

368 34. News Releases/Interviews. All Consultant and sub consultant news releases,
369 media interviews, testimony at hearings and public comment shall be prohibited unless expressly
370 authorized by the City.

371 35. Applicable Law; Venue. This Agreement shall be construed and interpreted
372 according to California law. In the event that suit shall be brought by either party hereunder, the
373 parties agree that trial of such action shall be held exclusively in a state court in the County of
374 Napa, California.


375 36. Authority. Each individual executing this Agreement on behalf of one of the
376 parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of
377 such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

CONSOLIDATED CM

By: _____
Richard D. Spitler, City Manager

By:  _____
Matt Scoble, Executive Vice President

Date: _____

Date: May 25, 2011

APPROVED AS TO FORM:

By: _____
Michelle Kenyon, City Attorney

ATTEST:

By: _____
Susan L. Sneddon, City Clerk

ADDENDUM TO ORIGINAL PROPOSAL

From: Derek Rayner [mailto:DRayner@ci.calistoga.ca.us]
Sent: Thursday, May 12, 2011 5:15 PM
To: dlee@consolidatedcm.com
Cc: Matt Scoble; Scott Ritter; gcopley@ce-labs.com
Subject: RE: Revised Mount Washington Tank Project 20 Month Budget

Thanks Dave - We appreciate you revising the budget for Construction services.

We will work with you on a two week look ahead to conserve on inspector time and want to be able to have this flexibility throughout the project so we don't burn through this budget. We will work with you to coordinate these times so the inspector can have the ability to work on other projects. We also appreciate you acknowledging that some of your time may be conserved along the way as the job progresses more into a routine. The City will be able to provide inspection during bad weather days so Consolidated doesn't have to provide services.

We will want to have Geotech of Record services included as part of the service package. Per our discussions with C.E.L. they are comfortable with the existing Klienfelder Geotechnical report and do not see any difficulties signing off as the Geotechnical Engineer of Record.

As we discussed, if there is overtime work, or the contractor wants to work 10-hour days, we will want to limit Danny's time to 8-hours (have him come in later in the morning or leave earlier in the afternoon) and we'll want the ability to work with you on this. If there is a pour or some substantial work going into over-time the Contractor is required to reimburse for additional inspection or re-inspection time.

We'll be in touch shortly.

Sincerely,

Derek Rayner, PE
Senior Engineer
City of Calistoga
414 Washington Street
Calistoga, CA 94515
Tel (707) 942-2828, Fax (707) 942-9472
drayner@ci.calistoga.ca.us

LEED Green Associate  Please consider the environment before printing

EXHIBIT "A"

From: Dave Lee [mailto:dlee@consolidatedcm.com]
Sent: Thursday, May 12, 2011 3:51 PM
To: Derek Rayner
Cc: Matt Scoble; Scott Ritter
Subject: Revised Mount Washington Tank Project 20 Month Budget

Derek

Attached please find the revised budget for Inspection and Construction Management support services for the Project. I expanded the duration from the previous 16 month budget to the 20 month duration currently in the Bid. As discussed with you over the past couple of days, we have worked with C.E.L. to conserve on the previous testing and special inspection budget. Part of these costs were reduced in the Geotechnical Engineering services which should not require too much effort unless issues arise that are significantly deviant from the design Geotechnical Report. Also our Inspector holds several certifications for special inspections which will contribute to the savings reflected herein.

I have revised the level of effort for Construction Manager and Schedule support and provided some initial Admin support to setup and training on our CPM system for Document Control for your Personnel.

In order to meet our goal of conserving Inspector time, looking ahead two (2) weeks as we discussed will certainly help in coordinating alternate fill in work for the inspector and help mitigate his loss of income which is imperative for continuity and consistency of inspection services with the Contractor.

Overall we were able to reduce the Budget approximately \$ 52,000.

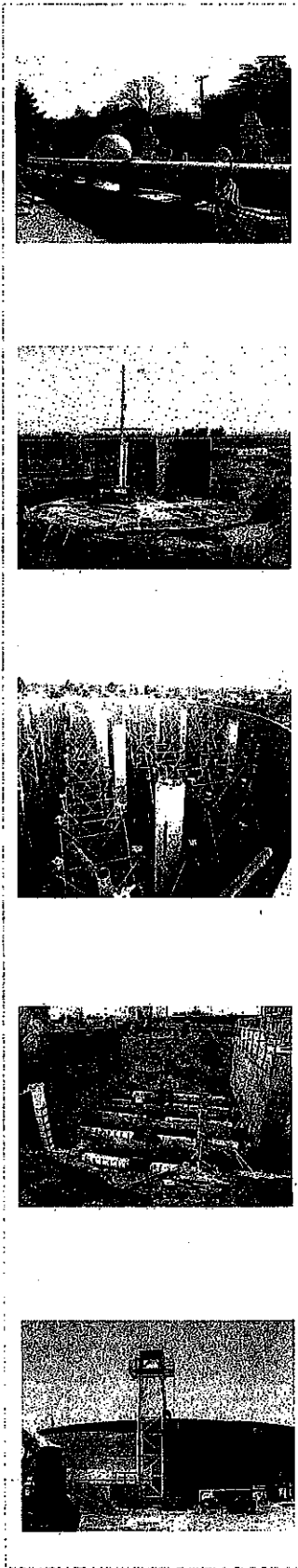
After you have had a chance to review the revised budget, please feel free to contact me with any questions.

Best Regards

Dave Lee

David C. Lee P.E.
Sr. Vice President
Consolidated C.M.
2500 Venture Oaks Way, Suite 125
Sacramento, Ca. 95833
Ph. 916-646-2830

Fax 916-646-2831
Cell 916-261-2830
dlee@consolidatedcm.com



PROJECT APPROACH

ABILITY OF THE FIRM TO MEET REQUIRED TIME SCHEDULE

All proposed CCM staff as well as our proposed testing laboratory, CEL, are available for the project and look forward to meeting the required project schedule for our involvement with the work. As discussed below, CCM is a full service organization with a significant depth of construction professionals. Regardless of how the project scope or schedule may change, CCM can respond with qualified staff.

ABILITY OF THE TEAM TO MEET PROJECT SCHEDULE

The proposed project schedule at first blush appears perhaps a bit long (both of our Davis DYK tank projects were larger and took less than 18 months each); however in light of the specific project challenges from the site, the EIR restrictions and the multiple nearby neighbors, without performing a schedule analysis the current project duration appears both reasonable and achievable. Should schedule challenges arise during the project, as discussed elsewhere in this proposal, CCM can assist the City to devise a recovery plan if so requested.

ABILITY TO PERFORM SCOPE

CCM is fully capable to perform all elements of the requested scope and has proposed senior experienced staff to provide all core and optional services. In addition to their specific experience the CCM team consists of individuals who have worked together successfully on multiple construction projects stretching back many years. This experience with each other results in a cost effective team which can begin to perform well from the first day on the project. You will see the difference with CCM.

LIST OF SPECIFIC TASKS

A. PRE-CONSTRUCTION

A1.) QA/QC Plan

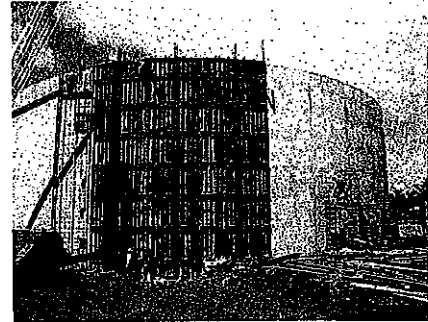
CCM will prepare a Quality Assurance/Quality Control (QA/QC) plan, clearly establishing standards and procedures which ensure a superior level of achievement on the project. Throughout the span of our projects, CCM conducts inspection and monitoring activities with QA/QC standards in mind. Our staff's experience in conducting and evaluating project activities and workmanship underscores these priorities. CCM also provides QA/QC services on a stand-alone basis.

EXHIBIT "A"

B. CONSTRUCTION

B1.) Inspections

CCM will provide a resident inspector with the correct mix of certifications and experience to monitor and inspect the work in the field. All CCM inspectors hold a technical degree and multiple ICBO/ICC certifications; many also have specialized training. The inspector will report to the construction manager. The inspector will review and be familiar with the contract documents as well as all contractor shop drawing submittals, RFIs and change orders. He shall oversee the contractor's field work and will prepare a daily report discussing on-going field work on CCM's internet-based management system. He shall



proactively work with the contractor to avoid and/or correct non-compliant work. Should the contractor not respond to the inspector's efforts to obtain contract compliance, in coordination with the CCM construction manager, the inspector following consultation with the City will issue a non-compliance report. If the non-compliance has not been corrected by the next progress payment cycle, the inspector shall recommend an appropriate amount of special retention to be withheld from the contractor's payment until the non-compliance is satisfactorily resolved. The inspector shall maintain a set of posted contract drawings clearly indicating minor changes in the work and the authority for those changes, such as a change order or RFI. He shall use these drawings each month as a basis for his review of the contractor's as-builts which will be performed as part of the progress payment process. The inspector will review the final as-builts at the end of the project and if he finds them accurate and complete he will sign them off as such. The inspector will also coordinate all special inspection and testing lab site visits as well as any site visits by building officials, the fire marshal or other associated parties. All inspection reports, non-compliance reports and inspection requests with results will be available on-line. CCM notes that the tank designer DYK will perform site visits to inspect the tank work at appropriate points in the project. This inspection by the designer is important but will be strictly limited to the tank work. Often the DYK inspector will only make a few visits during the entire project focusing on the foundation, the first wall pour and the roof, leaving the and the day to day inspection to the resident inspector. Our proposed inspector Danny Willow has constructed two DYK tanks and understands how to seamlessly work with DYK and the contractor to ensure the interface is smooth and all elements are fully addressed.

B2.) Daily Inspection Reports and Photos

CCM's Resident Inspector will document all construction activities in daily inspection reports. Utilizing the CPM schedule activity number, the reports record crew sizes, equipment, work performed, weather, change order work and any other special issues. As appropriate, digital photos/videos are attached to reports to enhance documentation. The inspection reports are tied to schedule activities, so they can be used to develop as-built construction schedules and/or to confirm physical progress of the monthly progress payment. Daily reports are reviewed by the RE and signed for record. Time and Materials (T&M) work will be reported on separate forms and signed daily by both the inspector and contractor.

B3.) Payments and Verifications

The CCM inspector will assist with the review of the contractor's progress payment requests and work with the owner on any special issues associated with payments, such as liens and stop-work notices. All requested payments are compared to actual work completed in accordance with the schedule of values presented by the contractor at the commencement of construction. The CCM inspector will provide the owner with an appropriate, and responsive, recommendation regarding the amount of monthly payments made to the contractor.

B4.) On-line Interactive Record Drawings

CCM assists the owner by monitoring, tracking, and posting the design and construction changes throughout the job. The CCM inspector will review the contractor's record drawings for completeness and accuracy using our posted drawing sets and other appropriate project documents for purposes of comparison. We also post all changes and other information on our own set of on-line interactive as-builts which are available to all project team members 24/7. The as-builts are actively linked to all RFIs, changes, field instructions and submittals as well as other project documents. They facilitate better decision making on the project by providing ready access to the most current project data. At the end of the project, the as-builts are reviewed, printed and signed by the inspector and an electronic copy will be provided to the City.

B5.) Special Inspection and Materials Testing Management

CCM will coordinate with the special inspection and testing laboratory Consolidated Engineering Laboratory, based in Windsor, for site visits. We will log all contractor requests for these services and when appropriate will request the lab to visit the site and perform the requested tests of inspections. CCM requires the lab personnel to check in with the inspector before proceeding to the field and will log all special inspector or laboratory site visits. These records will be used to assist the City to review the testing lab's monthly invoices or to support contractor back charges for re-testing of failed work.

B6.) Health, Safety and SWPPP Compliance

The contractor is responsible for general project site safety. But the CCM inspector will monitor all the contractor's safety-related efforts to ensure they are in compliance with the project's overall safety plan and with the owner's standards. The RFP states the contractor will provide the SWPPP certified individual (QSP) to oversee his storm water control efforts, however the CCM inspector is also knowledgeable in this area and will monitor and oversee the contractor's effort to comply with the SWPPP regulations as reflected in the approved plan.

C. POST CONSTRUCTION/CLOSEOUT

C1.) Punchlist

The inspector will assist the City to organize and conduct a contract walk with representatives of the owner, engineer and contractor for the purpose of creating a project close-out punchlist. The punchlist will itemize all unfinished or non-compliant work and will include all items by all members of the team. The inspector will assist the construction manager to estimate the value for each item as a guide to the correct amount of contract retainage for the owner to hold pending completion of the punchlist. The inspector will oversee the resolution

of each item, obtaining the sign off of each item once it has been completed from the author of the item. The contractor shall be given the time provided in the contract to complete all items.

C2.) Review As-builts

The inspector shall review the contractor's submitted as-builts for accuracy and completeness prior to forwarding them to the engineer. If the drawings are accurate they will be signed by the reviewer and forwarded to the engineer for further action. If they are not complete they will be returned to the contractor with comments for correction.

OPTIONAL TASKS

CCM is a full service construction management and inspection organization. Should the City unexpectedly need additional support we have experienced and available staff to rapidly respond. You may not need any of the optional services listed below, but they will be in reserve and available, if and when needed.

1.) Claims Avoidance/Special Issues

Consolidated CM understands it is the City's intention to manage the project and we are experienced and comfortable with that approach. Our Principal, Dave Lee, PE, is however an expert in assisting owners avoid claims and solving difficult construction challenges. For example on the recent Davis East Area tank the design plans implied a tank constructed from pre-cast panels but were not contractually clear and the contractor had bid a DYK tank. Mr. Lee has constructed both poured in place (DYK style tanks) and pre-cast panel tanks and is an expert in construction documents. He was able to work with the City, the general contractor and the design engineer to clear the matter up, move forward with the DYK tank and in the process obtain a credit for the owner. It is this type of performance that makes Dave the go-to guy for project oversight, claims avoidance and special challenges. Should an issue arise, Dave will be available to the City on request.

2.) Scheduling

Consolidated CM has a senior team of scheduling experts with specific experience with tank and infrastructure construction. It is our understanding the City will provide the schedule review services on the project, but should this change CCM is available to assist with baseline schedule review, monthly schedule update review, change order impact review or schedule as-building services. Scott Ritter heads our scheduling group and is available to the City on request. Our scheduling group in preparation for this proposal briefly reviewed the 90% documents with respect to schedule requirements. They noted the scheduling specification (01312) do not include a statement defining project schedule float ownership and stating it is a joint resource to both the City and the contractor. We suggest that be reviewed and revised as failure to share in the ownership of schedule float can place the City at a disadvantage when managing the project.

3.) Estimating

With luck, there may only be minor change orders on the project which can be estimated and negotiated by the City's construction manager as part of his project duties. If however a large or complex change (over \$100,000) arises which would require the construction manager's full attention

and impact his ability to manage the project while preparing his analysis, CCM can assist. Our estimating staff is completely familiar with public works project estimating and can assist if needed.

4.) Clerical

CCM understands the City will provide all necessary contract administration, however as part of our proposal we are offering the use of our internet project management system with which our administrative personnel are completely familiar. Our field inspector will prepare his daily reports and as-builts using our on-line system but if the City wishes to also use it for the system for RFIs, submittals, change orders and meeting minutes, CCM can assist your administrative staff in becoming familiar with the system.

SUMMARY

The City has requested a proposal to provide inspection and testing services to support the Mount Washington Reservoir Project. The construction management and contract administration will be handled by the City. CCM is comfortable with this type of arrangement and has formed combined project teams with owner staff on numerous occasions. We will work with the City to build a seamless team composed of personnel from both of our organizations. To help this happen we are offering, at no cost, the use of our internet project management system (CPM) to help weld the team together by improving communication and providing a single source for all project information. We developed our project management system back in the mid-1990's when the internet was new and over the years have continually improved it. We have managed hundreds of projects with it and you will find it intuitive to use, requiring little if any training. Use of the CPM system will also build a project database which, should the need arise, will allow us to offer any of our proposed optional services quickly and cost effectively even though we will not otherwise be involved in providing CM services to the project. In short, we offer a value added approach to our services which will help promote project success as well as cost effectiveness.

EXHIBIT B

Schedule of Performance & Compensation



**Mount Washington Water Storage Tank
Inspection and CM Services Proposed Costs
(20 months project)
May 12, 2011**

Position	Name	2011												2012												2013			Total Hours	Rate	Sub Totals
		Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar										
Principal**	Matt Scoble, PE	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	80	\$0	\$0		
CM	Dave Lee, PE	48	80	24	16	24	16	24	16	24	16	24	16	24	16	24	16	24	16	24	16	24	16	24	16	24	512	\$167	\$85,504		
Scheduler	Scott Ritter	16	32	16	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	216	\$147	\$31,752		
Inspector	Danny Willow	80	160	160	140	140	140	140	140	140	140	140	140	140	140	140	140	140	140	140	140	140	140	140	140	140	2,732	\$114	\$311,448		
Clerical	TBD	32	16	8																							56	\$71	\$3,976		
		Subtotal																								3,596		\$432,680			
		Testing Lab Allowance (See Note 6)																										\$76,000			
		O.D.C.'s																										\$10,000			
		Total																										\$518,680			

Notes on Project

1. Dave Lee, PE: Meetings, letters, Claims Avoidance/Special Issues (average 8hrs/wk).....\$167
2. Scott Ritter: Baseline Schedule review and monthly updates (as-needed).....\$147
3. Charles O'Neil, PE: Estimating (as-needed).....\$147
4. Clerical Support:..... \$71

****NOTES:**

Matt Scoble, PE will serve as principal for the CCM team. He will not bill for this QA/QC activity. No budget has been provided for Charles O'Neil to provide estimating as it is anticipated Dave Lee, or in some cases Scott Ritter can perform this service. Mr. O'Neil is however available if needed.

Notes:

1. This revised budget is based on a construction duration of 20 months as requested by the City. CM, Scheduling and Clerical support have been added in consultation with City staff.
2. The use of Consolidated CM's internet-based project management system is included at no cost to the project and is available to both our inspector and city staff for use on the project.
3. Other Direct Cost Allowance (ODC) is for such items as mileage, miscellaneous office supplies, copying, Fed Ex, etc. ODC's are billed at cost plus 10%. For off site travel, such as for the inspection of stored materials or to attend meetings, billed per IRS guidelines. All ODC expenditures will be supported by invoice and for expenditures over \$50, prior City approval will be requested. There is an hourly charge of \$2.50 per hour for cell phones and laptop computer.
4. Budget is based on straight time. Inspectors and clerical staff in California are covered under prevailing wage rules; consequently overtime is billed at time and a half and holiday or weekend work at double time. Every effort will be made to avoid overtime and should it appear to be required, prior owner approval will be obtained.
5. Billing rates reflect our 2011 rates. CCM will maintain these billing rates through the duration of the project until June 1, 2013, whereupon 3.5% rate adjustment will apply.
6. Testing Lab Allowance includes field testing, materials testing and assumption of geotechnical engineer of record services.