

January 27, 2009

FROM: PATRICK N. WIEMILLER, Public Works Director
Public Works Department

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Public Works Department

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Public Works Department, Capital Management Division

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Public Works Department, Capital Management Division

SUBJECT: APPROVE AGREEMENT WITH AQUATIC DESIGN GROUP IN THE AMOUNT OF \$61,500.00 WITH A CONTINGENCY AMOUNT NOT TO EXCEED \$6,800.00 TO PREPARE PLANS AND GENERAL CONSTRUCTION CONTRACT DOCUMENTS FOR THE DESIGN OF AN INTERACTIVE WATER FEATURE AND DECORATIVE FOUNTAIN DESIGN WITHIN THE CITY OF FRESNO'S EATON PLAZA. (*District 3*)

KEY RESULT AREA

Customer Satisfaction, Employee Satisfaction and Prudent Financial Management

RECOMMENDATION

Recommend approval of agreement with Aquatic Design Group in the amount of \$61,500.00, and a contingency amount not to exceed \$6,800.00 for the design of an interactive water feature and decorative fountain within the Eaton Plaza Park, and authorize the Public Works Director or his designee to sign the agreement on the City's behalf.

EXECUTIVE SUMMARY

Eaton Plaza Master Plan provides expanded green space, flower gardens, perimeter lighting, future art sculptures, decorative walk ways, new tree plantings, pathway lighting, an interactive water feature and decorative fountain as the focal piece. Eaton Plaza Park is broken down to five (5) phases to facilitate the current and future public needs. Phase I of this Eaton Plaza Master Plan was constructed on June 2006 and featured a 300 +/--seat amphitheater, irrigation, turf and shade trees. The next phases will incorporate remaining aspects of the Eaton Plaza Park Master Plan and construction is anticipated for May of 2009.

This Consultant Agreement with Aquatic Design Group will assist the Public Works Department to develop necessary construction plans and specifications to construct the approved interactive water feature and decorative fountain as outlined in the approved Eaton Plaza Master Plan.

KEY OBJECTIVE BALANCE

This project best balances the three Key Objectives of Customer Satisfaction, Employee Satisfaction and prudent Financial Management by enabling the City of Fresno to construct necessary facilities to accommodate public needs and to provide core services effectively and efficiently.

BACKGROUND

Staff from Parks, After School, Recreation, & Community Services and Public Works, worked with a citizens group of civic, business and governmental leaders with strong ties to the Downtown area prepared and presented several conceptual schematics to the stakeholders and general public at an Open House. After numerous meetings and revisions to the Master Plan a single Eaton Plaza Master Plan was agreed on.

On August 31, 2004, Council approved and adopted the Eaton Plaza Master Plan. This master plan outlined a five phased project needed to facilitate the current and future public needs of the Parks, After School, Recreation, and Community Services Department. The Master Plan was broken down to five (5) phases to give PARCS flexibility to meet the needs of the population growth within the downtown area. Phase I of the Master Plan is complete and the remaining phases of the master plan are currently under design.

This Consultant Agreement with Aquatic Design Group will allow the development of the construction plans and specifications to construct an interactive water feature and decorative fountain as called out in the approved Eaton Plaza Master Plan. In accordance with AO 6-19 Public Works distributed Request for Proposals (RFP's) to various firms. On November 14, 2008, the Public Works Department received five (5) proposals and based on what was presented staff feels that Aquatic Design Group was selected as the most qualified consultant.

The Public Works Department is requesting the approval of the Agreement with Aquatic Design Group and authorization of the Public Works Director or his designee to sign the agreement on the City's behalf. The agreement is for the design and preparation of plans and specifications for construction of the interactive water feature and decorative fountain. The consultant fee shall be a total fee of \$61,500.00 and a contingency amount not to exceed \$6,800.00. The not to exceed contingency amount of \$6,800.00 is for all reimbursable expenses such as printing costs, postage, delivery/courier and the travel and lodging expenses.

The Agreement for Consultant Services has been approved to form by the City Attorney's Office.

FISCAL IMPACT

The requested appropriations for the Consultant Services will be derived from the Citywide Park Impact Fee and will have no impact to the General Fund.

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the ____ day of January, 2009, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Aquatic Design Group, Inc., a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional architectural and engineering services for the design of plans and general construction contract documents for The Eaton Plaza interactive water park and decorative fountain design, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a professional engineer and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Department of Public Works Director (hereinafter referred to as "Director") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform the services described herein and in **Exhibit A** to complete the Project more fully described in **Exhibit A**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**. The services of CONSULTANT shall consist of five Parts as described below. A separate Notice to Proceed will be issued for each of the aforementioned Parts. By entry into this Agreement and upon CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in Part One. CONSULTANT shall not perform any other Part of the Agreement, and this Agreement shall not be a contract for any other Part, until further performance is authorized by CITY'S issuance of a written "Notice to Proceed." It shall, however, remain CONSULTANT'S offer to perform all remaining parts described herein. In the event CONSULTANT performs services without CITY'S prior written authorization, CONSULTANT will not be entitled to compensation for such services.

(a) Part One. Schematic Design Phase.

(1) CONSULTANT shall review the description of the Project set forth in **Exhibit A** and consult with designated representatives of CITY to ascertain the requirements of the Project.

(2) CONSULTANT shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the

respective responsible CITY department/division that is available in CITY'S records and is required by CONSULTANT in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions and easements. CONSULTANT shall notify CITY if a topographic survey is required.

(3) CONSULTANT shall provide a preliminary evaluation of the Project taking into consideration CITY'S estimate of the cost of construction ("Construction Budget") of \$400,000.00, including alternative approaches to design and construction of the Project.

(4) Based upon the mutually agreed upon Project requirements and any adjustments authorized by CITY in the Construction Budget, CONSULTANT shall design and prepare schematic design drawings and other documents for review, modification, if required, and acceptance by CITY staff sufficient to show the concept and scope of the proposed Project and the scale and relationship of Project components.

(5) CONSULTANT shall submit a preliminary estimate of construction cost for review and acceptance by CITY. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include CONSULTANT'S compensation as herein provided. Such estimate shall include, and shall separately state, the cost of any add or deduct alternatives, the cost of any work which may be let on a segregated bid basis and any equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget.

(6) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(7) CONSULTANT may not rely upon any as-builts provided by CITY, but shall investigate the existing conditions and ascertain the adequacy of such as-builts for CONSULTANT'S design. CONSULTANT shall bring to CITY'S attention any discrepancies in the as-builts that are discovered by CONSULTANT. CITY makes no representations regarding any as-builts.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 20] calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 10 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(b) Part Two. Design Development Phase. After review and acceptance of the schematic design phase and issuance of a written Notice to Proceed with this Part Two:

(1) Based upon the accepted schematic design documents and the Construction Budget, including authorized revisions thereto, CONSULTANT shall

prepare for review and acceptance by CITY the design development documents consisting of drawings and other documents to fix and describe the size and character of the Project as necessary to show treatment of significant details. In addition, CONSULTANT shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents and specifications shall be subject to review and acceptance by CITY.

(2) CONSULTANT shall submit a revised estimate of construction cost for review and acceptance by CITY. The revised estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated bid basis, and any furnishings, equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget, including authorized revisions thereto.

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part 1 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the revised estimate and CONSULTANT shall, at no additional cost to CITY, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by CITY. CITY shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in CONSULTANT'S compensation.

(4) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 20 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 10 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(c) Part Three. Construction Document Phase. After review and acceptance of the design development phase and issuance of a written Notice to Proceed with this Part Three:

(1) CONSULTANT shall prepare from the accepted design development documents, detailed plans and specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. CONSULTANT shall also prepare necessary bidding information, general and special conditions of the general construction contract, technical specifications of the general construction contract, and the bid proposal and general

construction contract forms. Such documents shall be subject to the review and acceptance by CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. CITY'S Standard Specifications must be used by CONSULTANT where possible. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by CITY shall be used by CONSULTANT unless the Director determines they would be impractical for this Project. CONSULTANT shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

(2) Upon request of CITY, CONSULTANT shall provide the calculations used to determine the general construction contract quantities; and structural calculations for the purpose of obtaining any building permits.

(3) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, report, statement, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(4) CONSULTANT shall provide CITY with 20 sets of completed plans and 10 sets of completed specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

(5) After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one set of accepted reproducible tracings and bid documents for the Project. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: AutoCAD.dwg.

(6) CONSULTANT shall submit a final estimate of construction cost for review and acceptance by CITY. Such estimate shall be calculated as of the date all general construction contract documents are delivered to CITY in final form ready for reproduction and advertising. Such estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated basis, and any equipment, or fixtures which may be incorporated in or excluded from the general construction contract.

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part 2 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the final estimate. If CITY elects to reject the final estimate, CONSULTANT shall at no additional cost to CITY, make such design changes

as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by CITY.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 20 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 10 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(d) Part Four. Bidding Phase. After review and acceptance of the construction document phase and if CITY elects to proceed to bid, which shall constitute a written Notice to Proceed with this Part Four:

(1) CONSULTANT shall assist CITY in obtaining bids. CONSULTANT shall not communicate with potential bidders regarding this Project without the express prior written authorization of CITY'S Purchasing Manager.

(2) CONSULTANT shall, within 7 calendar days of any request by CITY, expeditiously draft and promptly provide addendum as determined by CITY to be reasonable or necessary for the bidding process.

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by CITY, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, CONSULTANT shall, within 14 calendar days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, at no additional cost to CITY provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. CONSULTANT shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to CONSULTANT from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%.

(e) Part Five. Construction Phase and General Construction Contract Administration. The construction phase will begin with the award of the general construction contract, which shall constitute a written Notice to Proceed with this Part Five, and will terminate when a Notice of Completion is filed. Upon award of a general construction contract for the Project and under the direction of the Director through CITY'S designated Construction Manager for the Project:

(1) CONSULTANT shall attend the pre-construction conference and, if called upon by CITY, act on CITY'S behalf in discussing the various aspects of the construction phase.

(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of

the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor.

(3) CONSULTANT shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents, and keep CITY informed of the progress of the work. In the event that CONSULTANT'S visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, CONSULTANT shall immediately advise CITY and document, in writing, the work CONSULTANT deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. Based on CONSULTANT'S best knowledge, information and belief, CONSULTANT shall provide CITY a general written assurance that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, CONSULTANT shall provide a written judgment of the acceptability of the work for payment applications and final acceptance, subject to CITY'S right to overrule CONSULTANT.

(4) Upon written request by CITY, CONSULTANT shall render interpretations of the general construction contract documents necessary for the proper execution or progress of the work.

(5) Upon written request by CITY, CONSULTANT shall render written recommendations on change orders, claims, disputes or other questions arising out of the general construction contract, in a timely manner. Recommendations by CONSULTANT in favor of a change order that is consequently accepted by CITY shall constitute approval by CONSULTANT who shall then approve the change order in writing. CONSULTANT shall not unreasonably withhold written approval in the event CITY accepts a change order that CONSULTANT recommended to be rejected. In the event of any technical disputes, CONSULTANT shall provide CITY with CONSULTANT'S written interpretation of the contract documents. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor. If CITY, CONSULTANT and the respective general construction contractor are unable to mutually agree on such period for CONSULTANT review, then CITY will make the determination and that determination will be final.

(6) Upon written request by CITY, CONSULTANT shall provide such design and specification services as may be requested by CITY to implement change orders necessary for clarification or interpretation of the general construction contract documents or which may have resulted from errors or omissions by CONSULTANT.

(7) Where change orders arise as a result of an increase in the scope of work or are due to unforeseeable conditions, the parties may modify this Agreement, which modification shall include an agreed upon increase in CONSULTANT'S compensation.

(8) Upon written request of CITY, CONSULTANT shall assist CITY in the preparation of Progress Payment Estimates and other related construction reports.

(9) CONSULTANT shall prepare Record Drawings reflecting all changes or deviations from the plans that occurred during construction, as furnished by CITY. Record drawings shall be submitted within 90 calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 60 calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Director.

2. CITY'S responsibilities. CITY will:

(a) Provide, upon request and cooperation of CONSULTANT, access to, and make all provisions necessary to, enter upon public or private lands as required for CONSULTANT to perform such services and inspections as are required in development of the Project; provided, however, if CITY is unable to obtain access to enter upon public or private lands, CONSULTANT shall not be relieved from performing its services as to those public and private lands that are accessible. If CONSULTANT notifies CITY that a topographic survey is required by CONSULTANT in connection with the consulting services, then CITY will be responsible for conducting the topographic survey.

(b) Manage and be responsible for all negotiations with owners in connection with land or easement acquisition and provide all required title reports and appraisals.

(c) With the exception of preparing correspondence required for design, hold all required special meetings, serve all public and private notices, receive and act upon all protests, and perform all services customarily performed by owners as are necessary for the orderly progress of the work and the successful completion of the Project, and pay all costs incidental thereto.

(d) Select the testing laboratory and pay the cost of borings, samplings, and other work involved in soils testing during construction.

(e) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release CONSULTANT from its responsibility to make periodic site visits under Section 1(e) for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to CITY.

(f) Prepare all change orders during construction in cooperation with CONSULTANT.

(g) Prepare all Progress Payment Estimates in cooperation with CONSULTANT following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon CONSULTANT'S best knowledge, information and belief.

(h) Pay, or cause to be paid, plan check fees, conditional use permit fees and site plan review fees.

(i) Arrange for and pay, or cause to be paid, any fees associated with Environmental Impact Reports or Statements.

(j) Give reasonably prompt consideration to all matters submitted by CONSULTANT for acceptance to the end that there will be no substantial delays in CONSULTANT'S program of work. For an acceptance, approval, authorization, a request or any direction to CONSULTANT to be binding upon CITY under the terms of this Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by CITY and signed on behalf of CITY by the Director.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of \$61,500.00, and a contingency amount not to exceed \$6,800.00 for any additional work rendered pursuant to Subsection (c) below and authorized in writing by the Director. Such fees include all expenses incurred by CONSULTANT in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business. Such statements shall be for an amount no greater than that attributable to the Part upon which CONSULTANT is then engaged as provided in Section 3(c) below.

(c) For purposes of determining the division of the total compensation to CONSULTANT as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by CITY as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of CONSULTANT'S performance as follows: Part 1 - 10%, Part 2 - 25%, Part 3 - 50%, Part 4 - 5% and Part 5 - 10%. Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to CONSULTANT.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

4. Termination, Remedies, Force Majeure, and Consolidation of Disputes.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon the request of the Director or his/her designee, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify the Director or his/her designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or his/her designee of the cessation of such occurrence.

(g) CONSULTANT agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at CITY'S option, be joined and consolidated with any other dispute or disputes arising from or relating to the Project so that all disputes arising from or relating to the Project may be resolved in a single proceeding. CONSULTANT hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

5. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of CITY. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement or default by CONSULTANT. CONSULTANT grants CITY a copyright license to use such drawings and writings. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. CITY may modify the design including any drawings or writings. Any use by CITY of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by CONSULTANT will be at CITY'S sole risk and without liability or legal exposure to CONSULTANT. CONSULTANT may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT to do and perform the services in a skillful manner and CONSULTANT agrees to thus perform the services. Acceptance of the services by CITY shall not operate as a release of CONSULTANT from said standards of said profession.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CONSULTANT shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

(d) CONSULTANT'S services pursuant to this Agreement shall be provided under the supervision of Randall M. Mendioroz, and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, 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. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing

matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16 below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

Aquatic Design Group, Inc,
a California Corporation

By: _____
Efen Banuelos, Assistant Public
Works Director
Department of Public Works

By: Randall M. Mendioroz
Name: RANDALL M. MENDIOROZ

Title: PRESIDENT
[if corporation or LLC, Board
Chair, Pres. or Vice Pres.]

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Scott J. Ferrell
Name: SCOTT J. FERRELL

By: _____
Deputy

Title: SEC. / TREAS.
[if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary.]

No signature of City Attorney required.
Standard Document #DPW 12.1 has been
used without modification, as certified by
the undersigned.

By: Aaron A. Aguirre
Aaron A. Aguirre
Project Manager
Department of Public Works

Any Applicable Professional License:
Number: C-26222
Name: SCOTT J. FERRELL
Date of Issuance: FEB. 26 1996

REVIEWED BY:

Steven C. Son, Capital Projects Manager
Department of Public Works

Addresses:

CITY:
City of Fresno
Attention: Aaron A. Aguirre, Project
Manager
2600 Fresno Street Room 4016
Fresno, CA 93721
Phone: (559) 621-8714
FAX: (559) 457-1087

CONSULTANT:
Aquatic Design Group
Attention: Randall M. Mendioroz, Principal
2226 Faraday Avenue
Carlsbad, CA 92008
Phone: (760) 438-8400
FAX: (760) 438-5251

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

Exhibit B

INSURANCE REQUIREMENTS Consultant Service Agreement between City of Fresno and Aquatic Design Group, Inc. Interactive Water Park and Decorative Fountain Design PROJECT TITLE

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

CONSULTANT shall maintain limits of liability of not less than:

1. General Liability:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate applying separately to the work performed under the Agreement
2. Automobile Liability:
 - \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
 - \$1,000,000 each accident for bodily injury
 - \$1,000,000 disease each employee
 - \$1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

\$1,000,000 per claim/occurrence
\$2,000,000 policy aggregate

Umbrella or Excess Insurance

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.
3. CONSULTANT'S insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or authorized by CITY'S Risk Manager.

Verification of Coverage

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Interactive Water Park and Decorative Fountain Design
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Additional page(s) attached.

Randall M. Mendioroz
Signature

RANDALL M. MENDIOROZ
(name)

AQUATIC DESIGN GROUP, INC.
(company)

2226 FATZADAY AVE.
(address)

CARLSBAD, CA 92008
(city state zip)

1.0 INTRODUCTION

- 1.1 AQUATIC DESIGN GROUP, INC. of Carlsbad, California (hereinafter referred to as "CONSULTANT"), proposes to provide consulting design services to THE CITY OF FRESNO, PUBLIC WORKS DEPARTMENT, (hereinafter referred to as "CLIENT" for the following project:

RFP Interactive Water Park & Decorative Fountain Design
Eaton Plaza, Fresno, California

- 1.2 In conformance with the Request for Proposal revisions dated 17 December 2008 as issued by Mr. Aaron Aguirre, CONSULTANT shall provide:

2.0 SCOPE OF WORK

- 2.1 CONSULTANT shall provide design and engineering services as hereinafter described for the construction of a 54' x 54' interactive water park and one (1) 30' diameter decorative fountain.

- Preparation of plans, technical specifications, and a final cost estimate for bidding according to Prevailing Wage requirements and the California Public Contract Code
- Coordination with the city of Fresno's Building and Safety Department during permit plan-check to assure that the design conforms to current code standards and can be permitted.
- Construction support services during the bidding and construction periods including routine meetings with the contractor and City of Fresno staff, review and response to requests for information, approval of material submittals, and review of change order requests.
- Prepare and provide all load calculations needed for Pacific Gas & Electric Rule 16 Application.

3.0 SCOPE OF SERVICES

3.1 Schematic Design Phase:

3.1.1 CONSULTANT shall review the program furnished by CLIENT to ascertain the requirements of the project and shall arrive at a mutual understanding of such requirements with CLIENT.

3.1.2 Based upon the mutually agreed upon program, schedule and construction budget requirements, CONSULTANT shall prepare, for approval by CLIENT, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of project components. Schematic Design Phase deliverables shall include the following:

- .1 Water park / water feature plan views.
- .2 Water park / water feature longitudinal sections.
- .3 Water park / water feature finish details.
- .4 Water park deck and deck drainage details.
- .5 Review and coordination with existing electrical conditions at existing site.

3.1.3 CONSULTANT shall submit to CLIENT an estimate of probable construction cost based upon current area, volume, or other unit costs.

3.2 Design Development Phase:

3.2.1 Based upon the approved Schematic Design Documents and any adjustments authorized by CLIENT in the program, schedule or construction budget, CONSULTANT shall prepare, for approval by CLIENT, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to water park / water feature architectural, structural, mechanical and electrical systems,

materials and such other elements as may be appropriate. Design Development Phase deliverables shall include the following:

- .1 Water park / water feature plan views.
- .2 Water park / water feature longitudinal and cross-sections.
- .3 Water park / water feature finish details.
- .4 Water park / water feature rail goods details.
- .5 Outline specification in CSI format.
- .6 Water park deck and deck drainage details

3.2.2 CONSULTANT shall provide CLIENT with building and infrastructure requirements, including design criteria, as needed to service the Water park / water feature equipment, including:

- .1 Water park / water feature equipment room dimensions.
- .2 Sanitary/storm sewer requirements and points of connection.
- .3 Domestic water requirements and points of connection.
- .4 Natural gas requirements and points of connection.
- .5 HVAC requirements for water park / water feature equipment.
- .6 Electrical requirements and points of connection for water park / water feature equipment.
- .7 Water park deck and deck drainage details

3.2.3 CONSULTANT shall advise CLIENT of any adjustments to the estimate of probable construction cost.

3.3 Construction Documents Phase:

3.3.1 Based upon the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by CLIENT, CONSULTANT shall prepare, for approval by CLIENT,

Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for construction of the water park / water features. Construction Documents Phase deliverables shall include the following:

.1 Architectural Drawings:

- Water park / water feature plan views.
- Water park / water feature longitudinal and cross-sections.
- Water park / water feature finish details.
- Water park / water feature rail goods details.
- Water park deck and deck drainage details.

.2 Structural Drawings:

- Water park / water feature structural sections.
- Water park / water feature reinforcement schedules.
- Miscellaneous Water park / water feature structural details.

.3 Mechanical Drawings:

- Water park / water feature piping plan.
- Water park / water feature mechanical equipment piping plan.
- Water park / water feature mechanical equipment sections.
- Miscellaneous water park / water feature mechanical details.

.4 Electrical Drawings:

- Water park / water feature underwater lighting plan.

- Water park / water feature single phase panel schedule.
- Miscellaneous Water park / water feature electrical details.
- New electrical service equipment for project to be extended from an existing utility service as designated by the CLIENT.
- Consulting and design for service equipment locations, metering requirements, and electrical equipment location.
- Single line diagram including electrical system capacity and configuration, load calculations, distribution boards, panel schedules, load summaries, system sizing, and system ratings.
- Power systems design including sizing and arrangement of power distribution equipment, panel boards, devices, outlets, etc. in coordination with the project program.
- Fault current calculations based upon utility company or CLIENT input for incoming available fault current capacity.
- Branch circuit and feeder voltage drop calculations.
- Power for aquatic equipment according to the schedule of equipment.

.5 Miscellaneous:

- Water park / water feature structural calculations.
- Final form Water park / water feature technical specifications in CSI format.
- Water park deck and deck drainage details

3.3.2 CONSULTANT shall advise CLIENT of any adjustments to previous estimates of probable construction cost indicated by changes in requirements or general market conditions.

3.3.3 CONSULTANT shall assist CLIENT in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor, as it relates to the design program elements.

3.3.4 CONSULTANT shall assist CLIENT in connection with CLIENT's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.4 Bidding or Negotiation Phase:

3.4.1 CONSULTANT, following CLIENT's approval of the Construction Documents and the latest estimate of probable construction cost, shall assist CLIENT in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. Services provided by CONSULTANT during this phase to include:

- .1 Assist CLIENT in preparation of addenda.
- .2 Assist CLIENT in responding to Contractor requests for clarification of the Construction Documents.
- .3 Assist CLIENT in review of bids and/or proposals in determination of lowest responsive bidder/proposer.

3.5 Construction Observation Phase:

3.5.1 CONSULTANT shall be a representative of and shall advise and consult with CLIENT: 1) during construction until final payment to the Contractor is due; and 2) as an Additional Service at CLIENT's direction from time to time during the correction

period described in the Contract for Construction. CONSULTANT shall have authority to act on behalf of CLIENT only to the extent provided in this proposal unless otherwise modified. CONSULTANT shall provide the following construction support services:

- .1 Provide clarification, as required, of construction documents and respond to contractor requests for information.
- .2 Review and approval of water park / water feature-related sample and material submittals specified in Contract Documents.
- .3 Assistance with the issuance and negotiation of change orders.
- .4 Review of contractor-submitted Record Drawings for contract conformance and completeness based upon field observations.

3.5.2 CONSULTANT shall visit the site at intervals appropriate to the stage of construction or otherwise agreed by CLIENT and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations, CONSULTANT shall keep CLIENT informed of the progress and quality of the Work, and shall endeavor to guard CLIENT against defects and deficiencies in the Work.

3.6 Visits to the Project Site:

3.6.1 CONSULTANT shall visit the offices of CLIENT and/or the Project Site as reasonably needed for successful completion of this project. Visits will be agreed upon in advance with CLIENT and shall not exceed the following schedule:

.1	Schematic Design Phase	Three (3) site visits
.2	Design Development Phase	Two (2) site visits
.3	Construction Documents Phase	Three (3) site visits
.4	Bidding or Negotiation Phase	One (1) site visit
.5	Construction Observation Phase	Five (5) site visits

4.0 EXCLUSIONS TO SCOPE OF SERVICES

4.1 CLIENT shall provide full information regarding requirements for the project, including a program which shall set forth CLIENT's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment, systems and site requirements. Additional information that may be required by CONSULTANT as prepared by other members of the project team shall include:

4.1.1 Base sheets in digital (AutoCAD .dwg) format, including, but not limited to, the following:

- .1 Proposed drawing title block.
- .2 Site plan illustrating proposed water park / water feature location.
- .3 Floor plan illustrating proposed water park / water feature mechanical equipment room location.

4.1.2 Soils testing/engineering, including finalized geotechnical investigation report. Note: Unusual soil conditions such as expansive soils, fill soils, soils with low bearing capacity (under 2,000 psf), and high water tables which require additional

engineering will be considered an additional service and compensated for in conformance with Article 5.1.2, below.

- 4.1.3 Utilities design to water park / water feature mechanical equipment points of connection, including:
 - .1 Sanitary sewer.
 - .2 Storm sewer.
 - .3 Domestic water.
 - .4 Natural gas.
 - .5 Pool heater flues and combustion / ventilation air louvers.
 - .6 Design and specification of heat exchangers (if utilized in lieu of pool heaters), including hot water or steam piping and controls.
 - .7 Telephone and data communications.
- 4.1.4 Architectural, structural, mechanical, HVAC and electrical design of mechanical equipment room or other building structures as required; architectural and structural design of wet play equipment (engineered shop drawings to be furnished by specialty vendors).
- 4.1.5 Landscape design including fencing, planting, irrigation, site drainage and site lighting.
- 4.1.6 Miscellaneous plan check and permit fees as may be required by regulatory agencies.
- 4.1.7 Electrical engineering services as follow: site lighting and power systems, new utility service entrance, emergency power.
- 4.1.8 CLIENT shall provide a complete bid documents set, featuring 100% construction drawings, specifications and addenda in half size to CONSULTANT.

5.0 INDEMNITY

- 5.1 The CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold the CLIENT harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the CONSULTANT's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subconsultants or anyone for whom the CONSULTANT is legally liable. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the CLIENT's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the CLIENT is legally liable, and arising from the project that is the subject of this Agreement. The CONSULTANT is not obligated to indemnify the CLIENT in any manner whatsoever for the CLIENT's own negligence.

6.0 USE OF DOCUMENTS / ELECTRONIC FILES

- 6.1 CLIENT acknowledges the CONSULTANT's construction documents as instruments of professional service. Nevertheless, the drawings and specifications shall become the property of CLIENT upon completion of the work and payment in full of all monies due to the CONSULTANT. CLIENT shall not reuse or make any modifications to the drawings and specifications without the prior written consent of CONSULTANT. CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by CLIENT or any person or entity that acquires or obtains the plans and specifications from or through CLIENT without the written authorization of the CONSULTANT.

- 6.2 Electronic files may be provided by CONSULTANT for review by CLIENT and use by the Design Team in the preparation of construction documents. CONSULTANT assumes no responsibility for determining whether the data or software format are correct, up-to-date, or together represent actual conditions, or liability for the translations or results thereof. Acceptance or use by CLIENT of electronic files shall constitute a total release from liability, and as an indemnification for all costs or expenses from any claims, suits, judgments, or any other actions or liability as a result of such use. Under no circumstances shall delivery of the electronic files be deemed a sale by CONSULTANT, and CONSULTANT makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall CONSULTANT be liable for any loss of profit of any consequential damages as a result of re-use of electronic files. Drawing plan views may be delivered in AutoCAD .dwg or Adobe .pdf format. Drawing detail sheets will be delivered in Adobe .pdf format only. For use outside of the Design Team or for purposes other than the generation of construction documents a handling fee of \$250.00 plus \$25.00 per drawing sheet shall be remitted to CONSULTANT.

7.0 COMPENSATION

- 7.1 CLIENT shall compensate CONSULTANT for services rendered as follows:
- 7.1.1 Basic Services: The Scope of Services described above shall be compensated for by a lump sum, fixed fee of: SIXTY ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$61,500.00).
- 7.1.2 Additional Services: If requested, additional services will be billed for on an hourly basis, in conformance with the rates outlined in Article 7.3, below.

7.1.3 Reimbursable Expenses: In addition to basic compensation, an allowance of \$6,800 shall be provided for reimbursable expenses. Reimbursable expenses will be billed at CONSULTANT's direct cost, and shall include the following:

- .1 Plotting and reproduction expense of Drawings, Specifications and other documents.
- .2 Special delivery and handling of documents and correspondence such as courier and overnight delivery services.
- .3 Travel and lodging expense associated with travel outside of Southern California in connection with the Project.

7.2 Terms of Payment:

7.2.1 Payments for Basic Services shall be made based upon percentage of completion in not less than monthly installments, in conformance with the following schedule of values:

.1	Schematic Design Phase	\$ 6,150.00
.2	Design Development Phase	\$ 15,375.00
.3	Construction Documents Phase ...	\$ 30,750.00
.4	Bidding or Negotiation Phase	\$ 3,075.00
.5	Construction Observation Phase ..	\$ 6,150.00

7.3 Hourly Rates:

7.3.1 Compensation for additional services (when requested and authorized in advance by CLIENT) shall be provided in conformance with the following hourly rates:

.1	Principal	\$150.00 per hour
.2	Associate	\$125.00 per hour
.3	Sr. Project Manager (Design).....	\$100.00 per year

.4	Sr. Project Manager (Construction)	\$100.00 per hour
.5	Project Manager (Design).....	\$ 95.00 per hour
.6	Project Manager (Construction)....	\$ 95.00 per hour
.7	CAD Technician	\$ 90.00 per hour
.8	Graphics Technician	\$ 75.00 per hour
.9	Clerical	\$ 45.00 per hour

8.0 TIME

8.1 CONSULTANT shall prosecute design work in conformance with the following schedule, contingent upon receipt of all required information (program, base sheets, soils data, etc.) from CLIENT or CLIENT's designated representative:

8.1.1 Schematic Design Phase: Complete within thirty (30) calendar days of CONSULTANT's receipt of fully executed professional services agreement between CLIENT and CONSULTANT.

8.1.2 Design Development Phase: Complete within thirty (30) calendar days of approval of Schematic Design Documents and authorization to proceed with Design Development Phase.

8.1.3 Construction Documents Phase: Complete within thirty (30) calendar days of approval of Design Development Documents and authorization to proceed with Construction Documents Phase.

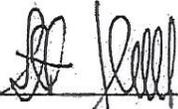
9.0 AUTHORIZED SIGNATURES

9.1 This proposal is valid for thirty (30) calendar days from the date referenced below and is submitted for and in behalf of CONSULTANT by:

AQUATIC DESIGN GROUP, INC.



By: Randy M. Mendioroz
Its: President



By: Scott J. Ferrel, AIA
Its: Vice-President

19 December 2008

Date

9.2 This proposal is accepted for and in behalf of CLIENT by:

CITY OF FRESNO

Signature of Authorized Representative

Printed Name and Title

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
01/13/09

PRODUCER 0A99520 1-619-234-6848
Cavignac & Associates
450 B Street, Suite 1800

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

San Diego, CA 92101-8005
Dorothy Amundson

INSURERS AFFORDING COVERAGE

INSURED
Aquatic Design Group, Inc.
2226 Faraday Avenue
Carlsbad, CA 92008

INSURER A: Travelers Property Casualty Company of America
INSURER B: The Travelers Indemnity Company of Connecticut
INSURER C: Beazley Insurance Company
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	6805250L166	10/17/08	10/17/09	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$ 1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> No Deductible				PERSONAL & ADV INJURY	\$ 1,000,000
	<input checked="" type="checkbox"/> Cross Liab. included				GENERAL AGGREGATE	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
B	AUTOMOBILE LIABILITY	BA7074L703	10/17/08	10/17/09	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
<input checked="" type="checkbox"/> HIRED AUTOS						
<input checked="" type="checkbox"/> NON-OWNED AUTOS						
<input checked="" type="checkbox"/> No Company Owned Autos						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
A	EXCESS LIABILITY	CUP7382Y418	10/17/08	10/17/09	EACH OCCURRENCE	\$ 2,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 2,000,000
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input checked="" type="checkbox"/> RETENTION \$-0-					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB7382Y210	10/17/08	10/17/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
	E.L. EACH ACCIDENT				\$ 1,000,000	
	E.L. DISEASE - EA EMPLOYEE				\$ 1,000,000	
	E.L. DISEASE - POLICY LIMIT				\$ 1,000,000	
C	OTHER Professional Liability Claims made, defense costs included w/in limit	V15OWS08PNPA	10/17/08	10/17/09	Each Claim	\$ 1,000,000
	Aggregate				\$ 2,000,000	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Re: Eaton Plaza Splash Pad
Certificate Holder is Additional Insured with respect to General Liability per attached. Waiver of Subrogation applies to Workers Compensation per attached.

CERTIFICATE HOLDER ADDITIONAL INSURED; INSURER LETTER: **A** CANCELLATION 10 days NOC for non-payment of premium.

City of Fresno
2600 Fresno Street, 4th Floor
Fresno, CA 93721

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Dorothy Amundson

USA

ACORD 25-S (7/97) CORI
10887707

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**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 99 03 76 (00)

POLICY NUMBER: UB7382Y210

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
ENDORSEMENT - CALIFORNIA
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS
COMPLETED A WRITTEN AGREEMENT TO PROVIDE THIS WAIVER.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED
(ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to the additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF INSURANCE (Section III)** for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other

insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.