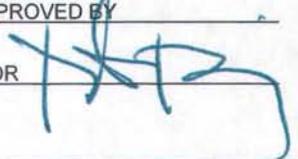


AGENDA ITEM NO.	1 A
COUNCIL MEETING:	2/4/2010
APPROVED BY _____	
	
DEPARTMENT DIRECTOR	
CITY MANAGER	

February 4, 2010

FROM: RENE A. RAMIREZ, Director 
Department of Public Utilities

BY: LON M. MARTIN, Assistant Director 
Department of Public Utilities – Administration

SUBJECT: APPROVE THE CONSULTING SERVICES AGREEMENT WITH BARTLE WELLS ASSOCIATES TO DEVELOP A WATER CONNECTION CHARGE FOR INTENSIFICATION OF THE NON-URBAN GROWTH MANAGEMENT AREA (UGM) AND UPDATE THE EXISTING WATER AND SEWER CONNECTION, CAPACITY AND UGM AREA CHARGES FOR \$162,635 AND AUTHORIZE THE DIRECTOR OF PUBLIC UTILITIES TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

RECOMMENDATION

Staff recommends that the City Council authorize the Director of Public Utilities to execute a consultant services agreement with Bartle Wells Associates for \$162,635 on behalf of the City to develop a water connection fee for intensification of the non-UGM area and update the existing water and sewer connection, capacity and UGM area charges.

EXECUTIVE SUMMARY

On May 6, 2008 Council approved an agreement with Bartle Wells to update the UGM 101s area fees in four phases and specifically included the study of Copper River Ranch (CRR). The CRR work, or phase I, was completed at a cost of \$27,482, and in cooperation with the developer it was determined that CRR would not be incorporated into the UGM 101s area. However, the existing agreement had expired and a new agreement was developed and negotiated for the remaining three phases at a cost not to exceed \$162,635. Although, the UGM Area 101s was not expanded to include CRR, the work was not wasted; the analysis for CRR is still valid, and will be used to update the UGM 101s Area fees. The final three phases include the formation of a water connection fee system for development intensification in the non-UGM areas, the update of existing UGM and other water and sewer connection fees. Once the infrastructure analysis is completed, a nexus study will be developed; the new and updated fees will be presented to the Building Industry Association (BIA) and eventually brought before Council for approval and adoption.

BACKGROUND

On December 17, 2007 staff sent out nine Requests for Qualifications (RFQ) according to Administrative Order 6-19, to firms specializing in Public Finance Consulting. The RFQ's were required to be delivered no later than January 31, 2008. Staff received one RFQ from Bartle Walls Associates. Upon review of their experience, it was determined they are a well qualified firm, therefore, they were selected and Council approved and authorized a consultant services agreement for them to commence work on May 6, 2008.

The first order of work was to investigate expansion of the UGM 101s area to include CRR as originally intended, when the City's sphere was expanded north of Copper Avenue. Water Division staff updated the capital plan and cost estimate for water supply and treatment facilities including the wells needed for CRR. Bartle Wells then distributed the costs over the remaining parcels and drafted a nexus analysis. Due to the new infrastructure for CRR, the low number of developable lots in the area, and the added cost of the surface water treatment facility, it was determined that it would be better for CRR to not participate in the UGM program. Included with their EIR, CRR provided a detailed water supply assessment that balanced their supply and demand. Therefore, it was recommended that CRR be required to construct all water infrastructure according to their water supply assessment and not be reimbursed for those facilities. Much of this data and information can and will be used for the eventual update of the UGM 101s fees.

The next phase of the project, subject to Council approval, will be to develop a new fee for intensification of the non-UGM area. The City is experiencing a significant number of infill and redevelopment projects that increases domestic water and fire demands. The existing water infrastructure was not designed nor constructed to serve this level of density. Bartle Wells will evaluate the needs to serve the existing customers verses the needs for the new, higher density development and prepare a defensible nexus analysis that can equitably distribute those costs between the two customer groups. This fee is intended to be applicable Citywide, although there may be special provisions for the existing UGM areas and the fee deferral program within the Downtown Priority Areas.

The final two phases are an update to the existing water and sewer connection, capacity and UGM Area charges. Although this is a sizable undertaking, it is a much needed exercise, some of these fees have never been updated and most have not been updated in the last ten years. As a result, the current fees collected are not adequate to either repay the development community or the existing customers for development related infrastructure projects. Prior to updating the any of the fees, DPU staff has to update to the capital plan(s) and work with Bartle Wells to estimate the costs of the projects, then equitably spread those costs to existing customers or new development. Although developing the capital plans can be a large undertaking, the Water Division is in the process of updating the Metropolitan Water Resource Management Plan, and much of the capital planning and cost estimating has been completed or is well underway.

The new and updated fees will be developed in draft form and distributed for review with various stakeholders within the development community. Once vetted, the new and/or updated fees will be brought back to Council for consideration. It is expected that each phase will be updated and brought before Council in an incremental approach. Addressing this project in totality will be very complex and possibly overwhelming; staff expects to be completed with all phases within 24 months.

FISCAL IMPACT

Funds for this project were included in the fiscal year 2010 budget, Wastewater Operating Fund 40501, Account 53302 Professional Services and Water Enterprise Capital Fund 40101, WC00064. The work will be proportioned based on the level of effort for each Division. Water's portion is \$128,641 and Wastewater's portion is \$33,994, for a total project cost of \$162,635. The 2010 Water Enterprise Capital budget retains \$122,000 for this project. However, the Fund contains savings from other capital projects to cover the additional \$6,641 needed. Approximately \$10,000 has been included for contingencies and unforeseen tasks only to be used upon authorization by City staff.

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

THIS AGREEMENT is made and entered into effective the 4th day of February, 2010, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and BARTLE WELLS ASSOCIATES, a California corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional finance consulting services for the update of water and sewer connection fees, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a public finance advisor 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 Director of the Department of Public Utilities (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

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

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through February 28, 2011, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 not to exceed \$152,635.00, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**, and a contingency amount not to exceed \$10,000.00 for any additional work rendered pursuant to Subsection (c) below and authorized in writing by the Director. Any such additional work will be paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not

be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) 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.

4. Termination, Remedies and Force Majeure.

(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 Administrator's request, 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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 the Administrator. 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, 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 writings and 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. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(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 such services in a skillful manner and CONSULTANT agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT from said professional standards.

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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(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 Administrator 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.

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

BARTLE WELLS ASSOCIATES,
a California corporation

By: _____
Rene Ramirez, Director
Department of Public Utilities

By: _____
Name: _____

ATTEST:
REBECCA E. KLISCH
City Clerk

Title: _____
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

By: _____
Deputy

By: _____
Name: _____

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

Title: _____
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

By: _____
Nancy A. Algier Date
Senior Deputy

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

Addresses:

CITY:
City of Fresno
Attention: Lon Martin, Assistant Director
2600 Fresno St., Room 3065
Fresno, CA 93721-3624
Phone: (559) 621-8616
FAX: (559) 498-1304

CONSULTANT:
Bartle Wells Associates
Attention: Thomas Gaffney, Principal
1889 Alcatraz Ave.
Berkeley, CA 94703
Phone: (510) 653-3399
FAX: (510) 653-3379

Attachments:

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

Exhibit A

SCOPE OF SERVICES Consultant Service Agreement between City of Fresno ("City") and Bartle Wells Associates ("BWA") Update of Water and Sewer Connection Fees PROJECT TITLE

Project Understanding BWA understands that the City requires analysis supporting the update of a variety of water and sewer fees levied on projects connecting to the water and sewer system (also known as connection fees or capacity fees). The fees which will be updated in the course of this study include:

Water Fees (non-UGM/Central Downtown Area)

Currently, the water frontage charge is the only water connection fee which applies to projects in the non-UGM areas of the City of Fresno. This fee has not been updated in a number of years. Furthermore, since much of the land in the non-UGM portions of the City is built-out and already connected to the water system, the water frontage charge is not typically collected when a parcel is redeveloped—even if that redevelopment requires new water supply or infrastructure.

As such, the City has requested that BWA assist in the creation of a new water connection (or capacity) fee for this area which accurately reflects the impacts that new or redeveloped connections to the water system have on capital infrastructure needs. In this phase of the study, BWA will develop an analysis to support such a fee, and provide the City with a number of different options for levying it—including a multi-year phase-in and area-specific options (downtown core, non-downtown core).

Water Fees (all UGM areas)

- UGM Water Supply Fee
- Water Recharge Area Fee
- Water Transmission Grid Main (TGM) Charge
- Water Transmission Grid Main Bond Debt Service Charge
- Wellhead Treatment Fee
- Water Frontage Charge
- Other fees as identified by City

The analysis of the UGM-area water fees will maintain the existing structure of the fees, but will update their nexus analysis and resulting amounts based on updated development and capital improvement numbers, as described more fully in the detailed task description that follows.

In addition, as part of the analysis of UGM area water fees, BWA will make initial recommendations for potential methods combining or re-organizing the structure of the UGM water supply fee, to determine if the levy of "single well supply area" fees is still appropriate.

Sewer Fees

BWA will also review and update the following sewer connection fees (BWA understands that this exact list may change upon commencement of this phase of the study).

Sewer Connection Charges

- Lateral Sewer Charge
- Oversize Sewer Charge
- House Branch Sewer Charge
- Trunk Sewer Charge
 - a. Grantland Trunk Sewer
 - b. Cornelia Trunk Sewer
 - c. Herndon Trunk Sewer
 - d. Herndon Sewer CapaCity Enhancement Charge
 - e. Fowler Trunk Sewer
- Wastewater Facilities Charge
- Copper Avenue Sewer Lift Station Benefit Service Area Charge
- Fowler Trunk Sewer Interim Fee Surety
- Other fees as identified by City

Sewer UGM Fees

- Oversize Sewer Service Areas
- Other fees as identified by City

Copper River Ranch Impact Fees

- Copper River Ranch Sewer Backbone System Facility Fee

Project Phasing and Schedule Because of the wide range of fees included in this scope, BWA anticipates that this project will proceed in a number of phases. Based on discussion with City staff, it is understood that these phases will proceed more or less in succession.

The first major goal will be to complete a study of the non-UGM area of the City and develop a water fee structure that fairly and legally collects sufficient revenues to provide for needed capital improvements to serve development in the study area.

In the second phase of the project, BWA will complete an update of the fees levied in the Urban Growth Management (UGM) areas in the City. BWA recently completed an update of the water fees in UGM Area 101S, so we are very familiar with their structure and analysis. BWA anticipates that this phase of the project would be completed first.

The third major objective is to update or combine sewer connection fees such as the lateral sewer charge, house branch charge, and trunk charges, as directed by the City.

In all three cases, BWA will provide the City, upon completion of the phase, a detailed nexus report which demonstrates the basis of the fee, the manner in which it will be levied, and that the fee meets all applicable legal requirements under State of California Assembly Bill 1600 (the Mitigation Fee Act, California Government Code section 66000 et seq.) and California Government Code section 66013.

See Project Schedule, attached hereto as **Attachment 1**.

PHASE I – Non-UGM/Central Area Water Fee

In this phase of the project, BWA will develop the analysis to support a new water capacity fee for the non-UGM areas of the City, including the downtown core (“Central Area”) and surrounding areas. The goal of this analysis is to provide the City with a clear and legally defensible analysis in compliance with the Mitigation Fee Act.

West Yost Associates (WYA) will serve as subcontractor to BWA for a number of tasks included in Phase I of this study. Tasks for which WYA has major responsibility are denoted with “WYA” before the Task numbering below. For purposes of project management and coordination, up to eight additional conference calls for such Tasks may be exercised as needed between City, WYA and BWA.

Task 1 – Data Collection, Capital Improvement Program Analysis

BWA will work closely with City staff to gather information required for Phase I of this project. This may include:

- Prior water fee studies or analyses for non-UGM area
- Water utility master plans and capital improvement programs for the non-UGM area, including the Urban Water Master Plan and the Metropolitan Water Resources Management Plan
- Existing fixed asset detail for water capital assets in the non-UGM area (for calculation of buy-in components if necessary)
- Summary of developed and undeveloped parcels within the non-UGM area
- Future development assumptions in the non-UGM area
- Water supply planning data for City

Deliverable: Information request to City

Meetings: Conference call to discuss information request

Task 2 – Initial Analysis and Methodology Review

BWA understands that in Phase I of the study, the City is requesting an initial analysis and methodology review before the final analysis is completed. In this Task, BWA will review initial information, and develop a methodology review and initial findings memo for review by City staff. This initial review will form the basis for the final nexus analysis completed later. It will include “planning level” estimates of the financial impacts of using different fee methodologies.

Among the issues that will be reviewed in this Task:

- Methods for allocating the benefit of projects among existing and future users
- Methods for collecting the fees, including examination of different criteria (meter size, average day demand, peak day demand, peak hour demand) for levying the capacity fee
- Timing of the projects and impact on fee

BWA will develop at least three different scenarios for both calculating the fee and for collecting it. It will present these findings in an initial methodology review memo which highlights the strength and weaknesses of each scenario developed, and submit that prior to a meeting with City staff to review the findings.

Deliverable: Interim Memo Report – Methodology Review and Initial Analysis

Meeting: One meeting at City offices to discuss initial findings

Task 3 (WYA) – Initial Analysis/Cost Allocation for Central Area UGM Fee

Development of the following:

1. Identification of the new water facilities that will be required to support buildout of the City's adopted General Plan;
2. Development of the capital costs for each water facility identified in Item 1 above; and
3. Identification of the hydraulic benefit (and corresponding cost share) of each recommended water facility, to existing and future customers, only for the City's new Downtown Central UGM area (includes all City parcels not currently within a UGM area)

With data from shape files received from City containing parcel information identifying each UGM area, and all City parcels not currently in a designated UGM area (the "downtown triangle area" and all City parcels not within an existing UGM area will be defined as being within the new Central Area UGM area), combine with the water facilities required to meet buildout of the City's General Plan, developed in the Metropolitan Water Resource Management Plan. Identify the hydraulic benefit of each water system facility, to existing and future customers within the designated new, Central Area UGM area. Existing customers will be defined as those current customers receiving water as of 2009, and future customers will be defined as those additional future customers who would be connected between 2010 and buildout of the City's adopted General Plan. Hydraulic analysis will be conducted under either a maximum day or a peak hour condition, depending on the type and function of the water infrastructure being evaluated to establish proportionate flow shares, and associated costs, by facility. Cost within the new, Central Area UGM area will then be tabulated and provided.

Prepare Draft Technical Memorandum describing the methodology used to determine the recommended water system infrastructure costs for the City's new Central Area UGM area, split between existing and future customers, including appropriate cost tables and figures. Meet to receive comments on the Draft Technical Memorandum.

Deliverable: Draft Technical Memorandum describing methodology for cost allocation (5 hard copies and an electronic PDF)

Meeting: One meeting with BWA, WYA, and City staff

Task 4 (WYA) – Conduct Additional Analysis of Central Area UGM Fee

Based on comments received from the City to the Task 3 Draft Technical Memorandum, there may be other methodologies requested to be evaluated to establish the new Central Area UGM fee. In this task, additional hydraulic analysis will be conducted as requested by City staff.

Revised tables and figures illustrating the impacts and/or implications of the alternative analyses will be prepared. Meet to discuss the results of the alternative analysis, and receive final comments.

Deliverable: Updated capital cost tables and figures

Meeting: One meeting with BWA, WYA, and City staff

Task 5 (WYA) – Finalize Central Area UGM Fee

Based on the comments received in Task 4, revise and finalize the Draft Technical Memorandum prepared as the Task 3 deliverable.

Deliverable: Final Technical Memorandum on Central Area Fee Capital Costs Analysis (5 hard copies and an electronic PDF)

Meeting: None

Task 6 – Non-UGM/Central Area Water Fee – Draft Report

Based on information contained in the analysis, and feedback provided by the meetings with City staff, BWA will submit a draft-final report based on a chosen methodology for levying the new non-UGM water fee. As part of this Task, BWA will:

- Finalize the list of capital improvements that form the basis of the fee
- Allocate the benefit of these projects among existing and future users and classes of use
- Recommend a water capacity fee on new development
- Demonstrate the basis for charging the fee and describe the manner of collecting it
- Present a final nexus report detailing the calculation of the new fee and supporting its legal basis

After submitting the draft report, BWA will attend a meeting with City staff to review final comments and questions on findings.

Deliverable: **Draft-Final Nexus Report** (compliant with Mitigation Fee Act)

Meeting: One meeting at City offices to review draft-final findings

Task 7 – Non-UGM/Central Area Water Fee – Final Report; Council Presentation/Outreach

BWA understands that presentation of the findings of this analysis to both the Council and public is a critical component of the study. As such, in this Task, BWA will attend at least one City Council meeting to present these findings, and if necessary, attend one public outreach meeting to discuss findings with interested stakeholders.

Deliverable: **Final Nexus Report** (compliant with Mitigation Fee Act)
Powerpoint presentation summarizing work to City Council

Meetings: One City Council meeting and one public outreach meeting

PHASE II – UGM Area Water Fees

In Phase II of this project, BWA will develop the nexus analysis to support update of the existing UGM-area specific water fees. This analysis will be completed for **all** UGM areas.

Task 1 – Data Collection, Capital Improvement Program Analysis

BWA will work closely with City staff to gather information required for Phase II of this project. This may include:

- Prior water fee studies or analyses of the UGM fees
- Master planning documents and capital improvement programs for the water utility in the UGM areas
- Existing fixed asset detail for water capital assets in the UGM areas, if necessary (for calculation of buy-in components if necessary)
- Summary of developed and undeveloped parcels within each of the UGM areas
- Future development assumptions in each of the UGM areas
- Water supply planning data for the UGM areas

Deliverable: Information request to City

Meeting: Conference call to discuss information request

Task 2 – Draft Update of UGM area fees

BWA completed an analysis of the UGM 101S fees in 2008. BWA understands that the fundamental structure of the fee system in the UGM areas will remain largely the same after this update.

In this Task, BWA will develop a draft update of the UGM area fees. BWA will submit a "Summary of Analysis" to the City for review, and then attend at meeting at City offices to discuss important assumptions and findings.

Deliverables: Summary of Analysis – UGM Area Water Fees

Meeting: One meeting at City offices to discuss preliminary findings

Task 3 – Final UGM Area Fee Nexus Study and Council Presentation

Based on the feedback received on the Summary of Analysis memo and the meeting, BWA will finalize the UGM area fees update in the form of a detailed nexus report, in full compliance with the legal requirements of the Mitigation Fee Act governing impact fees.

In this Task, BWA will also present the findings of the presentation to a City Council meeting.

Deliverables: Final Nexus Report on UGM Area Water Fees (compliant with Mitigation Fee Act)
City Council presentation

Meeting: One City Council meeting

PHASE III – Sewer Connection Fees

Task 1 – Data Collection, Capital Improvement Program Analysis

BWA will work closely with City staff to gather information required for Phase III of this project. This may include:

- Prior sewer fee studies or analysis
- Utility master plans and capital improvement programs for sewer and wastewater facilities
- Existing fixed asset detail for sewer capital assets, if necessary (for calculation of buy-in components if necessary)
- Summary of developed and undeveloped parcels within sewer service areas
- Future development assumptions
- Wastewater and sewer capacity planning data

Deliverable: Information request to City

Meeting: Conference call to discuss information request

Task 2 – Update of Sewer Connection/Capacity Fees

BWA understands that this portion of the project is still evolving. At a minimum, BWA will analyze and update the following fees.

- Lateral Sewer Charge
- Oversize Sewer Charge
- House Branch Sewer Charge
- Trunk Sewer Charge *
 - Grantland Trunk Sewer
 - Cornelia Trunk Sewer
 - Herndon Trunk Sewer
 - Herndon Sewer Capacity Enhancement Charge
 - Fowler Trunk Sewer
- Wastewater Facilities Charge *
- Copper Avenue Sewer Lift Station Benefit Service Area Charge
- Fowler Trunk Sewer Interim Fee Surety
- Other fees as identified by City

*Wastewater & Trunk Sewer unit charges for SFR and multi-family up to 3-units. Businesses and 4-unit or greater multi-family developments qualify for S.T.E.P.

UGM Sewer Fees

- Oversize Sewer Service Areas
- Other fees as identified by City

Copper River Ranch Impact Fees

- Copper River Ranch Sewer Backbone System Facility Fee

In order to update these fees, BWA will:

- Analyze and establish new Trunk Sewer Charge(s) or include/expand area(s) of interest for the collection of Trunk Sewer Charges.
- Consider the consolidation and/or the creation of a unified benefit area. Evaluate the issues of the increase in densification within the Downtown core area and throughout the City.

This study will include a fee analysis on facility and capacity enhancement(s), based upon impacts to the existing sewer system due to the increase created by land use densification. As with the water fee, the feasibility of an EDU based Capacity Enhancement Fee will be studied for the Downtown core area and possibly City wide.

As with Phases I and II, BWA will submit a final nexus report detailing and supporting the sewer fee analysis. BWA will also attend one City Council meeting.

Deliverables: *Nexus Report on Update Sewer Fee Analysis*

Meetings: Two project meetings (one initial analysis/kick-off, one City Council)

Project Management and Coordination

BWA is responsible for all project management and coordination with its subconsultant WYA throughout each phase. BWA will be responsible for all final work products on this project. Tom Gaffney, one of BWA's principals, will be placed in charge of the study and will devote the time and effort to the project as needed. Adam Lynch, Senior Consultant, will assist on the project and provide day-to-day analysis.

Schedule of Fees and Expenses

The total not to exceed fee of \$162,635 (including \$10,000.00 contingency amount) includes all direct expenses.

Professional Services

Hourly Rates

Financial Analyst I	\$95.00
Financial Analyst II	\$125.00
Senior Financial Analyst	\$165.00
Senior Consultant	\$195.00
Principal Consultant	\$225.00

The hourly rates include all overhead and indirect costs. BWA does not charge for secretarial support services and internal computer time. Expert witness, legal testimony or other special limited assignment will be billed at one and one-half times the consultant's hourly rate.

**City of Fresno
Water and Sewer Fee Study
Project Schedule and Budget**

	WEEK																Hours (1)										
	March-10				April-10				May-10				June-10				July-10				August-10				Principal	Sr. Consultant	
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	@ \$225/hour	@ \$195/hour	
Phase I - Non-UGM/Central Area Water Fee																											
Task 1																									6	36	
Task 2								(D)	(M)																24	36	
Task 3 (WYA)																											150
Task 4 (WYA)																											40
Task 5 (WYA)																											20
Task 6																									12	24	
Task 7																									20	40	
																	Subtotal Phase I	Subtotal Phase I		\$79,970							
Phase II - UGM Area Water Fees																											
Task 1																										4	32
Task 2								(D)	(M)																	12	40
Task 3																										12	40
																	Subtotal Phase II	Subtotal Phase II		\$28,140							
Phase III - Sewer Connection Fees																											
Task 1																										16	40
Task 2																										18	60
																	Subtotal Phase III	Subtotal Phase III		\$27,150							
Project Management (BWA)/Contingency																											
Project Management/Coordination (WYA)																			24	24							
																	Subtotal Project Management/Contingency				70	\$24,580					
(D) - Deliverable (M) - Meeting																											
Direct expenses: Travel, meals, lodging Direct expenses: Travel, meals, lodging Registration for City GIS Account for City GIS Account																											
\$500 \$500 \$0 \$1,795																											
																							TOTAL NOT-TO-EXCEED FEE (ALL TASKS)			\$162,635	

(1) Hours noted for Phase I, Tasks 3 - 5 are for West Yost Associates and are billed at their submitted hourly rates



WEST YOST ASSOCIATES, INC. 2010 Billing Rate Schedule

(Effective January 9, 2010 through December 31, 2010)*

Position	Labor Charges (dollars per hr)
Principal/Vice President	216
Engineering Manager	206
Principal Engineer/Scientist	188
Senior Engineer/Scientist/GIS Analyst	169
Associate Engineer/Scientist	151
GIS Analyst	151
Engineer II/Scientist II	134
Engineer I/Scientist I	115
Construction Manager III	164
Construction Manager II	151
Construction Manager I	139
Resident Inspector III	127
Resident Inspector II	117
Resident Inspector I	103
Sr. Designer/Sr. CAD Operator	109
Designer/CAD Operator	97
Technical Specialist II	94
Technical Specialist I	82
Engineering Aide	68
Administrative IV	97
Administrative III	85
Administrative II	73
Administrative I	61

Hourly labor rates include Direct Costs such as general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.

Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, Travel, etc. will be billed at actual cost plus 15%.

Mileage will be billed at the current Federal Rate.

Subconsultants will be billed at actual cost plus 10%.

Computers are billed at \$25 per hour for specialty models and AutoCAD.

A Finance Charge of 1.5 percent per month (an Annual Rate of 18 percent) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

Billing rates apply to all computers and equipment, whether owned or rented by West Yost, and to all employment categories including regular full-time, part-time, limited term and contract personnel as defined in West Yost's Employee Handbook.

*This schedule will be updated annually

WEST YOST ASSOCIATES, INC.
 2010 Billing Rate Schedule
 (Cont'd.)

(Effective January 9, 2010 through December 31, 2010)*

SURVEYING AND EQUIPMENT CHARGES

Position	Labor Charges (dollars per hr)
GPS, 3-Person	333
GPS, 2-Person	284
GPS, 1-Person	223
Survey Crew, 2-Person	242
Survey Crew, 1-Person	182

EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	16	77
pH Meter	5	24
Automatic Sampler	120	658
Transducer/Data Logger	38	190
Hydrant Pressure Gage	11	47
Hydrant Pressure Recorder (HPR)	—	190
Hydrant Wrench	5	30
Pitot Diffuser	27	124
Well Sounder	27	124
Ultrasonic Flow Meter	—	249
Vehicle	82	412
Velocity Meter	11	60
Water Quality Multimeter	163	891
Thickness Gage	—	66

*This schedule will be updated annually

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and Bartle Wells Associates ("CONSULTANT")
Update of Water and Sewer Connection Fees
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

\$1,000,000 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

Update of Water and Sewer Connection Fees
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input 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 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 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 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 type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Signature _____

 (name)

 (company)

 (address)

 (city state zip)

Additional page(s) attached.