

AGENDA ITEM NO.
<u>COUNCIL MEETING</u>
APPROVED BY _____
DEPARTMENT DIRECTOR 
CITY MANAGER _____

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

**BY:** GARTH GADDY, Provisional Water System Manager   
Department of Public Utilities, Water Division

**SUBJECT:** APPROVE PROFESSIONAL SERVICES AGREEMENT WITH ELECTRICAL POWER SYSTEMS, INC. FOR PLANNING AND ENGINEERING DESIGN SERVICES FOR THE INSTALLATION OF TEN EMERGENCY POWER SUPPLY UNITS AT WATER DIVISION PUMP STATIONS

**KEY RESULT AREA**

Public Safety

**RECOMMENDATION**

Staff recommends that the City Council approve an Agreement for \$187,552 with Electrical Power Systems, Inc. for planning and engineering design services for the installation of ten emergency power supply units at Water Division pump stations and authorize the Director of Public Utilities to enter into the agreement on behalf of the City.

**EXECUTIVE SUMMARY**

In 1997, the Water Division installed twenty-six emergency power supply units (Gensets) throughout the City to maintain emergency levels of water service and fire protection during electrical power outages. Since 1997, the City has experienced significant growth resulting in the development of over fifty new water wells without the support of gensets. To ensure a water supply in emergency situations, the Water Division plans to install ten gensets at a rate of two per year over the next five years. As part of the planning and design services to be obtained from Electrical Power Systems, a Genset Planning Study will be prepared to evaluate genset installations at pump stations and propose various alternatives of providing emergency backup power at the Surface Water Treatment Facility (SWTF) in northeast Fresno.

**KEY OBJECTIVE BALANCE**

The project balances the three focus areas of Customer Satisfaction, Employee Satisfaction and Financial Management. Customer satisfaction is derived by determining the most cost-effective design for installing equipment necessary to maintain a safe and reliable water supply during emergency situations. Employee satisfaction and financial management are derived through using technical expertise in evaluating and designing the genset installations to ensure the timely and cost-effective completion of the project.

## REPORT TO THE CITY COUNCIL

Agreement for Planning and Engineering Design Services

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### **BACKGROUND**

The Department of Public Utilities, Water Division, operates approximately 275 water wells and a thirty million gallon per day Surface Water Treatment Facility (SWTF) that supplies the City's potable water for drinking and fire protection. Following a widespread power outage in 1997, the Water Division installed twenty-six gensets at strategically selected pump stations to ensure a water supply during emergency situations. In the years following the initial genset installations, the City has experienced tremendous residential, commercial and industrial growth. This growth has resulted in the development of over fifty new water wells without any additional gensets. Due to the number of new pump stations and additional customers, it has been determined that it is necessary to install ten new gensets to continue to ensure a safe and reliable potable water supply during emergencies. The Water Division's Capital Improvement Program currently allows for the installation of gensets at a rate of two per year for the next five years.

The use of consultant services for this project is due to the complexity involved in evaluating the electrical needs and designing genset installations to provide emergency power for pump stations. Phase One of the project will include a Genset Planning Study that will provide a cost benefit analysis and technical review of genset equipment with regard City pump station operations. This Study will also evaluate various alternatives of providing emergency backup power at the SWTF. The SWTF is a major water supply facility, capable of producing up to thirty million gallons of potable water per day, but is currently susceptible to power outages. The study will provide the Water Division with the necessary analysis to properly plan for a redundant power supply at the SWTF. Once the Genset Planning Study is approved, the consultant will proceed with engineering and design, provide assistance to the City during bidding and construction, and submit San Joaquin Valley Air Pollution Control District permit applications on behalf of the City.

Consultant selection was completed in adherence with Fresno Municipal Code Section 4-109 and Administrative Order No. 6-19. Following the review of statements of qualifications and subsequent interviews, Electrical Power Systems, Inc., was selected to perform the design and related services. The Consultant Services Agreement has been "Approved as to Form" by the City Attorney's Office.

### **FISCAL IMPACT**

This project is funded in the Department of Public Utilities FY08 Capital Improvement Program, Water Enterprise Fund 40101, Project WC00053. No additional appropriations are required.

Attachment:

-Consultant Services Agreement

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

THIS AGREEMENT is made and entered into effective the 1st day of March, 2008 ("Effective Date"), by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Electrical Power Systems Corporation, a California corporation (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain professional engineering services for the study of alternatives to provide emergency backup power for City's surface water treatment plant ("SWTP") and the design of plans and general construction contract documents for Emergency Power Supply Units for Well Site Pump Stations, 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 Utilities 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, Completion Schedule and Liquidated Damages. CONSULTANT shall perform the services described herein and in attached **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 are categorized with the following definitions (such meaning shall apply throughout the Agreement whenever such category is referenced):

- (i) "Initial Study and Two Projects" - Preparation of Genset Planning Study (including Well Site Planning Study and SWTP Emergency Backup Power Study) and Design of two Emergency Power Supply Units for Well Site Pump Stations.
- (ii) "Future Project(s)" - Design of up to eight Emergency Power Supply Units for Well Site Pump Stations as may be authorized by CITY. CITY is contemplating contracting for the design of up to four Future Projects (one per year with each Future Project including the design of two Emergency Power Supply Units for Well Site Pump Stations) in addition to the Initial Study and Two Projects. The number of Future Projects is undetermined and may be none, or some of the four, depending on budgetary constraints. It remains, however, CONSULTANT'S offer, for the term of this Agreement, to perform any Future Project upon receipt of

a Notice to Proceed from CITY. CITY shall pay CONSULTANT for only authorized Future Project(s) satisfactorily performed.

The Initial Study and Two Projects services of CONSULTANT shall consist of six Parts as described below, and services for any separately authorized Future Project shall consist of Parts Two through Six. A separate Notice to Proceed will be issued for each of the aforementioned Parts. A separate Notice to Proceed will be issued for any Future Project.

By entry into this Agreement, and upon CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in Part One for the Initial Study and Two Projects. CONSULTANT shall not perform any other Part of the Agreement or any Future Project, and this Agreement shall not be a contract for any other Part or any Future Project, 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.

It is agreed by CONSULTANT and CITY that in the event that services called for under this Agreement are not completed before or upon expiration of the limits as set forth in the Parts described herein, damage shall be sustained by CITY. Since it is and shall be impractical to determine the actual damage which CITY shall sustain in the event of and by reason of such delay, it is therefore agreed that CONSULTANT shall pay to CITY the amount of \$100.00 per calendar day's delay in completing the services within the limits set forth herein. It is further agreed that CITY may deduct the amount thereof from any money due or that may become due CONSULTANT under this Agreement.

(a) Part One. Evaluation Design Phase.

(1) CONSULTANT shall conduct a project Kick-off Meeting and perform Genset Planning Study as set forth in Section B, Tasks 100 and 200 of **Exhibit A**.

(2) CONSULTANT shall conduct studies and investigations as necessary to complete requirements for the Planning Study 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, reports, information, as-built plans, restrictions and easements.

(3) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY.

(4) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 45 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 15 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

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

(1) CONSULTANT shall perform predesign as set forth in Section B, Task 300 of **Exhibit A**, and consult with designated representatives of CITY to ascertain the

requirements of the project, including CITY'S written estimate of the cost of construction ("Construction Budget") set forth in the Notice to Proceed.

(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, reports, information, restrictions and easements.

(3) CONSULTANT shall provide a Preliminary Design Report as described in Section B, Task 300 of **Exhibit A** and taking into consideration the Construction Budget, including alternative approaches to design and construction of the project.

(4) 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.

(5) CONSULTANT shall make as many as three submittals (including revisions) 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.

(6) 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.

(7) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 45 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 15 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

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

(1) CONSULTANT shall perform the services described in Section B, Task 400 of **Exhibit A**.

(2) Based upon the accepted design report 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.

(3) 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.

(4) 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 2 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.

(5) CONSULTANT shall make as many as three submittals (including revisions) 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.

(6) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 60 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 15 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

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

(1) CONSULTANT shall perform the services described in Section B, Task 500 of **Exhibit A**.

(2) 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 or 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.

(3) 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 building permits.

(4) CONSULTANT shall make as many as three submittals (including revisions) 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.

(5) CONSULTANT shall provide CITY with 5 sets of completed plans and 5 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.

(6) CONSULTANT shall submit 4 sets of plans and 2 sets of calculations to the CITY'S Planning and Development Department for plan check. CONSULTANT shall respond to CITY'S Planning and Development Department plan check comments and modify the plans and specifications accordingly. CONSULTANT shall attend all plan check and backcheck appointments with the CITY'S Planning and Development Department which are required for its issuance of permits.

(7) 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: Auto CAD 2006 and MS Word.

(8) 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.

(9) 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 3 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.

(10) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 60 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 15 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(e) Part Five. 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 Five:

(1) CONSULTANT shall perform the services described in Section B, Task 600 of **Exhibit A**.

(2) 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.

(3) Upon request of CITY, CONSULTANT shall expeditiously draft addendum as determined by CITY to be reasonable or necessary for the bidding process.

(4) 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 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(d) 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%.

(f) Part Six. 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 Six, and will terminate when a Notice of Completion is filed. Upon award of a general construction contract and under the direction of the Director through CITY'S designated Construction Manager:

(1) CONSULTANT shall perform the services described in Section B, Task 700 and 800 of **Exhibit A**.

(2) 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.

(3) CONSULTANT shall review and recommend in writing to CITY acceptance or nonacceptance 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.

(4) 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 judgement of the acceptability of the work for payment applications and final acceptance, subject to CITY'S right to overrule CONSULTANT.

(5) 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.

(6) 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.

(7) 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.

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

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

(10) 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 60 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 30 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.

(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(f) 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 in accordance with the fees described in the following paragraphs of this Subsection (a), and a contingency amount not to exceed \$20,000 for any additional services rendered pursuant to Subsection (d) below and authorized in writing by the Director. The applicable total maximum fee and respective rates for any Future Project shall be determined based upon the date that the respective Notice to Proceed is issued for Part Two for that Future Project.

(1) Initial Study and Two Projects: A total fee not to exceed \$43,858, paid on the basis of the rates for "Initial Study and Two Projects" set forth in the schedule of fees contained in **Exhibit A**. [For purposes of determining the division of this maximum total compensation, Part One - \$6,000; Parts Two through Six - \$37,858 per two well sites allocated in accordance with Section 3(c) below.]

(2) Future Project (Notice to Proceed is issued between March 1, 2009 and February 28, 2010 for two well sites): A total fee not to exceed \$34,300 per two well sites, paid on the basis of the rates for "Future Project - NTP issued between March 1, 2009 and February 28, 2010" set forth in the schedule of fees contained in **Exhibit A**.

(3) Future Project (Notice to Proceed is issued between March 1, 2010 and February 28, 2011 for two well sites): A total fee not to exceed \$35,350 per two well sites, paid on the basis of the rates for "Future Project - NTP issued between March 1, 2010 and February 28, 2011" set forth in the schedule of fees contained in **Exhibit A**.

(4) Future Project (Notice to Proceed is issued between March 1, 2011 and February 28, 2012 for two well sites): A total fee not to exceed \$36,412 per two well sites, paid on the basis of the rates for "Future Project - NTP issued between March 1, 2011 and February 28, 2012" set forth in the schedule of fees contained in **Exhibit A**.

(5) Future Project (Notice to Proceed is issued between March 1, 2012 and February 28, 2013 for two well sites): A total fee not to exceed \$37,632 per two well sites, paid on the basis of the rates for "Future Project - NTP issued between March 1, 2012 and February 28, 2013" set forth in the schedule of fees contained in **Exhibit A**.

(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. 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) 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 per well site shall be allocated to Parts Two through Six of CONSULTANT'S performance as follows: Part 2 - 9%, Part 3 - 19%, Part 4 - 39%, Part 5 -13% and Part 6 - 20%. 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 (including, without limitation, those additional services described in Section D of **Exhibit A**), 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 Four for the respective project, changes due to Code revisions or enactments adopted after such date shall constitute additional services subject to this Section 3(d).

4. Term of Agreement. Unless otherwise terminated as provided in this Agreement, this Agreement shall remain in effect for a period of five years beginning on the Effective Date of this Agreement and ending on February 28, 2013; provided, however, in the event that CITY has issued a Notice to Proceed to begin a Future Project(s), this Agreement shall remain in effect until completion of all respective Parts for which CITY issues a Notice to Proceed in accordance with Section 1, above.

5. 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 including, but not limited to, any liquidated damages. 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 termination or expiration of the Agreement, 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, liquidated, 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.

#### 6. 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 6 shall survive expiration or termination of this Agreement.

7. 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.

8. 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.

9. 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, and any additional insurance as may be required, 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.

10. 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 10 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 10 shall survive expiration or termination of this Agreement.

11. 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.

12. 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 12(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 Mark Ysusi, and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

13. 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.

14. 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.

15. 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.

16. Binding. Subject to Section 17 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

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

26. 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.

27. 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.

28. 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.

29. 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

ELECTRICAL POWER SYSTEMS  
CORPORATION,  
a California corporation

By: \_\_\_\_\_  
Rene Ramirez, Director  
Department of Public Utilities

By: *Joe Prevendar*  
Name: Joe Prevendar

ATTEST:  
REBECCA E. KLISCH  
City Clerk

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

By: \_\_\_\_\_  
Deputy

By: *Theresa Hagans*  
Name: Theresa Hagans

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

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

By: *Nancy A. Algier* 1-29-08  
Nancy A. Algier Date  
Senior Deputy

Any Applicable Professional License:  
Number: CA 16581  
Name: Joseph P. Prevendar  
Date of Issuance: 12-14-2001

REVIEWED BY:

\_\_\_\_\_  
Lon Martin, Assistant Director  
Department of Public Utilities

Addresses:

CITY:  
City of Fresno  
Attention: Michael Carbajal,  
1910 E. University Avenue  
Fresno, CA 93703-2988  
Phone: (559) 621-5319  
FAX: (559) 457-1329

CONSULTANT:  
Electrical Power Systems Corporation  
Attention: Joe Prevendar, PE  
4049 N. Fresno Street  
Fresno, CA 93726  
Phone: (559) 221-7230  
FAX: (559) 221-0507

**Exhibit A**

**SCOPE OF SERVICES**  
**Consultant Service Agreement between City of Fresno**  
**and Electrical Power Systems Corporation**  
Genset Planning Study & Emergency Power Supply Units for Well Site Pump Stations  
PROJECT TITLE

**A. Background**

The City of Fresno (City) owns and operates approximately 275 water wells that supply the majority of City's potable water for drinking and fire protection. There are no elevated storage reservoirs in the Fresno water system and a complete loss of electrical power prior to 1997 resulted in widespread loss of water throughout the City. In 1997, twenty-six emergency backup power systems (Gensets) were installed throughout the City to maintain water pressure and provide fire protection during power failures. The City, however, has continued to grow and there has been significant development since 1997 with a number of wells having been added to the water system without the support of emergency backup power systems. Installation of new Gensets will be necessary to insure the continued supply of water during emergencies. The City's current plan is to initially install Gensets at two well sites and then, depending upon budgetary constraints, install Gensets at the rate of two (2) per year for a total of ten (10) new installations over the next five (5) years.

The table below lists the ten well sites that are currently identified by the City as candidates for Genset installations. The City may substitute any of these sites with others at their discretion. Any well site selections for the respective year will be provided to Electrical Power Systems, Inc. (EPS) by the City.

<u>Well Site</u>	<u>Location</u>
132	1749 E. Serena
318	9503 N. Fine
69 and FS5	3145 N. Fresno
320	3765 N. Marty
33A	2059 S. Hazelwood Blvd.
159	7022 N Warren
3A	1430 Santa Clara
TBD	TBD
TBD	TBD
TBD	TBD

EPS will provide to the City a concise report analyzing alternatives for providing emergency backup power for the City's existing 30-MGD surface water treatment plant (SWTP) in northeast Fresno. The general nature of this study would be to determine the most reliable and cost-effective alternative of providing emergency backup power.

## **B. Work Tasks**

The following work tasks related to the Genset Planning Study and professional engineering services to be performed by EPS [any work by EPS on any Future Project(s) will begin with the Phase 2 – Schematic Design described below]:

### **Phase 1 - Evaluation Design Phase**

#### **Task 100 – Kick Off Meeting/Review of Background Information**

EPS will organize a kick off meeting with City staff to review the project scope and the task list and scope to complete the project successfully. Prior to this meeting, the City will provide available and identifiable as-built plans for the well and SWTP sites tentatively selected by the City and listed in the table above. One kick off meeting will be conducted for the entire project at the beginning of the project. EPS will document minutes of the kick off meeting.

#### **Task 200 – Genset Planning Study**

EPS will conduct a Genset Planning Study and report that will be completed within 45 calendar days after receipt of the Notice to Proceed and as-built plans and information on existing sites from the City. The study will include a planning study primarily focused on well site Genset installations and include a study that evaluates various alternatives of providing emergency backup power at the SWTP. The SWTP study is intended to provide the City with guidance information that will assist them in determining if, and how, emergency power could effectively be provided at the SWTP. Both elements of the Genset Planning Study will be furnished to the City in one report. This scope of services includes one Genset Planning Study as the first phase of the Project.

EPS shall submit four (4) draft copies of the Genset Planning Study to City of Fresno Water Division staff for review and comment. Water Division Staff comments will be incorporated into the final Genset Planning Study/Design Guidelines. Four (4) copies of the final Genset Planning Study with Design Guidelines, stamped by a licensed engineer, will be furnished to the City. The decisions and directions made as a result of this study will document and provide guidance in the design of Gensets for any Future Projects.

#### **Well Site Planning Study**

The well site Genset Planning Study will include the following key items:

- Preparation of a cost-benefit analysis of variable frequency drives (VFDs) versus larger (if required) generators. Assumptions concerning estimated equipment, operation, maintenance, power, and costs and the estimated useful equipment life durations used in developing the cost-benefit analysis will be documented as a part of the analysis.
- Evaluation of the feasibility of adding load banks to the Genset installations in sufficient detail to provide a basis for using or not using load banks as a part of the Genset installations.

- Evaluation of diesel, natural gas, and propane emergency power supply units will be provided in sufficient detail to provide guidance to the City to determine which of the listed fuels provides the highest reliability and lowest cost of ownership for the Gensets.

### **SWTP Emergency Backup Power Study**

Primary alternatives to be studied include one large Genset to provide sufficient backup power to keep the entire plant running at a high flow rate, one smaller Genset to provide sufficient power to keep critical portions of the plant running at a reduced flow rate, and paralleling Gensets that allow future additional Gensets.

The SWTP Backup Power Study will include the following key items:

- EPS Electrical Engineers will meet with City SWTP operations staff in order to develop a more thorough understanding of the plant's typical current and anticipated operation and to develop a prioritization of treatment and pumping elements of the plant that are the minimum needs to provide water to the public in an emergency. Alternative emergency operational scenarios for the plant will be determined.
- Using "as constructed" electrical site, single line, P&ID, and motor control plans furnished by the City, EPS will develop various alternatives for providing emergency backup power to the plant or selected portions of the plant.
- EPS will then develop preliminary cost estimates of the various alternatives along with a short description of each alternative, its general function, along with its pros and cons.

### **Phase 2 - Schematic Design Phase**

#### **Task 300 – Preliminary Engineering**

EPS will provide preliminary engineering for the respective well sites selected for new Genset installation. An Electrical Engineer will visit the City-selected well site to obtain information required to perform generator sizing calculations and prepare preliminary drawings.

Preliminary engineering for the site will typically include the following key items:

- After meeting with Water Division staff, a field review of the selected sites will be conducted to obtain general information to be used for preliminary design, to look for potential nearby construction considerations (such as site access).
- Generator-sizing calculations for the site. Evaluation of the existing starter type to determine if it is replaced, a smaller Genset could be used.
- City to provide AutoCAD files of existing site plans, single lines and motor controls.
- Preliminary site plan(s) of the well site(s) showing the proposed location(s) and size(s) of the new standby generator(s) to be submitted with the Conditional Use Permit application(s). The preliminary site plans will show the distances to nearby residences. City staff will prepare the CUP application(s) and handle CUP processing.
- Preliminary opinion(s) of the probable construction cost(s), including additive or deductive alternates, as applicable.

EPS shall submit four (4) hard copies of the preliminary engineering work, including the preliminary site plan(s) to City of Fresno Water Division staff. The preliminary engineering shall be stamped by a licensed engineer.

### **Phase 3 - Design Development Phase**

#### **Task 400 – Preliminary Design**

EPS shall prepare preliminary plans and technical specifications (P&TS) for the Genset installations. The P&TS shall be submitted to City of Fresno Water Division staff for review at approximately the 60 and 90 percent completion level for the respective well site(s) being designed. One or two bid packages shall be prepared for up to two well sites, in the sole discretion of City. Five sets of plans and technical specifications for the respective well site(s) shall be provided for City review and comment at each submittal.

EPS shall attend a meeting with City staff after City review of the P&TS to obtain review comments. EPS shall incorporate City comments into the final P&TS.

### **Phase 4 - Construction Document Phase**

#### **Task 500 - Final Plans and Specifications**

Upon receipt of City comments on the 90 percent completion P&TS, final P&TS shall be prepared and submitted for final review and acceptance by the City Water Division and other various city departments as well as to obtain permits from the Fresno Building and Safety Department, if necessary. Structural calculations for the Genset concrete pads and anchor bolts shall be provided for review and approval by the Fresno Building and Safety Division of the City's Planning and Development Department. City comments on the preliminary plans and specifications shall be incorporated into the final plans and specifications. The plans shall be prepared on 22" x 34" or similar size sheets. All sheets shall be stamped by a licensed engineer. The technical specifications for the new Genset work shall be prepared by EPS in CSI format for inclusion in City standard bid (or other procurement methods) documents.

EPS shall prepare a current final opinion of probable construction costs for each new Genset being installed.

### **Phase 5 - Bidding Phase**

#### **Task 600 – Bidding Phase Services**

EPS will assist the City of Fresno Water Division during the advertising period by answering questions from interested bidders to the City and attending a prebid meeting for each bid package. EPS will attend the bid openings, evaluate bid proposals, and assist in identifying the lowest responsive and responsible bidder. Reproduction of the plans and contract documents for bidding purposes and advertising costs will be the responsibility of the City.

## **Phase 6 - Construction Phase and General Construction Contract Administration**

### **Task 700 – San Joaquin Valley Air Pollution Control District Permit**

EPS shall complete and submit San Joaquin Valley Air Pollution Control District (SJVAPCD) permit applications for the selected standby Gensets. EPS shall also provide normal follow-up work with SJVAPCD necessary to clarify issues and secure permits. Fees for the permits shall be paid directly by the City.

### **Task 800 - Construction Phase Services**

EPS shall attend preconstruction meetings with City staff and the contractor(s) selected for the work for the respective well site(s). EPS shall act on the City's behalf in discussing various aspects of the construction phase

EPS will also review equipment and material submittals (shop drawings) and recommend in writing to City acceptance or non-acceptance. EPS shall respond to requests for information (RFI's) from the contractor or from City inspection staff during construction. EPS's inspector or designated qualified representative shall make visits to the construction site (approximately three per well site) to determine, in general, if the work is proceeding in accordance with the construction contract documents. EPS's site visit efforts will be directed toward providing a greater degree of confidence for the City of Fresno that the complete work of the contractor will generally conform to the contract documents. EPS shall attend a final walk-through once construction is completed and shall develop a punch list of items needing correction before project acceptance.

The construction contractor shall be held entirely responsible for maintaining on-site safety during all phases of the construction work. Operations manuals as required in the technical specifications and prepared by the construction contractor shall be reviewed by EPS for conformance with the contract documents.

Record drawings shall be provided by EPS in hard copy and electronic format in AutoCAD based on marked-up plans provided by the construction contractor and City inspectors reflecting significant changes made during construction.

#### **C. Asbestos or Hazardous Material**

In providing its services described herein, EPS shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the project. However, in the event that EPS becomes aware of the presence of asbestos or hazardous material at the jobsite, EPS shall immediately notify City, who shall then be entitled to cease any of its services that may be affected by such presence, without any liability to City arising therefrom.

#### **D. Additional Services**

EPS shall be compensated by City for additional services provided by EPS as requested in writing by City pursuant to the Additional Services section of this Agreement in accordance with the Hourly Rate Schedule in effect at the time of performance of the additional services and subject to any maximum amount mutually agreed to in writing.

The following engineering services are excluded from this Agreement and may be provided by EPS upon written request of the City and execution by both parties of an amendment to this Agreement setting forth applicable scope, fee, and schedule provisions:

1. Potholing of existing underground utilities.
2. Construction surveys to enable contractor(s) to proceed with the layout of the work.
3. Services resulting from significant changes in extent of the project or its design including, but not limited to, changes in size, complexity, or the City's schedule.
4. Investigations involving detailed consideration of operations, maintenance, and overhead expenses other than those specifically detailed in this scope of services, providing value engineering during the course of design; or the preparation of cash flow and economic evaluations and rate schedules. Assistance in obtaining financing for the project.
5. Preparing to serve or serving as an expert witness for the City in any litigation, public hearing, or other legal or administrative proceeding involving the project.
6. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) prolongation of the contract time of any prime construction contract by more than 30 days, and (3) acceleration of the progress schedule involving services beyond normal working hours.
7. Assistance in the utilization of any equipment or system and training personnel for operation and maintenance.
8. Services after completion of the construction phase, such as inspections during any guarantee period and reporting observed discrepancies under the guarantees called for in the construction contract for the project.
9. Arc Flash hazard analysis and labeling.

### Schedule of Fees

#### Initial Study and Two Projects:

	Hourly Rate*
PRINCIPAL	\$ 200.00
E.I.T.	\$ 170.00
FLD. TECH./DSG NR	\$ 145.00
DRAFTING TECH	\$ 110.00
CAD ADDER	\$ 7.00
CLERICAL	\$ 80.00
	<b>Flat Rate Per Two Well Sites*</b>
STRUCTURAL CONSULTANT	\$2500.00

\* Such rates include all expenses incurred by EPS in performance of the services.

#### Future Project – NTP Issued Between March 1, 2009 and February 28, 2010:

	Hourly Rate*
PRINCIPAL	\$ 206.00
E.I.T.	\$ 175.00
FLD. TECH./DSG NR	\$ 149.00
DRAFTING TECH	\$ 113.00
CAD ADDER	\$ 7.00
CLERICAL	\$ 82.00
	<b>Flat Rate Per Two Well Sites*</b>
STRUCTURAL CONSULTANT	\$2600.00

\* Such rates include all expenses incurred by EPS in performance of the services.

**Future Project – NTP Issued Between March 1, 2010 and February 28, 2011:**

	<b>Hourly Rate*</b>
PRINCIPAL	\$ 212.00
E.I.T.	\$ 180.00
FLD. TECH./DSG NR	\$ 153.00
DRAFTING TECH	\$ 116.00
CAD ADDER	\$ 8.00
CLERICAL	\$ 85.00
	<b>Flat Rate Per Two Well Sites*</b>
STRUCTURAL CONSULTANT	\$2700.00

\* Such rates include all expenses incurred by EPS in performance of the services.

**Future Project – NTP Issued Between March 1, 2011 and February 28, 2012:**

	<b>Hourly Rate*</b>
PRINCIPAL	\$ 218.00
E.I.T.	\$ 185.00
FLD. TECH./DSG NR	\$ 158.00
DRAFTING TECH	\$ 120.00
CAD ADDER	\$ 8.00
CLERICAL	\$ 88.00
	<b>Flat Rate Per Two Well Sites*</b>
STRUCTURAL CONSULTANT	\$2800.00

\* Such rates include all expenses incurred by EPS in performance of the services.

**Future Project – NTP Issued Between March 1, 2012 and February 28, 2013:**

	<b>Hourly Rate*</b>
PRINCIPAL	\$ 225.00
E.I.T.	\$ 190.00
FLD. TECH./DSGNR	\$ 163.00
DRAFTING TECH	\$ 124.00
CAD ADDER	\$ 9.00
CLERICAL	\$ 91.00
	<b>Flat Rate Per Two Well Sites*</b>
STRUCTURAL CONSULTANT	\$2900.00

\* Such rates include all expenses incurred by EPS in performance of the services.

**Exhibit B**

**INSURANCE REQUIREMENTS**  
**Consultant Service Agreement between City of Fresno**  
**and Electrical Power Systems Corporation**  
Genset Planning Study & Emergency Power Supply Units for Well Site Pump Stations  
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
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.

#### **Other Requirements**

CONSULTANT'S owned or leased property or property in its care, custody and control, will be at the risk of the CONSULTANT only and the CITY will not be liable for any damage thereto or theft thereof. Further, CONSULTANT waives its right of recovery, and its insurers also waive their right of recovery, against CITY for loss of its owned or leased property or property in its care, custody and control. The phrase "owned or leased property or property in its care, custody and control" shall include, without limitation, tools, equipment, fixtures, materials and parts.

#### **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. The words "endeavor to" and "but the failure to do so shall impose no obligation upon the insurer, its agents or representatives" shall be deleted or eliminated from the Cancellation wording in the lower right hand corner of the certificate.

**Exhibit C**

**DISCLOSURE OF CONFLICT OF INTEREST**

Genset Planning Study & Emergency Power Supply Units for Well Site Pump Stations  
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: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Joseph P. Prevedar  
 Signature  
Joseph P. Prevedar, P.E.  
 (name)  
Electrical Power Systems, Inc.  
 (company)  
4049 N. Fresno Street  
 (address)  
Fresno, CA 93726  
 (city state zip)

Additional page(s) attached.