

AGENDA ITEM NO. 1 B  
COUNCIL MEETING 3/18/2010  
APPROVED BY

March 18, 2010

*Four*  
DEPARTMENT DIRECTOR *Car M. P. [Signature]*  
CITY MANAGER

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

**BY:** MARTIN A. QUERIN, P.E., Assistant Director *L.M.*  
Department of Public Utilities – Water Division

**SUBJECT:** APPROVE REIMBURSEMENT AGREEMENT FOR COOPERATIVE AGENCY GROUNDWATER RECHARGE INFRASTRUCTURE CONSTRUCTION PROJECTS BETWEEN THE CITY OF FRESNO AND THE FRESNO METROPOLITAN FLOOD CONTROL DISTRICT RANGING IN COSTS APPROXIMATELY \$50,000 - \$300,000 AND AUTHORIZE THE DIRECTOR OF PUBLIC UTILITIES TO SIGN ALL NECESSARY DOCUMENTS ON BEHALF OF THE CITY

### RECOMMENDATIONS

Staff recommends that the City Council:

- 1) Approve the Reimbursement Agreement for Cooperative Agency Groundwater Recharge Infrastructure Construction Projects between the City of Fresno (City) and the Fresno Metropolitan Flood Control District (District).
- 2) Authorize the Director of Public Utilities to sign all necessary documents on behalf of the City.

### EXECUTIVE SUMMARY

The overall objective of the Reimbursement Agreement (Agreement) is to provide the City and District the ability to establish annual funding, and expedite prioritized groundwater recharge construction projects to achieve the goals contained in the adopted (August 21, 2008) Urban Water Management Plan (UWMP). The UWMP dictates an increase in recharge water operations from a volume of 38,100 acre feet (a.f.) in 2007 to 58,000 a.f. by 2025 in order to balance to groundwater pumping from the aquifer.

In cooperation with the District to meet these goals, critical projects will be identified, funded, and approved on an annual basis, thereby establishing a two-fold benefit to the City: limit funding to only those projects approved on an annual basis, and expediting project construction in meeting UWMP groundwater recharge expansion goal timelines.

### BACKGROUND

On December 23, 1991, the City and District entered into an "Agreement for Use of Basins for Groundwater Recharge." Since, this Agreement was amended on April 8, 2004, July 13, 2005, and April 18, 2007, and is collectively referred to as the Recharge Agreement. According to the Recharge Agreement, the City may construct connections or facilities necessary to convey and discharge water into those basins authorized by the District for the purpose of groundwater recharge.

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To help ensure timely completion of these groundwater recharge connections and facilities, and meet UWMP goals, a list of prioritized projects will be mutually-agreed upon, approved, and budgeted by the City and District for each fiscal year. This streamlined approach will substantially reduce existing administrative timelines and costs associated with generation of individual project agreements. This in-turn will help expedite project completion schedules.

Project development and associated costs will include a ten-percent (10%) contingency allowance, and will be included in the City's budget brought before Council each fiscal year for consideration and approval.

With Council approval, the Agreement will provide an avenue to accelerate expansion and completion of the groundwater recharge program to meeting the UWMP goals, and reducing contract administration costs.

The proposed groundwater recharge expansion budget includes several previously identified projects which may be implemented in FY11. It is anticipated that annual funding may range from \$50,000 to \$300,000 to cover the cooperative projects.

The Agreement has been approved-to-form by the City Attorney's Office.

**FISCAL IMPACT**

Funding for anticipated projects during FY11 will be covered under WC00033 (Fund 40101) in the Water Enterprise Fund. No additional funding is required.

**Attachment:**

- Reimbursement Agreement for Cooperative Agency Groundwater Recharge Infrastructure Construction Projects

**AGREEMENT No. 1623(G)**

**REIMBURSEMENT AGREEMENT FOR COOPERATIVE AGENCY GROUNDWATER RECHARGE INFRASTRUCTURE CONSTRUCTION PROJECTS**

**THIS REIMBURSEMENT AGREEMENT (AGREEMENT)** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (“Effective Date”) by and between the Fresno Metropolitan Flood Control District, a California public corporation herein referred to as the “DISTRICT” and the City of Fresno, a California municipal corporation, hereinafter referred to as the “CITY”.

**WITNESSETH**

WHEREAS, DISTRICT has adopted and bears responsibility for implementation of its Storm Drainage and Flood Control Master Plan; and

WHEREAS, CITY bears responsibility for managing the municipal water supply; and

WHEREAS, DISTRICT purchases, excavates and installs basin improvements in various properties acquired for the purpose of providing urban storm water disposal to a certain portion of the metropolitan area; and

WHEREAS, such basin improvements are capable of receiving and percolating surface water during a portion of the year; and

WHEREAS, CITY actively replaces a portion of the water removed from the water table through a groundwater recharge program; and

WHEREAS, CITY and DISTRICT entered into an “Agreement for Use of Basins for Groundwater Recharge” on December 23, 1991, as amended April 8, 2004, July 13, 2005, and April 18, 2007 (collectively referred to herein as the “Recharge Agreement”); and

WHEREAS, pursuant to the Recharge Agreement, CITY may construct connections or facilities necessary to convey and discharge water for recharge into the DISTRICT basin improvements in accordance with plans and specifications approved by DISTRICT (such connections or facilities shall individually and collectively hereafter be referred to as “Discharge Improvements”); and

WHEREAS, such Discharge Improvements placed upon DISTRICT easements or property by CITY remain the property of CITY and may be removed by CITY at its election provided that such Discharge Improvements can be removed without damage to property of DISTRICT; and

WHEREAS, from time to time, CITY desires that DISTRICT conduct land purchases, environmental and design engineering work, "exceptional maintenance" (i.e., that requiring one-time greater maintenance by DISTRICT of its facilities than DISTRICT's standard maintenance practice for the sole purpose of accommodating construction of the Discharge Improvements), and the construction and installation of Discharge Improvements authorized and approved by CITY necessary for its Discharge Improvements and for the benefit of its groundwater recharge program activities; and

WHEREAS, CITY and DISTRICT continue cooperative efforts in the coordination and planning of infrastructure projects in a manner that will provide expediency and will be of benefit and economic savings to both parties, eliminating the unnecessary removal and replacement of infrastructure; and

WHEREAS, this cooperative effort is critical to achieve the goals contained in the CITY's adopted (August 21, 2008) Urban Water Management Plan which outlines necessary increases to its groundwater recharge operations from 38,100 acre feet (a.f.) in 2007 to 85,000 a.f. by 2025 to bring a balance to groundwater pumping and recharge operations; and

WHEREAS, annually, in preparation for fiscal budgets, a list of such beneficial projects may be developed, and agreed upon by both parties, and be included in the annual budget for consideration and approval by CITY's governing body ("City Council").

**NOW, THEREFORE**, in consideration of the above recitals, and for valuable consideration hereby acknowledged, the parties agree as follows:

**1. Project Development and Cost Estimates:** For each fiscal year (i.e., July 1 through June 30) during this AGREEMENT beginning with fiscal year 2011 (i.e., July 1, 2010 through June 30, 2011) through fiscal year 2015, DISTRICT and CITY shall work cooperatively to develop and agree on a list of anticipated projects related to groundwater recharge program activities, including estimated costs for design and construction of Discharge Improvements.

2. **Budget Approval:** Based on the anticipated projects and estimated costs for the respective fiscal year, CITY's budget may include such costs and a ten percent (10%) contingency for CITY's portion of project design, construction and completion for City Council consideration and approval for each fiscal year.

3. **Preliminary Project Scope and Cost Estimate Acceptance:** After City Council approval of the CITY's budget, DISTRICT shall, in a timely manner and prior to occurrence of any such project(s) included in said approved budget that does not involve state or federal funding in part or in whole (individually referred to herein as "Project"), submit a proposed scope of work and Project schedule, including preliminary Project design and construction cost estimate(s) for review and authorization by CITY. Design of the Project shall be by a licensed professional engineer. Upon acceptance of the proposed scope of work, Project schedule and preliminary cost estimate(s) for the Project, CITY's Director of Public Utilities or his/her designee ("Director") may authorize DISTRICT in writing to proceed in providing final plans, specifications, Project schedule and cost estimates for each Project, provided that the total preliminary cost estimate for each Project is within identified CITY budget limits ("Authorized Expenditure") for the respective Project.

4. **Final Plans and Specifications:** Upon obtaining Director's prior written authorization to proceed, DISTRICT shall in a timely manner prepare final plans, specifications, Project schedule and cost estimates for the respective Project and submit to the Director for his/her review and written acceptance. Upon acceptance of the final plans, specifications, Project schedule and cost estimate(s) for the respective Project, the Director may authorize DISTRICT in writing to proceed to advertise for bids from licensed general construction contractors for the construction of the Project, provided that the total final cost estimate for the Project is within the Authorized Expenditure for the respective Project. For purposes of the Recharge Agreement, all final plans, specifications and any final Project schedule accepted by the Director hereunder shall be deemed to be approved by DISTRICT.

5. **Bidding and Award of Project Construction Contract:** Upon obtaining the Director's prior written authorization to proceed, DISTRICT shall in a timely manner advertise for bids from licensed general construction contractors for the construction of the Project. DISTRICT shall award and enter into a contract with the lowest responsive and responsible bidder, provided

that either the total amount of the bid is within the final cost estimate for construction authorized by the Director as part of the total final cost estimate for the Project in Section 4 above, or DISTRICT has obtained the Director's prior review of the bid and written authorization to award the contract in accordance with Section 7 below.

**6. Administration of Construction Contract and Change Orders:** Upon award of a contract for construction of the Project in accordance with Section 5 above, DISTRICT shall administer and manage the construction through completion of the Project. CITY and DISTRICT agree that all change orders for the respective Project shall be subject to the prior written acceptance of the Director in accordance with Section 7 below.

**7. Director Acceptance and Authorization:** Any acceptance or authorization by the Director hereunder will be in a timely manner, provided, however, in the event that any acceptance or authorization is for a total cost estimate, bid award or contract change order that results in the total costs for the Project exceeding the Authorized Expenditure for said Project, then such acceptance or authorization is subject to prior City Council approval and appropriation of funds. DISTRICT shall cooperate with CITY in containing costs by exercising all reasonable effort to design, construct and administer each Project within the respective Authorized Expenditure.

**8. Discharge Improvements:** In addition to the Project requirements above for Discharge Improvements of the Project, DISTRICT shall on behalf of CITY, (i) obtain all necessary permits; (ii) acquire all necessary easements requested and approved by CITY and convey such easements to CITY by a Deed of Easement; (iii) acquire all necessary real property (other than easements) requested and approved by CITY and convey such property to CITY by a Deed in Fee Simple; and (iv) prepare plans and specifications for the Discharge Improvements for the Project in accordance with CITY Standard Plans and Specifications and cause them to be constructed in accordance therewith. Notwithstanding the foregoing, DISTRICT is not obligated to acquire any property rights hereunder through the exercise of the power of eminent domain. DISTRICT shall obtain from the general construction contractor and any supplier for the respective Project, and provide CITY with, all warranties for the Discharge Improvements. CITY shall own, operate and maintain the Discharge Improvements. DISTRICT shall own, operate, maintain and be responsible for any costs

and liability for any infrastructure, facilities or other portion of the Project that does not constitute Discharge Improvements.

**9. Reimbursement to DISTRICT:** After written authorization to proceed by CITY, DISTRICT will provide CITY itemized monthly invoices based on those design and construction expenditures defined within the scope of work and any applicable contract change order for the Discharge Improvements for each Project including any "exceptional maintenance" costs incurred by DISTRICT necessary for construction of such Discharge Improvements. DISTRICT's invoice(s) shall be for work completed and accepted by CITY, and shall include a description of work performed, status of the work, an accounting of costs and fees incorporated into the invoice, and an estimate of the remaining costs and fees to be incurred to complete the work. Should DISTRICT or CITY elect not to proceed with any portion of an approved Project, notification by the rescinding agency must be submitted to the other by written notice or facsimile as soon as possible, but in any event within twenty-one (21) calendar days of such decision and prior to contract award for construction of the Project. Upon such notification, CITY shall only be responsible for paying DISTRICT any actual incurred costs for any easement/land acquisition(s) or design work subject to receipt of an itemized invoice from DISTRICT. All undisputed invoices will be due and payable to DISTRICT within forty-five (45) days of receipt by CITY. The parties hereto shall make reasonable efforts to resolve any disputed invoice, including elevation of the invoice to the chief executive level within the respective agency if efforts at lower administrative levels are unsuccessful.

**10. Inspection of Project(s):** DISTRICT shall inspect and approve or disapprove the construction for the Project(s) in accordance with the respective final plans, specifications and Project schedule accepted by CITY. Within four (4) calendar days after receipt of DISTRICT's notification of Project completion, CITY shall inspect the Project(s) and (i) accept, in writing, those portions of the Project(s) which conform in all material respects to the respective final plans, specifications and Project schedule accepted by CITY; and (ii) notify DISTRICT in writing of any portions of the Project(s) which do not so conform, and specific respects in which they do not conform. DISTRICT shall resolve any non-conformance in a timely manner at no additional cost to CITY.

**11. Environmental and Design Professional Engineer Indemnification and Insurance Requirements:** DISTRICT shall incorporate the provisions in **Exhibit A** in all consultant environmental engineering agreements and in all consultant design engineering agreements for Projects with the respective environmental engineer and design professional engineer (each engineer of a consultant agreement hereinafter referred to as the "Consultant").

**12. General Construction Contractor Indemnification and Insurance Requirements:** DISTRICT shall incorporate the provisions in **Exhibit B** in all construction contracts for Projects with the general construction contractor ("Contractor").

**13. CITY as Third Party Beneficiary in General Construction Contract:** DISTRICT shall incorporate a provision in all construction contracts and consultant design engineering agreements for Projects with the respective Contractor and Consultant making CITY a third party beneficiary under said contract and agreement of all DISTRICT rights and interests thereunder.

**14. Indemnification and Insurance:** DISTRICT 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) incurred by CITY, DISTRICT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of DISTRICT or any of its directors, officers, officials, employees, agents or volunteers in the performance of this AGREEMENT.

CITY shall indemnify, hold harmless and defend DISTRICT and each of its directors, 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) incurred by DISTRICT, CITY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of CITY or any

of its officers, officials, employees, agents or volunteers in the performance of this AGREEMENT.

In the event of concurrent negligence on the part of DISTRICT or any of its directors, officers, officials, employees, agents or volunteers, and CITY or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This and the preceding paragraphs of this section shall survive termination or expiration of this AGREEMENT.

It is understood and agreed that DISTRICT and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its directors, officers, officials, agents, employees and volunteers. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this AGREEMENT.

**15. 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.

**16. Records Retention:** Records of DISTRICT expenses pertaining to its performance of this AGREEMENT shall be kept on a generally-recognized accounting basis. All records pertaining to DISTRICT'S performance under this AGREEMENT shall be maintained and made available to CITY or its authorized representative(s) upon request during regular business hours throughout the life of this AGREEMENT and for a period of three years after final payment by CITY pursuant to this AGREEMENT, or if longer, for any period required by law. In addition, all books, documents, papers, and records of DISTRICT pertaining to its performance hereunder shall be available to CITY or its authorized representative(s) for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section will survive expiration or termination of this AGREEMENT.

**17. Term, Project Completion and Termination of Reimbursement Agreement:** The term of this AGREEMENT shall begin on the Effective Date and end on either June 30, 2015, or

completion by DISTRICT of all authorized Projects by CITY hereunder, whichever is longer. DISTRICT shall complete each Project in accordance with the respective final Project schedule accepted by CITY.

Notwithstanding the 21-day notice requirement in Section 9 above, this AGREEMENT may be terminated by either DISTRICT or CITY upon seven (7) calendar days prior written notice, should the other party fail substantially to fulfill or perform any obligation, covenant, term or condition in accordance with this AGREEMENT. A party shall have failed substantially to fulfill or perform any obligation, covenant, term or condition of this AGREEMENT if such failure is not cured within seven (7) calendar days of receipt of such prior written notice.

This AGREEMENT is valid and enforceable only if sufficient funds are made available to DISTRICT and to CITY by their respective governing body for the purpose of this AGREEMENT. Notwithstanding the 21-day notice requirement in Section 9 above, it is mutually agreed that if the respective governing body for CITY or DISTRICT does not appropriate sufficient funds, (i) this AGREEMENT may be modified by written agreement of the parties to reflect any reduction in funds; or (ii) this AGREEMENT may be terminated at any time by the non-appropriating party giving at least thirty (30) calendar days advance written notice of termination to the other party.

Upon termination, the CITY shall only be responsible for paying DISTRICT any actual incurred costs for any easement/land acquisition(s), design or construction work subject to receipt of an itemized invoice from DISTRICT. All undisputed invoices will be due and payable to DISTRICT within forty-five (45) days of receipt by CITY. The parties hereto shall make reasonable efforts to resolve any disputed invoice, including elevation of the invoice to the chief executive level within the respective agency if efforts at lower administrative levels are unsuccessful.

**18. Independent Contractor:** In performance of the work, duties and obligations assumed by DISTRICT under this AGREEMENT, DISTRICT and its directors, officers, officials, agents, employees and volunteers shall at all times be acting and performing as an independent contractor, and shall act in such independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the CITY. Furthermore, CITY shall have no right to control or supervise or direct the manner or method by which DISTRICT shall perform its work and functions hereunder. However, CITY shall retain the right to administer this

AGREEMENT so as to verify that DISTRICT is performing its obligations in accordance with the terms and conditions thereof.

CITY and DISTRICT shall comply with any and all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters pertaining to the subject hereof.

This AGREEMENT does not evidence a partnership or joint venture between DISTRICT and CITY. DISTRICT shall have no authority to bind CITY absent CITY's express written consent. Except to the extent otherwise provided in this AGREEMENT, DISTRICT shall bear its own costs and expenses incurred in performing this AGREEMENT.

Because of its status as an independent contractor, DISTRICT and its directors, officials, officers, agents, employees and volunteers shall have no entitlement to employment rights and benefits available to CITY employees. DISTRICT 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, DISTRICT shall be solely responsible for and shall indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for, and payment of, DISTRICT's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and compliance with 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, DISTRICT may be providing services to others unrelated to CITY or this AGREEMENT.

**19. 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 shall benefit or flow to the interest of any third parties.

20. **Exhibits: Exhibit A and Exhibit B** are incorporated by reference into and made a part of this AGREEMENT.

21. **Extent of Reimbursement Agreement:** Except for the Recharge 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. It is not the intent of the parties that this AGREEMENT amend or supersede the Recharge Agreement. This AGREEMENT may be modified only by written instrument duly authorized and executed by both the CITY and DISTRICT.

**IN WITNESS WHEREOF**, the parties hereto have executed this AGREEMENT as of the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

FRESNO METROPOLITAN FLOOD  
CONTROL DISTRICT,  
a California public corporation

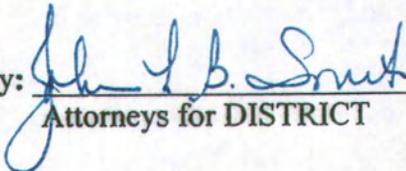
By: \_\_\_\_\_  
Rene A. Ramirez, Director  
Department of Public Utilities

By: \_\_\_\_\_  
Bob Van Wyk  
General Manager - Secretary

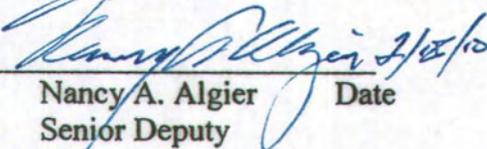
ATTEST:  
Rebecca E Klish, City Clerk

Baker, Manock and Jensen

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

By:   
Attorneys for DISTRICT

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

By:   
Nancy A. Algier Date  
Senior Deputy

Attachments:

Exhibit A – Design Professional Engineer Indemnification and Insurance  
Exhibit B – General Construction Contractor Indemnification and Insurance

**Exhibit A**  
**Environmental Engineer and Design Professional Engineer ("Consultant")**  
**Indemnification and Insurance Requirements**

Indemnification. To the furthest extent allowed by law including California Civil Code section 2782.8, Consultant shall indemnify, hold harmless and defend the City of Fresno 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 the City of Fresno and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This and the two preceding paragraphs shall survive termination or expiration of this Agreement.

Insurance. Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) 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 (ii) authorized by City of Fresno's Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and 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 with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage  
\$1,000,000 per occurrence for personal and advertising injury  
\$2,000,000 aggregate for products and completed operations  
\$2,000,000 general aggregate applying separately to the services performed under the Agreement

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) PROFESSIONAL LIABILITY (Errors and Omissions) insurance with limits of liability of not less than \$1,000,000 per claim/occurrence and \$2,000,000 policy aggregate.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(v) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

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 of Fresno's Risk Manager or his/her designee. At the option of the City of Fresno's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City of Fresno, its officers, officials, employees, agents and volunteers; or (ii) Consultant shall provide a financial guarantee, satisfactory to City of Fresno's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City of Fresno be responsible for the payment of any deductibles or self-insured retentions.

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 has been given to City of Fresno. 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 of Fresno 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, 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.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be primary and no contribution shall be required of City of Fresno. The coverage shall contain no special limitations on the scope of protection afforded to City of Fresno, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City of Fresno, its officers, officials, agents, employees 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 the City of Fresno for review.
5. These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City of Fresno 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 of Fresno's Risk Manager or his/her designee before work commences.** Upon request of City of Fresno, Consultant shall immediately furnish City of Fresno 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.

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 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 of Fresno 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 of Fresno. Any failure to maintain the required insurance shall be sufficient cause for the Fresno Metropolitan Flood Control District ("District") to terminate this Agreement. No action taken by the City of Fresno or District hereunder 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 the City of Fresno that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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 of Fresno 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.

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 of Fresno, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Consultant and City of Fresno prior to the commencement of any work by the subcontractor.

**Exhibit B**  
**General Construction Contractor ("Contractor")**  
**Indemnification and Insurance Requirements**

Indemnification. To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend the City of Fresno 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) incurred by the City of Fresno, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether the City of Fresno or any of its officers, officials, employees, agents, consultants or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs, or damages caused by the active or sole negligence, or the willful misconduct, of the City of Fresno or any of its officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, CONTRACTOR shall require each subcontractor to indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This and the two preceding paragraphs shall survive termination or expiration of this Contract.

Insurance. Throughout the life of this Contract, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) 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 (ii) authorized by City of Fresno's Risk Manager. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage  
\$1,000,000 per occurrence for personal and advertising injury  
\$2,000,000 per occurrence for products and completed operations  
\$2,000,000 aggregate for products and completed operations  
\$2,000,000 general aggregate applying separately to the work performed under the Contract

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. **(Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)**

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

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

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 has been given to City of Fresno. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish City of Fresno 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, Contractor 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.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of City of Fresno. The coverage shall contain no special limitations on the scope of protection afforded to City of Fresno, its officers, officials, employees, agents and volunteers. The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the City of Fresno as a named insured. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City of Fresno, its officers, officials, agents, employees and volunteers.

Contractor shall furnish City of Fresno 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 of Fresno's Risk Manager or his/her designee before work commences.** Upon request of City of Fresno, Contractor shall immediately furnish City of Fresno with a complete copy of any insurance policy required under this Contract, 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 Contract.

If at any time during the life of the Contract or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Contract shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City of Fresno 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 of Fresno. Any failure to maintain the required insurance shall be sufficient cause for the Fresno Metropolitan Flood Control District ("District") to terminate this Contract. No action taken by the City of Fresno or District hereunder shall in any way relieve Contractor of its responsibilities under this Contract. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City of Fresno that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Contract. The duty to indemnify City of Fresno 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 Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Contract and the final acceptance of the work or materials to be performed or supplied thereunder, the Contractor shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the Contractor or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

If Contractor should subcontract all or any portion of the services to be performed under this Contract, Contractor shall require each subcontractor to provide insurance protection in favor of City of Fresno, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and City of Fresno prior to the commencement of any work by the subcontractor.