

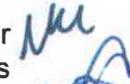


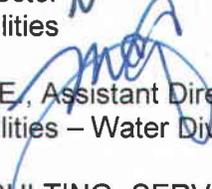
AGENDA ITEM NO. 1 M
 COUNCIL MEETING: 6/3/2010

APPROVED BY

DEPARTMENT DIRECTOR
 CITY MANAGER

June 3, 2010

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

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

SUBJECT: APPROVE THE CONSULTING SERVICES AGREEMENT WITH MUNICIPAL FINANCIAL SERVICE TO DEVELOP A WATER RATE STUDY FOR \$66,600 AND AUTHORIZE THE DIRECTOR OF PUBLIC UTILITIES TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

RECOMMENDATION

Staff recommends that the City Council authorize the Director of Public Utilities to execute a consultant services agreement with Municipal Financial Services for \$66,600 on behalf of the City to develop a water rate study.

EXECUTIVE SUMMARY

During FY 2007, a five-year rate plan was approved for the Water Division. This plan covered the period of FY 2007 through FY 2011. On November 5, 2009, as part of the residential meter installation project, the single-family residential metered rates were approved based on a water rate study by HDR Engineering Inc. To implement the next phase of the five-year water rate plan (FY 2012 through FY 2016) the Department of Public Utilities conducted a Request for Qualifications (RFQ) and selected Municipal Financial Services to conduct a water rate study. Once the study is completed, the updated rates will be presented to the Utilities Advisory Committee (UAC) for review and recommendations and then subsequently brought before Council for approval.

The cost of this work, as described in the attached agreement, shall be a total fee not to exceed \$66,600, which will be covered by appropriations in the FY 2010 Water Enterprise Fund budget.

BACKGROUND

On February 27, 2007, the City Council approved a five-year water rate plan for the solid waste, wastewater and water utilities of the Department of Public Utilities. This included the Water Rate Study developed by Brown and Caldwell for the period from FY 2007 through FY 2011. These rates were adopted each fiscal year through FY 2010 by the City Council. Per the plan, no rate increases are proposed for FY 2011, per the plan. As part of the single-family residential meter retrofit project, in December 2006, the City retained the services of HDR Engineering, Inc. (HDR), to design volumetric rates for residential customers. On November 5, 2009, the City Council approved the water rates, which were intended to be revenue neutral. This means that the rates are intended to collect the same amount of revenue from the single-family customers as the City is currently collecting from existing residential flat rates. These rates become effective for customers when a meter is installed at their property, during the course of the residential meter installation to be completed by January 2013.

REPORT TO THE CITY COUNCIL

Award of a Consultant Services Agreement with Municipal Financial Services

June 3, 2010

Page 2

To implement the next phase of the five-year rate plan (FY 2012 through FY 2016), in December 2009, staff sent out six RFQ's to firms specializing in Public Rate Consulting. The RFQ's were required to be delivered no later than January 8, 2010. Staff received five responses. On March 10, 2010, a panel of DPU staff interviewed four prospective consultants for the work: R3 Consulting Group, HF&H Consultants, Municipal Financial Services and Bartle Wells Associates. These four firms were given the option to interview for one or all of the DPU Divisions in need of a new five-year plan.

Per Administrative Order 6-19, a Professional Consultant is chosen based on 14 criteria. The City of Fresno does not base the hiring of professional services solely on cost. The consultants were interviewed and selection was based more upon experience of the firms, knowledge of our utilities and the rates necessary to run them efficiently and previous successes in other jurisdictions. Upon review of the proposals, it was determined that Municipal Financial Services was the best qualified firm to conduct the water rate study; therefore, they were selected and are recommended for approval at a negotiated price of \$66,600.

The scope of work for the water rate study includes: 1) evaluating cost allocation methods and rate structures, 2) producing customer characteristics and revenue requirement projections, 3) establishing cost of service allocations, 4) developing rate structure alternatives, 5) preparing meeting presentations and all reports and 6) attending meetings.

The updated rates will be developed in draft form and presented to the UAC for review, analysis and recommendations during FY 2011. Once fully vetted, the updated rates will be brought before the City Council for consideration. Upon approval of the City Council, the Proposition 218 public hearing will be conducted. Final adoption of the five-year rate plan may then be considered.

FISCAL IMPACT

Funds for this project are available in the FY 2010 budget from savings in Purchased Professional and Technical Services within the Water Enterprise Fund. A total of \$6,600 has been included for contingencies and unforeseen tasks to be used only upon authorization by City staff.

Attachment: Agreement for Consultant Services

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

THIS AGREEMENT is made and entered into effective the 3rd day of June, 2010, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Municipal Financial Services, a Nevada corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional financial consulting services for a water rate study, hereinafter referred to as the "Project;" and

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

AGREEMENT

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

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

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through August 1, 2011, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$66,000.00, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with

applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

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

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

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

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

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault

or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

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

(b) Any and all writings and documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

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

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

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

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

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

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

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

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

9. Conflict of Interest and Non-Solicitation.

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

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of

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

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

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

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

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

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

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

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

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

11. General Terms.

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

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

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

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

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

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to

their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

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

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

13. Independent Contractor.

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

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

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

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

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

16. Assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF FRESNO,
a California municipal corporation

Municipal Financial Services,
a Nevada corporation

By: _____
Rene Ramirez, Director
Department of Public Utilities

By: Tom Pavletic
Name: TOM PAVLETIC

ATTEST:
REBECCA E. KLISCH
City Clerk

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

By: _____
Deputy

By: _____
Name: _____

No signature of City Attorney required.
Standard Document #ALL 1.1 has been
used without modification, as certified by
the undersigned.

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

By: Martin Quirin
Martin Quirin, P.E.
Assistant Director
Department of Public Utilities

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

Addresses:

CITY:
City of Fresno
Attention: Henry McLaughlin,
Management Analyst III
1910 East University Avenue
Fresno, CA 93703
Phone: (559) 621-5399
FAX: (559) 488-1024

CONSULTANT:
Municipal Financial Services
Attention: Tom Pavletic, Owner
871 Coronado Center Drive, Suite 200
Henderson, NV 89052
Phone: (510) 439-6264
FAX: (925) 937-3026

Attachments:

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

Exhibit A

**Municipal
Financial
Services**

April 30, 2010

Mr. Robert N. Andersen
City of Fresno
Department of Utilities
2600 Fresno Street, Room 3064
Fresno, CA 93721

Subject: Water Rate Study Scope of Work and Budget

Dear Mr. Andersen:

Municipal Financial Services is pleased to submit our scope of work and budget to perform a water rate study for the City of Fresno. Each task and the budget are described more fully in the paragraphs below.

Scope of Work

We will perform the following scope of work to develop a rate and financial plan model for the water enterprise:

Task 1—Evaluate Cost Allocation Methods and Rate Structures

We will meet with the City to discuss which cost allocation methods and rate structures are likely to be selected for implementation and evaluation in the rate study. We will review pages 150, 151 and 152 of the Master Fee Schedule with the City to obtain a list of the current water rates that will continue to be implemented. We will assist the City in their selection of new rate structures that will supplement or replace current water rates.

The discussion of cost allocation methods and rate structures will include the review of findings from the *2008 Urban Water Management Plan*, findings from the previous consulting firm retained by the City to develop the new consumption-based metered water rates for residential customers, and findings and recommendations from the Fresno Utility Advisory Committee (UAC) delivered to the Mayor, City Council and City Manager on July 16, 2009.

Key cost allocation method and rate structure issues that we will discuss with the City include the following:

- Amount of revenue to be recovered from meter charges versus the amount of revenue recovered from quantity charges
- Levels of water conservation likely to result from each customer class for each rate structure alternative
- Growth rates for new customers for each customer class
- Whether to introduce tiered rates (inclining block), seasonal rates or a combination of both
- Whether to recommend different quantity charges and/or block thresholds for each customer classification
- Whether to retain the Senior Citizen rate structure component
- How to update existing flat rates based on lot size
- How to update additional charges added to the basic rate for additional living units, air conditioning / refrigeration units, etc.

Note that this scope of work excludes the development of fees or charges for penalties, service work, temporary service, well drilling, well inspection, and water connection charges.

We will prepare a technical memorandum that summarizes the cost allocation methods, rate structures, water conservation projections and growth projections selected by the City for evaluation in the rate study.

Task 2—Develop Customer Characteristic Projections

We will obtain detailed customer water use data from the City's billing system. We will verify the most recent 12 months of customer data by categorizing the data according to the existing rate structure components, multiplying the water use and account data times the applicable rate in the rate structure, and calculating the amount of rate revenue those customers would produce. We will compare that amount of revenue with the amount of revenue shown in the general ledger. If the two amounts of revenue are approximately the same, we know that the customer characteristics data will serve as a good benchmark for the remainder of the study period.

We will also evaluate water use data from other reports prepared for the City. These reports include the *2008 Urban Water Management Plan* and findings from the previous consulting firm retained by the City to develop the new consumption-based metered water rates for residential customers.

We will analyze the customer water use data in enough detail to facilitate the development of water rate structures selected by the City for implementation. We will coordinate with City staff to ensure they export data from the utility billing system to an Excel spreadsheet that meets our data analysis needs.

We will prepare a technical memorandum that summarizes the water use and account characteristics to be used in the rate study.

Task 3—Develop Revenue Requirements Projections

We will obtain from the City all financial data necessary for the development of water rates. The City will be requested to provide data for the annual projection of capital and operating expenditures, existing and projected annual debt service obligations, recent revenue from water rates and other sources, fund balances and debt coverage covenants.

Expenditures for specific City services with dedicated rates, such as backflow prevention, service inspection and maintenance; and fluoridation, will need to be segregated by the City for the purposes of rate development.

We will discuss with City staff how internal and external transfers involving the water enterprise funds are set up on an accounting basis so that we may develop a spreadsheet that projects relevant fund balances in a manner that is similar to fund balances shown in financial reports.

We will develop an Excel-based spreadsheet that evaluates the annual amount of revenue required from rates. These revenue requirements will include operations and

maintenance expenses, capital improvement program (CIP) expenditures for replacement projects and water supply-related projects, and debt service costs to be recovered via rates. We will confer with the City to obtain their consensus approach for financing capital expenditures that are not designated "pay-as-you-go." We will use Excel's standard financial functions for calculating interest and principal payments to develop debt service schedules for projected new financing. We will confer with the City to develop escalation rates that will be used to escalate projected operating and maintenance expenditures and capital expenditures.

Because revenue requirements are expected to increase significantly (resulting from increases in capital expenditures), we will work at the direction of City staff to consider the use of reserves to moderate rate increases. We will offset revenue required from rates using other non-rate revenues where applicable (revenue from capacity charges, interest earnings and account management charges are typical examples). We will rely on the City to provide annual projections of the amount of revenue to be derived from capacity charges.

The study period for projected revenue requirements and rates will be FY 2010/11 - FY 2021/20 (10 years).

We will evaluate debt service coverage ratios and fund balances. We will develop coverage calculations that match the methodology described in the covenant(s) as provided to us by the City. We will develop fund balance target amounts (reserves) using a classical approach. The classical approach involves quantitative methods of developing reserves requirements for working capital, capital improvements and rate stabilization.

We will prepare a technical memorandum that summarizes the revenue and expenditure data to be used in the rate study.

Task 4—Develop Cost of Service Allocations

We will allocate the costs that comprise the revenue required from rates among functional cost categories. We will discuss with the City the basis for the current cost allocations and use existing methodology as appropriate. We will use standard methods such as base-extra capacity, commodity-demand or appropriate variations of those methods. We expect that costs to be recovered from service charges and fire service charges will be allocated based on meter flow capacity and recovered as fixed charges. All other costs are expected to be recovered from quantity charges. We will modify allocations of costs to be recovered via quantity charges as necessary to allow the development of appropriate alternative rate structures.

Task 5—Develop Rate Structure Alternatives

We will develop water rates for the study period using the detailed customer data from Task 2 and revenue requirements from Task 3. We will develop water rates using the current rate structure (including the recently adopted rate structure for metered residential customers) and for up to two other alternative rate structures.

Task 6—Prepare Presentations and Attend Meetings

We will prepare tables and figures for presentations that clearly describe findings and recommendations. We will compare the recommended water rates with historical water rates at the City and current water rates at other nearby municipalities. We will conduct up to four (4) meetings at City Hall to present findings and recommendations to the Fresno Utility Advisory Committee and the City Council.

Task 7—Prepare Reports

We will document our findings and recommendations in report form, and prepare and submit five copies of a bound draft report for staff review. We will receive and address one consolidated set of review comments. We will submit 15 bound copies and one electronic copy of a final report to the City at the conclusion of the study. All information will be presented in a clear, concise, and easy-to-understand manner.

Prior to preparing the draft and final reports, we will produce an administrative draft version after receiving most source data. The administrative draft (as opposed to the subsequent draft and final versions) is produced only for staff review and is intended to reflect a report at the 70 percent completion stage. We have found this additional preliminary version of the report expedites the identification of data needs; provides initial exposure to the number, type and initial assumptions for variables used in the development of projected expenditures and customer characteristics; and clarifies the number and type of alternatives that will be presented and reported.

Work Products

Work products (deliverables) included in this proposal are:

- Technical memoranda.
- Draft and final reports.
- Electronic copy of final report.
- Meetings with staff at City Hall and via phone/net conferences.
- One meeting for discussion of cost allocation methods and rate structures.
- Four meetings for presentation of findings.

Spreadsheet and Word Processing Software

Calculations and development of rates will be modeled in a new workbook using Microsoft Office Excel 2003 with Service Pack 2. The reports will be produced using Microsoft Office Word 2003 with Service Pack 2.

Schedule

Work may commence immediately upon signing an agreement. Task completion dates are listed in Table 1.

Table 1. Schedule

Work Item	Months after notice to proceed >												
	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11
	Weeks After Notice to Proceed												
	1	2	3	4	5	6	7	8	9	10	11	12	13
Task 1—Evaluate Cost Allocation Methods and Rate Structures													
Task 2—Develop Customer Characteristics Projections													
Task 3—Develop Revenue Requirements Projections													
Task 4—Develop Cost of Service Allocations													
Task 5—Develop Rate Structure Alternatives													
Task 6—Prepare Presentations and Attend Meetings				UAC			UAC		UAC			1st Hr	2nd Hr
Task 7—Prepare Reports			Draft					Final					

Legend: UAC - Utility Advisory Committee; 1st/2nd Hr - Council Rate Hearings

The completion dates listed above are contingent on the timely delivery of customer data and financial data by the City.

Budget

Table 2 below shows the budget and staff that will perform the scope of work. The budget is a not-to-exceed amount. Only labor hours actually used will be charged. Labor hours not used will not be invoiced. Costs for travel and all other non-labor expenditures are included. Marv Winer would be a subconsultant to Municipal Financial Services.

Table 2. Budget

Task	Hourly Rate =>	Rate		Total Hours	Total Cost
		Project Manager (Pavletic) \$150	Development Expert (Winer) \$150		
Task 1—Evaluate Cost Allocation Methods and Rate Structures		24	8	32	\$4,800
Task 2—Develop Customer Characteristics Projections		80	8	88	\$13,200
Task 3—Develop Revenue Requirements Projections		48	8	56	\$8,400
Task 4—Develop Cost of Service Allocations		32	8	40	\$6,000
Task 5—Develop Rate Structure Alternatives		40	8	48	\$7,200
Task 6—Prepare Presentations and Attend Meetings		40	40	80	\$12,000
Task 7—Prepare Reports		48	8	56	\$8,400
Total Costs		312	88	400	\$60,000
Contingency @ 10.0%					\$6,000
Total, rounded to nearest hundred					\$66,000

We would invoice the City for work performed no more than once per month. Invoices will include a list of all tasks, a total amount due, the amounts previously billed, and the net amount due on the invoice.

Mr. Robert Anderson
April 30, 2010
Page 6 of 6

We are excited about the opportunity to be work on this important project. If you have any questions, please call me at (925) 210-2385 (Brown and Caldwell office) or (510) 439-6264 (cell).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Tom Pavletic".

Tom Pavletic
MUNICIPAL FINANCIAL SERVICES

Exhibit B

INSURANCE REQUIREMENTS Consultant Service Agreement between City of Fresno and Municipal Financial Services

Water Rate Study Services for the City of Fresno, Department of Public Utilities-Water Division
PROJECT TITLE

Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

Minimum Limits of Insurance

CONSULTANT shall maintain limits of liability of not less than:

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

4. Professional Liability (Errors and Omissions)

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

Umbrella or Excess Insurance

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

Deductibles and Self-Insured Retentions

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

Other Insurance Provisions

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

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

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

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

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

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

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

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

Acceptability of Insurers

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

Verification of Coverage

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

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Water Rate Study Services for the City of Fresno, Department of Public Utilities-Water Division
PROJECT TITLE

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

Explanation: _____

Additional page(s) attached.

Tom Pavletic
Signature

TOM PAVLETIC
(name)

MUNICIPAL FINANCIAL SERVICES
(company)

871 CORONADO CENTER DR., ST 200
(address)

HENDERSON, NV 89502
(city state zip)