City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.
COUNCIL MEETING July 28, 2011
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

July 28, 2011

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: KELLY S. RIDDLE, Facilities Manager
Public Works Department, Facilities and Major Projects Division

MARK M. JOHNSON, Project Manager
Public Works Department, Facilities and Major Projects Division

SUBJECT: APPROVE A THIRD AMENDMENT TO THE AGREEMENT WITH LAWRENCE, NYE, ANDERSEN ASSOCIATES (LNAA) IN THE AMOUNT OF $6,200 TO DESIGN AN UPGRADE OF THE ENVIRONMENTAL CONTROL SYSTEM FOR THE CITY HALL (COUNCIL DISTRICT 3)

RECOMMENDATION

Staff recommends that the City Council approve the third amendment to the consultant services agreement with the firm of Lawrence, Nye, Andersen Associates (LNAA) of Fresno, CA, dated May 28, 2008, to increase the fee paid to LNAA by $6,200.00 for the design of an upgrade of the environmental control system for the City Hall and to extend the term of the consultant services agreement to August 31, 2013. Authorization is recommended for the Public Works Director, or designee, to sign the third amendment to the agreement.

EXECUTIVE SUMMARY

The third amendment to agreement will allow LNAA to prepare necessary construction documents, including complete plans and technical specifications, for replacing the existing main Direct Digital Control/Energy Management System (DDC/EMS) control system, the existing main air handlers controls, the existing heating boiler controls, the controls of the two fan coils serving the Tele/Communication Rooms, connection to the new chiller system controls, and connection to the new computer room controls. Conduits will be provided to allow for future expansion of the new DDC/EMS to include the existing Variable Air Volume (VAV) and fan terminal boxes. This control system will replace the existing antiquated system that was installed when the City Hall was constructed in 1991. The existing control system for City Hall is antiquated, the manufacture no longer supports the system, parts are difficult to acquire and servicing components has been problematic.

BACKGROUND

On April 29, 2008, Council approved an agreement with LNAA for mechanical engineering services in the amount of $94,100 for the design and general construction plans and contract documents for a new water cooled chiller system for the City Hall central plant and conduct a study of the heating, ventilation and air conditioning requirements (HVAC) for the Informational Services Division (ISD). On December 2, 2008, Council approved the first amendment to the agreement with LNAA in the amount of $70,000 to design a new cooling system, air distribution and temperature control for the computer room for ISD based on the study conducted by LNAA. As part of the first amendment, LNAA was tasked with designing a new digital controls and energy management system for City Hall. On September 24, 2009, Council approved the

second amendment to the agreement with LNAA for additional mechanical engineering services in the amount of $15,000 for the design of a new Hot Aisle/In-Row Air Handling System for ISD.

On July 30, 2009, the City Council awarded a construction contract in the amount of $1,900,000 to Lawson Mechanical Contractors of Fresno, California to install a new chiller system to serve City Hall. The project was substantially complete on March 7, 2011.

The existing control system for City Hall is found to be antiquated, the manufacturer no longer supports the system, parts are difficult to acquire and servicing components is problematic. The City is proposing to modify the design criteria from the first amendment which modifies the scope of consultant services, herein, by requiring additional services to redesign the control system with an approximate cost savings during construction of $350,000 to the City. The new control system will provide a cost saving to the City on energy usage allowing the City to provide better energy management. The third amendment to agreement will allow LNAA to prepare necessary construction documents, including complete plans and technical specifications, for replacing the existing main DDC/EMS control system, the existing main air handlers controls, the existing heating boiler controls, the controls of the two fan coils serving the Tele/Communication Rooms, connection to the new chiller system controls, and connection to the new computer room controls. Conduits will be provided to allow for future expansion of the new DDC/EMS to include the existing VAV and fan terminal boxes. This existing control system will replace the existing system that was installed when the City Hall was constructed in 1991.

Staff is requesting Council approve the third amendment to the agreement with LNAA for an additional $6,200 for mechanical engineering services for the project. The third amendment is for $6,200, bringing a LNAA agreement to a total cost not to exceed for $185,300 and will allow the Public Works Department to move forward with the completion of the construction plans and documents.

This amendment has been reviewed and approved as to form by the City Attorney's Office.

FISCAL IMPACT

There is no impact to the General Fund for the project is provided by the City Hall Chiller Bond.

Attachments:
-Fiscal Impact Statement
-Agreement with LNAA dated, May 28, 2008
-Amendment No. 1 with LNAA dated, December 15, 2008
-Amendment No. 2 with LNAA dated, September 30, 2009
-Amendment No. 3 with LNAA

FISCAL IMPACT STATEMENT

PROGRAM: DESIGN AN UPGRADE OF THE ENVIRONMENTAL CONTROL SYSTEM FOR THE CITY HALL

RECOMMENDATION	CURRENT	COST
Direct Cost	$6,200.00	
Indirect Costs*: *Contract management, design coordination, etc.*, (estimated)	$5,000.00	
TOTAL COST	$11,200.00	
Additional Revenue or Savings Generated	-0-	
Net City Cost	-0-	
Amount Budgeted (If none budgeted, identify source):	$11,200.00	

*Indirect cost consists of the following:

Project Management	$5,000.00

AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the 28th day of May, 2008, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and LAWRENCE, NYE, ANDERSEN ASSOCIATES, a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional Mechanical Engineering] services for Design of New Water Cooled Chiller System For City Hall Central Plant and Study of Information Systems Division HVAC Requirements, hereinafter referred to as the "Project;" and

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

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

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

AGREEMENT

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

1. Scope of Services. CONSULTANT shall perform 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 and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or August 31, 2009, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within 490 consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of $94,100.00. Such fee includes all expenses incurred by CONSULTANT in performance of the services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business.

(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 Director'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 Director 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 Director of the cessation of such occurrence.

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

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

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

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

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT to do and perform 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.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

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

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

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

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

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

(i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S

Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

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

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

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

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

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

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Cindy Bauer 5/27/08
Deputy

No signature of City Attorney required. Standard Document #DPW 9.0 has been used without modification, as certified by the undersigned.

By: _____
Mark A. Vester, PE
Professional Engineer
Department of Public Works

REVIEWED BY:

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

Lawrence, Nye, Andersen Associates,
a California Corporation

By: _____

Name: GILBERT L. NYE PE

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

By: _____

Name: Eric Andersen

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

Any Applicable Professional License:
Number: M26224
Name: GILBERT L. NYE PE
Date of Issuance: 1.27.1989

Addresses:

CITY:
City of Fresno
Attention: Mark A. Vester, PE
2600 Fresno Street
Fresno, CA 93721-3615
Phone: (559) 621-8705
FAX: (559) 488-1045

CONSULTANT:
Lawrence, Nye, Andersen Associates
Attention: Gilbert L. Nye, PE, President
7491 N. Remington Ave., Suite 101
Fresno, CA 93711
Phone: (559) 431-0101
FAX: (559) 431-1362

Attachments:

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

EXHIBIT "A"

Scope of Services

Part 1

Design Of New Water Cooled Chiller System For City Hall Central Plant

The Scope of Services for Part 1, as performed by Lawrence, Nye, Andersen Associates (LNA), Inc., shall consist of the
following phases and tasks:

(a) Part One. Schematic Design Phase.

(1) CONSULTANT shall review the description of the Project set forth herein and consult with CITY staff to ascertain the requirements of the Project.

(2) CONSULTANT shall confer with City staff on cooling load requirements for City Hall, conduct survey of existing central plant equipment, and determine equipment and system requirements for new water cooled central plant.

(3) Consultant shall prepare a letter report outlining the new water cooled chiller system to be installed, including recommended system components, capacities, and efficiencies. The recommended system and components shall meet State of California Title 24 Energy Conservation Standards. The report shall contain a "budget" level construction estimate for the project, including all necessary architectural, structural, mechanical, and electrical work to be performed for a complete operating system. Consultant shall deliver the completed report to the City for review.

(4) Based upon City's review and acceptance of the report, the City will issue direction to LNA to proceed with Phase Two – Design Development Phase.

(2) In the performance of Tasks 1, 2, and 3 listed above, Consultant shall obtain all information and data from the respective responsible CITY department/division that is available in CITY'S records and is required by CONSULTANT in connection with the consulting services including, but not limited to, maps, reports, drawings, information, restrictions and existing facility conditions. CONSULTANT may not rely solely upon any as-builts provided by CITY, but shall investigate the existing conditions and ascertain the adequacy of such as-builts for CONSULTANT'S design. CONSULTANT shall bring to CITY'S attention any discrepancies in the as-builts that are discovered by CONSULTANT. CITY makes no representations regarding any as-builts or record drawings.

(4) Services shall be undertaken and completed in a sequence for expeditious completion. All services for completion of Tasks 1, 2, and 3 of Part One shall be rendered and deliverables submitted within **30** calendar days from the issuance of a Notice to Proceed for this part of the scope of work. Any extension of time shall be approved in writing by the Public Works Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within **30** calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Public Works Director.

(b) Part Two. Design Development Phase. After review and acceptance of the Schematic Design Phase and issuance of a written Notice to Proceed for this Part Two:

(1) CONSULTANT shall provide construction documents consisting of 50% drawings and other documents to fix and describe the character of the Project as necessary to show treatment of significant details. In addition, CONSULTANT shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development drawings and specifications shall be subject to review and acceptance by CITY. The construction documents submitted to the City for review and acceptance shall incorporate and address the following design components:

- Design for the replacement of the three existing 150-ton air cooled chillers with a new water cooled chiller system serving City Hall.
- Provide schematic design for the future replacement of the two existing 25-ton air cooled chillers serving the ISD Division, with water cooled chillers.
- Design for the installation of a new cooling tower in mechanical pit area. Tower shall be supported by required structural supports/footings installed on pit floor to reduce height of exposed tower to minimum. Installation of tower on raised steel support structure is not included in consultants required tasks. Tower performance requirements shall be as specified by Consultant, and certified by tower manufacturer.
- Design of non-chemical water treatment system for cooling tower.
- Design of condenser water pumps and all required condenser water piping.
- Design of chilled water pumps and all required chilled water piping.
- Design of City approved screening around cooling tower.
- Design of City approved roof structure to be installed over new chillers.
- Design of all necessary architectural, structural, plumbing, mechanical, electrical, and control components as may be required for a complete operating system.

(2) CONSULTANT shall submit an opinion of probable construction cost, based on 50% plans and specifications, for review and acceptance by CITY. The opinion shall include, and shall separately state, the cost of any add or deduct alternatives, the cost of any work which may be let on a segregated bid basis and any equipment or fixtures which may by incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget, including authorized revisions thereto.

(3) Services shall be undertaken and completed in a sequence for expeditious completion. All services shall be rendered and deliverables submitted within **45** calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 30 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Public Works Director.

(c) Part Three. Construction Document Phase. After review and acceptance of the Design Development Phase and issuance of a written Notice to Proceed for this Part Three:

(1) CONSULTANT shall prepare, from the accepted design development documents, 100% detailed plans and technical specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. Such documents shall be subject to the review and acceptance by CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. CITY'S Standard Specifications must be used by CONSULTANT where applicable. CONSULTANT shall utilize his master specifications format to prepare technical specifications sections. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by CITY shall be used by CONSULTANT unless the Director determines they would be impractical for this Project. CONSULTANT shall be responsible for assuring that the technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

(2) CONSULTANT shall respond to, address, and make all necessary changes to the plans and technical specifications resulting from plans checks conducted by the City of Fresno Development Department.

(3) CONSULTANT shall evaluate and advise the City on the need for temporary chillers, and the procedures to implement them during construction.

(4) CONSULTANT shall provide the calculations used to determine the general construction contract quantities, and all required calculations for the purpose of obtaining any building permits.

(5) CONSULTANT shall provide CITY with 6 sets of completed plans and 6 sets of completed technical specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

(6) After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one set of accepted reproducible tracings and bid documents for the Project. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: minimum of AutoCAD 2004 or later version, and MS Word.

(7) CONSULTANT shall submit a final (100%) opinion of probable construction cost for review and acceptance by CITY. Such opinion shall be calculated as of the date all general construction contract documents are delivered to CITY in final form ready for reproduction and advertising. Such opinion shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated basis, and any equipment, or fixtures which may be incorporated in or excluded from the general construction contract.

(8) In the event that the final opinion of probable construction cost exceeds the revised opinion of probable construction cost previously accepted, excluding there-from any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised opinion in Part 2 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the final opinion. If CITY elects to reject the final opinion, CONSULTANT shall at no additional cost to CITY, make such design changes as may be necessary to reduce the final opinion so that it shall not exceed the revised opinion of probable construction cost previously accepted by CITY.

(9) Services shall be undertaken and completed in a sequence for expeditious completion. All services shall be rendered and deliverables submitted within 45 calendar days from the issuance of a Notice to

Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 30 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Public Works Director.

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

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

(2) CONSULTANT shall attend the pre-bid meeting and answer any questions which may arise. Upon request of CITY, CONSULTANT shall expeditiously draft addendum as determined by CITY to be reasonable or necessary for the bidding process.

(3) Upon request of City, CONSULTANT shall assist in evaluating bids received to determine lowest, responsible bidder for award construction contract by City Council.

(4) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final opinion of probable construction cost previously accepted by CITY, excluding there-from any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, CONSULTANT shall within **21** calendar days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final opinion of probable construction cost, at no additional cost to CITY provided such bid is received within 180 calendar days after completion of services in Section 2(c) of this agreement. CONSULTANT shall also submit such revised plans and specifications, together with a new final opinion of probable construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final opinion of probable construction cost, shall, upon written notice to CONSULTANT from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final opinion of probable construction cost by more than 10%.

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

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

(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. Approval of submittals shall be limited to their general compliance with the general construction contract. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor.

(3) CONSULTANT shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents, and keep CITY informed of the progress of the work. In the event that CONSULTANT'S visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, CONSULTANT shall immediately advise CITY and document, in writing,

the work CONSULTANT deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. CONSULTANT shall neither be responsible for any determination or reporting of safety issues, measures or devices on the Project site nor for determining the adequacy of the general contractor's means or methods of construction. Based on CONSULTANT'S best knowledge, information and belief, CONSULTANT shall provide CITY a general written statement that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, CONSULTANT shall provide a written statement of the acceptability of the work for payment applications and final acceptance, subject to CITY'S right to overrule CONSULTANT.

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

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

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

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

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

(9) CONSULTANT shall prepare Record Drawings reflecting all changes or deviations form the plans that occurred during construction, as furnished by CITY. Record drawings shall be submitted within **60** calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within **14** calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Public Works Director.

Total compensation due to LNA for completion on all phases and tasks of Part 1 outlined above is $89,600.00

EXHIBIT "A"

Scope of Services

Part 2

Evaluation of Information Systems Division (ISD) Heating, Ventilation, and Air Conditioning (HVAC) Requirements

The Scope of Services for Part 2, as performed by Lawrence, Nye, Andersen Associates (LNA), Inc., shall consist of the following tasks:

1. Evaluate the cooling load of the ISD data processing center both for current conditions, and for future conditions as anticipated by ISD staff.

2. Evaluate the capacity and current condition to the existing ISD cooling system, including chillers and air handlers. Provide recommendations regarding replacement of existing air cooled chillers with new water cooled chillers.

3. Provide recommendations regarding dividing the data center into separate office and equipment areas.

4. Provide recommendations regarding air distribution from the access flooring system, including sealing around cable penetrations.

5. Prepare a report for review by the City summarizing the results of the ISD HVAC evaluation. Report shall include a "budget level" construction cost estimate.

All tasks for Part 2 shall be completed within 90 calendar days from the issuance of a Notice to Proceed for this part of the scope of services.

Total compensation due LNA for completion of all tasks under Part 2 outlined above is $4,500.00.

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno and Lawrence Nye Anderson Associates
Design of New Chiller System for City Hall Central Plant and ISD HVAC Study

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

(Risk Mgmt. rev.)

4. Professional Liability (Errors and Omissions)

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

Umbrella or Excess Insurance

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

Deductibles and Self-Insured Retentions

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance polices 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 Ommisions) 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

Design of New Chiller Systrem For City Hall Central Plant/ ISD HVAC Study
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☒
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☒
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☒
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?	☐	☒
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?	☐	☒
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?	☐	☒

* If the answer to any question is yes, please explain in full below.

Explanation: _____

☐ Additional page(s) attached.

Signature

GILBERT L. NOLAS

(name)

LNAA

(company)

7491 N. Kourinetian

(address)

Fresno CA 93711

(city state zip)

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT ("Amendment") made and entered into as of this 15th day of December, 2008, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and LAWRENCE, NYE, ANDERSEN ASSOCIATES, a California Corporation, hereinafter referred to as "CONSULTANT".

RECITALS

WHEREAS, CITY and CONSULTANT entered into an Agreement, dated May 28, 2008, for Mechanical Engineering Services for Design of New Water Cooled Chiller System for City Hall and Study of Information Services Division HVAC Requirements, hereinafter referred to as "Agreement;" and

WHEREAS, CITY now desires to modify the scope of work, therein, by requiring additional services, and

WHEREAS, the Agreement is due to expire on August 31, 2009; and

WHEREAS, the parties desire to extend the Agreement until August 31, 2010.

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, the parties agree that the aforesaid Agreement be amended as follows:

1. CONSULTANT shall provide additional services as described in Exhibit "A", attached hereto and incorporated herein by reference. Such additional services shall be completed within 365 of days following execution of this Amendment by both parties.

2. The term of the Agreement as set forth in Section Two thereof, is extended to August 31, 2010.

3. The number of consecutive calendar days set forth in Section Two of the Agreement is amended to read "855 consecutive calendar days from such authorization to proceed."

4. The total fee of $94,100.00 in Section Three for satisfactory performance of all services required or rendered pursuant to the Agreement, shall be increased by $70,000.00 for a total fee of $164,100.00.

5. In the event of any conflict between the body of this Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment 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 Amendment, shall be null and void.

6. Except as otherwise provided herein, the Agreement entered into by CITY and CONSULTANT, dated May 28, 2008, remains in full force and effect.

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

CITY OF FRESNO,
a municipal corporation

By: _____
for
Name: Efren Banuelos

Title: Assistant Director
Public Works Department

ATTEST:

REBECCA E. KLISCH
City Clerk

By: _____ 1/13/09
Deputy

APPROVED AS TO FORM:
James C. Sanchez
City Attorney

By: _____ 11/13/08
Deputy

Lawrence, Nye, Andersen Associates,
a California corporation

By: _____

Name: Gilbert Nye, PE

Title: President

By: _____

Name: DAVID GUSTAO, PE

Title: VICE PRESIDENT
(if Corporation or LLC, CFO, Treasurer, Secretary, or Assistant Secretary)

REVIEWED BY: _____

Steven Son, PE
Capital Projects Manager

Attachment: Exhibit "A" - Scope of Work

EXHIBIT "A"

Scope of Work
Amendment No. 1

Design of New Water Cooled Chiller System To Serve Information Services Division (ISD) and Design of New Heating, Ventilation, and Air Conditioning (HVAC) Control System for City Hall

A. Amendment Outline and General Requirements

The intent of the amendment and general requirements are as follows:

CONSULTANT shall prepare complete plans and technical specifications for the design of a new water cooled chiller system to serve the Information Services Division (ISD) located in City Hall. The new water cooled chiller system will replace the existing air cooled chillers, and associated equipment located in the mechanical/electrical basement adjacent to City Hall. CONSULTANT will also prepare complete plans and technical specifications for interior heating, ventilation, and air conditioning (HVAC) modifications required in the computer center of ISD located on the first floor of City Hall.

In addition, CONSULTANT shall prepare complete plans and technical specifications for the design of a new heating, ventilation, and air conditioning control system for City Hall. The new electronic, digital control system will replace the existing pneumatic control system installed in the building when City Hall was constructed in 1991.

B. Detailed Project Requirements and Phasing of Work

The Scope of Work, as performed by Lawrence, Nye, Andersen Associates (LNA) shall consist of the following phases and tasks, and shall become a part of the Agreement with LNA dated May 28, 2008:

Task No. 1: Design of New Water Cooled Chiller System to Serve Information Services Division (ISD)

Part Two. Design Development Phase. After review and acceptance of the Schematic Design Phase and issuance of a written Notice to Proceed for this Part Two:

(1) CONSULTANT shall provide construction documents consisting of 60% drawings and other documents to fix and describe the character of the Project as necessary to show treatment of significant details. In addition, CONSULTANT shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development drawings and specifications shall be subject to review and acceptance by CITY.

(2) Services shall be undertaken and completed in a sequence for expeditious completion. All services shall be rendered and deliverables submitted within **14** calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Public Works Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 30 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Public Works Director.

Part Three. Construction Document Phase. After review and acceptance of the Design Development Phase and issuance of a written Notice to Proceed for this Part Three:

(1) CONSULTANT shall prepare, from the accepted design development documents, 100% detailed plans and technical specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. Such documents shall be subject to the review and acceptance by CITY. CITY'S Standard Specifications must be used by CONSULTANT where applicable. CONSULTANT shall utilize its master specifications format to prepare technical specifications sections. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. CONSULTANT shall be responsible for assuring that the technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

(2) CONSULTANT shall respond to, address, and make all necessary changes to the plans and technical specifications resulting from plans checks conducted by the City of Fresno Planning & Development Department.

(3) CONSULTANT shall provide the calculations used to determine the general construction contract quantities, and all required calculations for the purpose of obtaining any building permits.

(4) CONSULTANT shall provide CITY with 6 sets of completed plans and 6 sets of completed technical specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

(5) After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one set of accepted reproducible tracings for the Project. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: minimum of AutoCAD 2004 or later version, and MS Word.

(6) Services shall be undertaken and completed in a sequence for expeditious completion. All services shall be rendered and deliverables submitted within **14** calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Public Works Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 30 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Public Works Director.

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

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

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

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final opinion of probable construction cost previously accepted by CITY, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, CONSULTANT shall within 14 days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final opinion of probable construction cost, at no additional cost to CITY provided such bid is received within 180 calendar days after completion of services in Part Three of this Task. CONSULTANT shall also submit such

revised plans and specifications, together with a new final opinion of probable construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final opinion of probable construction cost, shall, upon written notice to CONSULTANT from the Public Works Director, be repeated until an acceptable bid is received that does not exceed the accepted final opinion of probable construction cost by more than 10%.

Part Five. Construction Phase and General Construction Contract Administration. CONSULTANT shall begin the construction phase with the issuance of a written Notice to Proceed for this Part Five, and this phase will terminate when a Notice of Completion is filed. Under the direction of the Public Works Director through CITY'S designated Construction Manager for the Project:

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

(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. Approval of submittals shall be based upon the general construction contractor's compliance with the general construction contract. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY and CONSULTANT.

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

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

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

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

(7) As specified in the Agreement, CONSULTANT shall have **162** calendar days to complete this phase of the project.

(8) CONSULTANT shall prepare Record Drawings reflecting all changes or deviations from the plans that occurred during construction, as furnished by CITY. Record drawings shall be submitted within **60** calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Public Works Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within **14** calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Public Works Director.

Total compensation due to LNA for completion on all phases of Task Number 1 outlined above is $25,000.00.

Task No. 2: Design of New Heating, Ventilation, and Air Conditioning (HVAC) Control System for City Hall Central Plant and Air Handling System

1. The Scope of Work for this task as performed by LNA shall include the following work:

    1. Conduct a survey of all air handlers, exhaust fans, return fans, and mixing boxes in City Hall to determine existing operating condition and necessary repairs, modifications, upgrades, and maintenance which may be required to integrate the air handling system into the new HVAC control system. Results of survey shall be submitted to CITY in report form for review.
    2. Provide all necessary plans and technical specifications for a new HVAC/Building Automation System for City Hall. The new control system shall be capable of controlling both the hot and chilled water central plant, and all air handlers, exhaust and return fans, and mixing boxes in City Hall in a single, unified HVAC control system.
    3. Provide assistance to CITY during the bidding period by attending the pre-bid conference and answering any questions or requests for information (RFI's) which may arise during the bidding process.
    4. Assist CITY in evaluating bids received to determine lowest responsive, responsible bidder for award of contract by Council.
    5. Provide necessary services during construction including review of equipment and system submittals, on-site inspections as requested by CITY, assistance with change order evaluation and approval.
    6. Review record drawings prepared by the contractor and incorporate changes into as-built drawings for submittal to CITY. As-builts shall be submitted in both hard copy paper and electronic format.
    7. Review and edit, as required, operation and maintenance manuals prepared by the contractor.
    8. Perform additional tasks, as requested by CITY, subject to subsequent amendments approved by Council.

2. CONSULTANT'S responsibilities. CONSULTANT will:

(a) Part One. Schematic Design Phase.

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

(2) CONSULTANT shall conduct surveys of the existing air handling system at City Hall to confirm requirements of design including obtaining all information and data from the respective responsible CITY department/division that is available in CITY'S records and is required by CONSULTANT in connection with the consulting services including, but not limited to, maps, reports, drawings, information, restrictions and existing facility conditions. The findings of the survey of the existing air handling system shall be presented in a report, and submitted to the CITY for review.

(3) CONSULTANT shall make a maximum of 2 submittals to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, report, statement or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

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

(5) Services shall be undertaken and completed in a sequence for expeditious completion. All services shall be rendered and deliverables submitted within **45** calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Public Works Director. Re-submittals, as specified above in Section 2(a) (3), to obtain the acceptance by CITY, shall be submitted to

CITY within 30 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Public Works Director.

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

(1) CONSULTANT shall provide a preliminary evaluation of the Project taking into consideration CITY'S estimate of the cost of construction ("Construction Budget") of $700,000.00, including alternative approaches to design and construction of the Project.

(2) Based upon the accepted schematic design documents and the Construction Budget, including authorized revisions thereto, CONSULTANT shall prepare for review and acceptance by CITY the design development documents consisting of drawings and other documents to fix and describe the character of the Project as necessary to show treatment of significant details. In addition, CONSULTANT shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development–documents and specifications shall be subject to review and acceptance by CITY.

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

(4) Services shall be undertaken and completed in a sequence for expeditious completion. All services shall be rendered and deliverables submitted within **30** calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Public Works Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 30 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Public Works Director.

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

(1) CONSULTANT shall prepare from the accepted design development documents, detailed plans and technical specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. Such documents shall be subject to the review and acceptance by CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. CITY'S Standard Specifications must be used by CONSULTANT where possible. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by CITY shall be used by CONSULTANT unless the Public Works Director determines they would be impractical for this Project. CONSULTANT shall be responsible for assuring that the technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

(2) CONSULTANT shall provide the calculations used to determine the general construction contract quantities, and all required calculations for the purpose of obtaining any building permits.

(3) CONSULTANT shall provide CITY with 6 sets of completed plans and 6 sets of completed technical specifications for review and final acceptance by CITY. Should the plans and specifications as

submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

(4) After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one set of accepted reproducible tracings and bid documents for the Project. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: minimum of AutoCad 2004 or later version, and MS Word.

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

(6) In the event that the final opinion of probable construction cost exceeds the revised opinion of probable construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised opinion in Part 2 of this Task as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the final opinion. If CITY elects to reject the final opinion, CONSULTANT shall at no additional cost to CITY, make such design changes as may be necessary to reduce the final opinion so that it shall not exceed the revised opinion of probable construction cost previously accepted by CITY.

(7) Services shall be undertaken and completed in a sequence for expeditious completion. All services shall be rendered and deliverables submitted within **30** calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Public Works Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 30 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Public Works Director.

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

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

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

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final opinion of probable construction cost previously accepted by CITY, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, CONSULTANT shall within 14 days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final opinion of probable construction cost, at no additional cost to CITY provided such bid is received within 180 calendar days after completion of services in Section 2(c) of this Task. CONSULTANT shall also submit such revised plans and specifications, together with a new final opinion of probable construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final opinion of probable construction cost, shall, upon written notice to CONSULTANT from the Public Works Director, be repeated until an acceptable bid is received that does not exceed the accepted final opinion of probable construction cost by more than 10%.

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

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

(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. Approval of submittals shall be based upon the general construction contractor's compliance with the general construction contract. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor.

(3) CONSULTANT shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents, and keep CITY informed of the progress of the work. In the event that CONSULTANT'S visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, CONSULTANT shall immediately advise CITY and document, in writing, the work CONSULTANT deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. CONSULTANT shall neither be responsible for any determination or reporting of safety issues, measures or devices on the Project site nor for determining the adequacy of the general contractor's means or methods of construction. Based on CONSULTANT'S best knowledge, information and belief, CONSULTANT shall provide CITY a general written statement that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, CONSULTANT shall provide a written statement of the acceptability of the work for payment applications and final acceptance, subject to CITY'S right to overrule CONSULTANT.

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

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

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

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

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

(9) CONSULTANT shall prepare Record Drawings reflecting all changes or deviations from the plans that occurred during construction, as furnished by CITY. Record drawings are based in part upon unverified representations of actual construction provided by CITY. Record drawings shall be submitted within 60 calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Public Works Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 10 calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Public Works Director.

3. CITY'S responsibilities. CITY will:

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

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

(c) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release CONSULTANT from its responsibility to make periodic site visits under Section 2(e) as described herein, for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to CITY.

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

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

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

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

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

Total compensation due to LNA for completion on all phases of Task Number 2 outlined above is $45,000.00.

SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT ("Amendment") made and entered into as of this 30th day of September, 2009, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and LAWRENCE, NYE, ANDERSEN ASSOCIATES, a California Corporation, hereinafter referred to as "CONSULTANT".

RECITALS

WHEREAS, CITY and CONSULTANT entered into an Agreement, dated May 28, 2008, and as amended on December 15, 2008, for Mechanical Engineering Services for Design of New Water Cooled Chiller System for City Hall and Study of Information Services Division HVAC Requirements, hereinafter referred to as "Agreement;" and

WHEREAS, CITY now desires to modify the scope of work, therein, by requiring additional services, and

WHEREAS, the parties desire to extend the Agreement until December 31, 2010.

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, the parties agree that the aforesaid Agreement be amended as follows:

1. CONSULTANT shall provide additional services as described in Exhibit "A", attached hereto and incorporated herein by reference. Such additional services shall be completed within 365 of days following execution of this Amendment by both parties.

2. The term of the Agreement as set forth in Section Two thereof, is extended to December 31, 2010.

3. The number of consecutive calendar days set forth in Section Two of the Agreement is amended to read "977" consecutive calendar days from such authorization to proceed.

4. The total fee of $164,000.00 in Section Three for satisfactory performance of all services required or rendered pursuant to the Agreement, shall be increased by $15,000.00 for a total fee of $179,100.00.

5. In the event of any conflict between the body of this Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment 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 Amendment, shall be null and void.

6. Except as otherwise provided herein, the Agreement entered into by CITY and CONSULTANT, dated May 28, 2008, and as amended December 15, 2008, remains in full force and effect.

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

CITY OF FRESNO,
a municipal corporation

By: _____

Name: Efren Banuelos

Title: Assistant Director
Public Works Department

ATTEST:

REBECCA E. KLISCH
City Clerk

By: _____
Deputy 9/30/09

APPROVED AS TO FORM:
James C. Sanchez
City Attorney

By: _____
~~Deputy~~ Adam Lindgren
9/10/09 OSC, Meyers Nave

Attachment: Exhibit "A" - Scope of Work

Lawrence, Nye, Andersen Associates,
a California corporation

By: _____

Name: Gilbert Nye, PE

Title: President

By: _____

Name: ERIC ANDERSEN, PE

Title: SECRETARY
(if Corporation or LLC, CFO, Treasurer, Secretary, or Assistant Secretary)

REVIEWED BY: _____

Steven Son, PE
Capital Projects Manager

EXHIBIT "A"

Scope of Work
Amendment No. 2

Design of New Hot Aisle/In-Row Air Handling System To Serve Information Services Division (ISD)

A. Amendment Outline and General Requirements

The intent of the amendment and general requirements are as follows:

CONSULTANT shall prepare complete plans and technical specifications for the design of a new Hot Aisle/In-Row Air Handling System to serve the Information Services Division (ISD) computer center located in City Hall. The new air handling system will replace the existing air handling system located on the fifth floor of City Hall.

B. Detailed Project Requirements:

The Scope of Work, as performed by Lawrence, Nye, Andersen Associates (LNA) shall consist of the following tasks, and shall become a part of the Agreement with LNA dated May 28, 2008, and as amended December 15, 2008:

1. Revise chilled water pump design/schedule for larger pumps required for new hot aisle/in-row air handling units.
2. Revise structural drawings to accommodate new larger pump footprint.
3. Revise chilled water supply and return piping design/drawings to accommodate new hot aisle/in-row air handling units.
4. Revise plumbing design/drawings to accommodate new hot aisle/in row air handling units, including condensate pumps and drains.
5. Revise electrical drawings as required to accommodate new hot aisle/in-row air handling units.
6. Revise technical specifications as required for design of new hot aisle/in-row air handling Units.
7. Attend up to three meetings with city ISD staff and selected equipment manufacturer to review and finalize the design of the proposed hot aisle/in-row air handling system.
8. Provide up to two field inspections, as may be requested by the City, during the construction period to verify correct system installation.
9. Provide final as-built drawings from contractor mark-ups, and submit both hard copy and electronic versions to the city.

Total compensation due to LNA for completion on all tasks outlined above is $15,000.00.

THIRD AMENDMENT TO AGREEMENT

THIS THIRD AMENDMENT TO AGREEMENT ("Amendment") made and entered into as of this _____ day of _____, 2011, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and LAWRENCE, NYE, ANDERSEN ASSOCIATES, a California Corporation, hereinafter referred to as "CONSULTANT".

RECITALS

WHEREAS, CITY and CONSULTANT entered into an Agreement, dated May 28, 2008, and as amended on December 15, 2008 and September 30, 2009 for professional Mechanical Engineering services for Design for New Water Cooled System for City Hall and Study of Information Services Division HVAC Requirements, hereinafter referred to as "Agreement;" and

WHEREAS, CONSULTANT has completed 100% of the Design Development Phase of the Agreement for the project; and

WHEREAS, CITY now desires to modify the scope of services, therein, by requiring the additional services described in Attachment "A"; and

WHEREAS, CITY now desires to modify the Terms of Agreement and Time of Performance and extend the Agreement until August 31, 2013; and

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, the parties agree that the aforesaid Agreement be amended as follows:

1. CONSULTANT shall provide additional services as described in Attachment "A", attached hereto and incorporated herein by reference. Such additional Services shall be completed within 30 of the execution for this Amendment by both parties.

2. The term for the Agreement as set forth in Section Two thereof, is extended to **August 31, 2013**.

3. The number of consecutive calendar days set forth in Section Two of the Agreement is amended to read "1,707" consecutive calendar days from such authorization to proceed.

4. The total fee for $179,100.00 in Section Three for satisfactory performance of all services required or rendered pursuant to the Agreement shall be increased by **$6,200.00** for a total fee of $185,300.00.

5. In the event of any conflict between the body of this Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment

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 Amendment, shall be null and void.

6. Except as otherwise provided herein, the Agreement entered into by CITY and CONSULTANT, dated May 28, 2008, remains in full force and effect.

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

CITY OF FRESNO,
a municipal corporation

_____
Patrick N. Wiemiller
Public Works Director

ATTEST:

REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Date

LAWRENCE, NYE, ANDERSEN ASSOCIATES,
a California Corporation

By:_____

Name_____

Title_____

By:_____

Name:_____

Title:_____

REVIEWED BY:

_____
Kelly S. Riddle, Manager
Facilities & Major Projects Division

Attachment: Attachment "A" – Scope of Service

Attachment A

SCOPE OF SERVICES
AMENDMENT #3

Mechanical Engineering services for Design for New Water Cooled System for City Hall and Study of Information Services Division HVAC Requirements. This amendment will modify the construction documents for the upgrade of the Fresno City Hall Controls from the original design.

I. SCOPE OF WORK

A. The project will be in two parts with a base bid to include replacing the existing main DDC/EMS control system: Remove existing Robert Shaw DMS controllers and install new standalone local operating Direct Digital Control/Energy Management System (DDC/EMS) control system as a new standalone local operating EMS and incorporate into existing EMS. Convert all existing pneumatic systems controlled directly by the DMS to electric/electronic controls with the following as part of the base bid.

   a. The existing main air handler controls: remove existing local controller and install a standalone control for each individual air handler. All pneumatics that are directly controlled by the air handler are to be converted to electric/electronic controls. The new DDC/EMS control system for the air handlers will be an integrated and fully functional system.

   b. The existing heating boiler controls: remove/upgrade the existing boiler local controls to allow for communications both local and remote to view operating status and control the boilers. The new DDC/EMS control system for the building boiler system will be an integrated and fully functional system.

   c. The controls for the two Fan Coils (FC) serving the Tele/Communication Rooms: remove existing controls and install a standalone control system. Convert all pneumatics to electric/electronic controls. The new DDC/EMS control system for the two fan coils serving the Tele/Communication Rooms will be an integrated and fully functional system.

   d. The connection to the new chiller system controls and connection to the new computer room controls: the new EMS system is to communicate and control systems seamlessly with existing chiller EMS system and computer room controls.

   e. Connection to the City Hall ADX virtual server: the City Hall EMS system is to communicate and control systems seamlessly with the existing ADX virtual server in ISD. This server will be the main access point for offsite remote control of the City Hall system; it will also be used as the main storage of data above and beyond what the local control units are capable of storing.

f. Conduits will be provided to allow for future expansion of the new DDC/EMS system to include the existing Variable Air Volume (VAV) and FC, and Fan Terminal Boxes (FTB).

B. Additive alternate will be identified to convert the pneumatic/electric controls of the existing VAV boxes and fan terminals, along with any fan coils, except for the two noted above as part of the base bid, to the new DDC/EMS control system.

C. The new DDC/EMS will match and be incorporated into the new chiller controls system.

D. Prepare revised construction documents.

II. SERVICE NOT INCLUDED

A. Evaluate the performance of Air Handler (AH)-1/Return Fan (RF)-2 and AH-3/RF-4 at the first floor mechanical rooms when on the restored economizer operation. The charcoal filters added to these systems will affect their operation when on economizer and is outside the scope of this project.

III. FEE

Lawrence, Nye, Andersen Associates will provide the Mechanical Engineering services described in herein for an hourly rate not-to-exceed fee of **$6,200.00**.

Additional services not specified in the Scope of Services shall be subject to a written amendment in accordance with section 3(c) of the agreement.