

AGENDA ITEM NO.
<u>COUNCIL MEETING</u> <u>5/8/07</u>
APPROVED BY _____
DEPARTMENT DIRECTOR _____
CITY MANAGER _____

April 27, 2007

FROM: BRUCE RUDD, Assistant City Manager/Interim Chief Information Officer
City Manager's Office/Information Services Department

BY: EDDIE HUGHES, Information Services Manager
Systems Applications Division

SUBJECT: APPROVE AGREEMENT WITH EVERGE GROUP OF TEXAS, LTD. IN THE AMOUNT OF \$539,008 TO PROVIDE PROFESSIONAL CONSULTING SERVICES TO UPGRADE THE PEOPLESOFT HUMAN RESOURCES/PAYROLL APPLICATIONS AND IMPLEMENTATION OF SELF SERVICE APPLICATIONS.

KEY RESULT AREA

Customer Service and Resource Management

RECOMMENDATIONS

Staff recommends that the City Council approve an agreement with eVerge Group of Texas, Ltd. in the amount of \$539,008 for professional consulting services to upgrade the PeopleSoft Human Resources Management System (HRMS)/Payroll applications and the implementation of self service applications.

EXECUTIVE SUMMARY

Beginning in July, 1999, the City has been utilizing the PeopleSoft HRMS/Payroll system for employee recordkeeping and payroll processing. The City is currently on a non-support 8.3 version of PeopleSoft which was last upgraded in December, 2003. The City must upgrade to PeopleSoft version 8.9/9.0 to maintain vendor support. The agreement with the eVerge Group of Texas, Ltd. is for professional consulting services to assist in the upgrade from version 8.3 to 8.9/9.0.

Council approval is requested to approve the agreement which has been approved as to form by the City Attorney's Office and the Risk Management Division.

KEY OBJECTIVE BALANCE

The upgrade and implementation balances all three key objectives of Customer Satisfaction, Financial Management, and Employee Satisfaction. Customer satisfaction is derived from the ability of potential City employees to complete employment applications on-line and track their application status at any time. Current

employees will also be able to do the same for promotional opportunities, inquire on their employment history, and make updates to personal information. The availability of information will increase both customer and employee satisfaction. The upgrade will allow the City to continue its fiscal responsibility to pay its employees on time and accurately, be on a vendor supported software, and take advantage of system improvements.

BACKGROUND

The City utilizes the PeopleSoft HRMS/Payroll software applications to maintain employee records and process the bi-weekly employee payroll. The City last upgraded its PeopleSoft HRMS/Payroll system in December, 2003 and is currently operating on version 8.3 which recently went off vendor support. PeopleSoft is currently supporting versions 8.9 and 9.0. The City has the election to upgrade to either version for the same cost. The City's decision will be dependent on the City's needs and the consultant's recommendation.

In preparing for the upgrade to version 8.9/9.0, staff has worked with PeopleSoft to identify areas that will be improved by the City's use of the updated PeopleSoft applications. The improvements will streamline current business processes and utilize new functionality found in the next version. In order to implement the recommended improvements, City staff will require consulting expertise to assist in the upgrade and configuration of the PeopleSoft application.

The HRMS/Payroll upgrade process will also include the implementation of self service applications. The self service applications will allow potential and current employees to update personal information online. Job applicants will be able to complete online applications and track application status. Employees will be able to access and update selected employment records, make inquiries into employment history, and ensure current employee profiles are accurate. The self service applications will improve and increase the City's eGov service initiatives and allows the City to provide better service with existing staff.

The HRMS/Payroll upgrade is included in the FY 2007 Information Services Department budget for \$1,000,000. The project costs are broken down into consulting services (\$600,000), PeopleSoft self-service applications (\$300,000), and hardware upgrades (\$100,000).

In adherence with Fresno Municipal Code Section 3-109 and Administrative Order 6-19, a consulting services Request for Proposal was posted on the City's website, advertised in a local newspaper, and faxed to 16 consulting firms. Seven bid proposals were received. The eVerge Group of Texas, Ltd. was the second lowest bidder and was separated from the lowest bidder by less than one hundred dollars. The eVerge Group of Texas, Ltd. was determined by the selection committee to be more experienced in public sector upgrades and implementations and provided more value to the City. Staff recommends that the City Council award the contract in the amount of \$539,008 to the eVerge Group of Texas, Ltd.

FISCAL IMPACT

Funds have been included in the FY 2007 adopted budget for the HRMS/Payroll applications upgrade.

KI
04/27/07

Attachment: Agreement

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

THIS AGREEMENT is made and entered into effective the 14th day of May, 2007, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and eVerge Group of Texas, LTD., a Texas limited partnership (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional software implementation, configuration and consulting services for Human Resources Management Systems Upgrade and Implementation of Self Service Applications, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing PeopleSoft software implementation and configuration services 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 3-109 and Administrative Order 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Interim Chief Information Officer (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

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

1. Scope of Services. CONSULTANT shall perform the services described in **Exhibit A** in accordance with the standards set forth in Section 6 of this Agreement.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through June 30, 2008, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$539,008, paid on the basis of the hourly rates and expenses set forth in the Schedule of Fees in **Exhibit A**.

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

(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 (other than the requirement herein that CITY pay CONSULTANT compensation for services performed in accordance with Section 1 of this Agreement prior to the effective date of termination) 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) 30 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; (iv) completion of all services by CONSULTANT pursuant to Section 1 of this Agreement and full payment therefor; or (v) expiration of this Agreement. CITY agrees to give CONSULTANT written notice within 30 days of any such non-appropriation of funds or insufficient funding for the Project.

(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 performed in accordance with Section 1 of this Agreement prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred (i) which reasonably could have been avoided after receiving any notice of termination from CITY, or (ii) which were performed or incurred after the effective date of termination or expiration.

(c) In the event of termination due to failure of CONSULTANT to 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. If it is ultimately determined by a court of competent jurisdiction that CONSULTANT is entitled to any payment withheld pursuant to this Section 4(c), CITY agrees to promptly make such payment to CONSULTANT with interest at the percentage yield rate of City's investment pool per annum for such monies accruing from the date such payment should have been made.

(d) Upon any termination or expiration of the Agreement, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; or (ii) proceed by appropriate court action to enforce the terms of the Agreement.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement, unless such failure to comply is as a result of or in connection with CITY'S breach 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 or omissions of CITY in its contractual capacity (i.e., in the course of its performance under this Agreement), fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall use all commercially reasonable efforts to remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator 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 (other than its employees and subcontractors who need to know such information and who agree with CONSULTANT to maintain the confidentiality of such information) pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all (i) proprietary and confidential information as described in Section 5(c) below; and (ii) proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

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

(c) In providing the services hereunder, CONSULTANT will have the need to use and access certain programs, software, and other intellectual property rights licensed to CITY by PeopleSoft USA, Inc. or Oracle Corporation or any of its affiliates under an End User or Software License and Services Agreement. Confidential Information in Section 5(a) above shall include such software and any of the following in CITY'S possession: (i) all information process, process parameters, methods, practices, fabrication techniques, technical plans, new product development, price lists, supplier lists, financial information and all other compilations of information (whether or not designated or marked "confidential" or the like), which relate to the business of PeopleSoft/Oracle and which have not been disclosed by PeopleSoft/Oracle to the general public; and to (ii) all "Trade Secrets" (as defined in Section 6254.7 of the California Government Code) of PeopleSoft/Oracle.

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

6. Professional Skill and Warranties.

(a) CONSULTANT represents to CITY that CONSULTANT is a certified Oracle/PeopleSoft partner and experienced in PeopleSoft software implementation and configuration. CONSULTANT warrants that CONSULTANT will perform the services in a professional and skillful manner in accordance with industry standards.

(b) Following successful prerequisite testing and acceptance by CITY, demonstrating that the upgrade has been completed for Phase 1 of **Exhibit A**, CITY will schedule the actual "Go Live Date" for Phase 1. For a period of 60 calendar days following the earliest to occur of (1) such actual "Go Live Date," (2) CITY'S termination of this Agreement or (3) the expiration of this Agreement (assuming CONSULTANT is no longer performing services, as provided in Section 2); CONSULTANT warrants the services (including performance of a task, provision of advice and counsel, assistance, support, or access to a resource CONSULTANT makes available to CITY) and deliverables provided by CONSULTANT will enable the respective PeopleSoft Human Resources Management System, Payroll, Time & Labor systems to function in a live, production environment, in accordance with the specifications for Phase 1 of **Exhibit A** (including, without limitation, the mutually agreed upon Project Scope Statement). CITY must report to CONSULTANT any deficiencies in the services or deliverables in writing within such 60 days.

(c) Following successful prerequisite testing and acceptance by CITY, demonstrating that the implementation has been completed for Phase 2 of **Exhibit A**, CITY will schedule the actual "Go Live Date" for Phase 2. For a period of 60 calendar days following the earliest to occur of (1) such actual "Go Live Date," (2) CITY'S termination of this Agreement or (3) the expiration of this Agreement (assuming CONSULTANT is no longer performing services, as provided in Section 2); CONSULTANT warrants the services (including performance of a task, provision of advice and counsel, assistance, support, or access to a resource CONSULTANT makes available to CITY) and deliverables provided by CONSULTANT will enable the respective self-service applications to function in a live, production environment, in accordance with the specifications for Phase 2 of **Exhibit A** (including, without limitation, the mutually agreed upon Project Scope Statement). CITY must report to CONSULTANT any deficiencies in the services or deliverables in writing within such 60 days.

(d) CITY'S primary remedy for any breach of the above warranties of services and deliverables shall be the re-performance of the non-conforming services under this Agreement. If CONSULTANT cannot re-perform the service according to the standards in Section 6(a) above, CITY shall be entitled to recover any fees paid to CONSULTANT for the deficient service and CONSULTANT agrees to reimburse CITY such fees.

(e) CONSULTANT hereby disclaims all warranties whatsoever with respect to the programs, software and other intellectual property rights licensed by Oracle Corporation and its affiliates under the End User License and Services Agreement with Oracle Corporation that is provided to CITY (the "EULA") by Oracle Corporation. CITY agrees to look solely to Oracle Corporation for any such warranties. No hardware or software is being provided to CITY by CONSULTANT pursuant to this Agreement.

(f) THE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE BY CONSULTANT, ITS EMPLOYEES OR AGENTS PRIOR TO OR DURING THE PERFORMANCE OF THIS AGREEMENT.

(g) This Section 6 shall survive expiration or termination of this Agreement.

7. Indemnification.

(a) 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.

(b) All indemnification obligations under this Section 7 shall be subject to the following requirements: (i) CITY shall provide CONSULTANT with prompt written notice of any third party claim for which indemnification will be sought; (ii) CITY shall permit CONSULTANT to assume and control the defense of any such claim upon CONSULTANT'S written acknowledgment of the obligation to indemnify (unless, in the opinion of counsel of CITY, such assumption would result in a material conflict of interest); and (iii) CONSULTANT shall not enter into any settlement or compromise of any claim without CITY'S prior written consent, which shall not be unreasonably withheld. In addition, CITY may, at its own expense, participate in its defense of any such claim. In the event that CONSULTANT assumes the defense of any such claim, CONSULTANT shall have no liability for attorney's fees and costs incurred by CITY in regards to such claim except for those reasonable attorney's fees and costs incurred by CITY prior to CONSULTANT'S assumption of the defense of any such claim.

(c) 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.

(d) This Section 7 shall survive termination or expiration of this Agreement.

8. Limitation of Liability.

(a) Neither party shall be liable to the other party or any other person under this Agreement for any incidental, indirect, exemplary, special or consequential damages, under any circumstances, including, but not limited to, lost profits, revenues, or savings, or the loss or use of any data, even if the claimant had been advised of, knew, or should have known, of the possibility thereof.

(b) To the extent that all or any portion of a claim by CITY or any third party is not covered under any insurance required to be maintained by CONSULTANT or its subcontractors under Section 9 of this Agreement (so long as such non-coverage is not due to failure of either CONSULTANT, or its subcontractors to maintain such required insurance), such non-covered portion of such claim shall be a "Non-Covered Claim" for purposes of this Agreement. CONSULTANT'S aggregate maximum cumulative liability for all such "Non-Covered Claims" under this Agreement, including Section 7 above or otherwise, whether in contract, tort or otherwise, shall under no circumstances exceed the total fee amount as set forth in Section 3(a) of this Agreement (i.e., \$539,008).

9. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**.

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

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

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

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

10. Conflict of Interest and Non-Solicitation.

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

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the

California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

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

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 10(b), above.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 10 in each subcontract and require its subcontractors to comply therewith.

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

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

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

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

12. General Terms.

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

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available during regular business hours for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time to confirm compliance with the terms of this Agreement. This Section 12(b) shall survive expiration or termination of this Agreement.

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

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

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

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

demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

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

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

14. Independent Contractor.

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

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

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

15. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested,

addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

16. Binding. Subject to Section 17, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

17. Assignment and Subcontracting.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment or subcontracting 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 or subcontracting by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee. CONSULTANT shall provide CITY written qualifications of any proposed subcontractor and make such subcontractor available to CITY for interview.

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

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

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

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

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

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

23. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement

be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

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

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

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

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

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

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

30. Permissible Marketing. CITY agrees that CONSULTANT may issue press releases or other marketing materials or display on its website web pages which contain CITY'S name, and CONSULTANT may disclose the nature of the relationship between the parties created by the Agreement; provided, however, CONSULTANT gives an advance copy to CITY for its review at least 15 calendar days prior to its release or display. Further, CITY agrees that CONSULTANT may include its name with listings and other presentations of CONSULTANT'S customers; provided, however, CONSULTANT gives to CITY a copy of the respective list and presentation for its review at least 15 calendar days prior to its release or display. CONSULTANT shall immediately cease further use of CITY'S name in the event a written request is received from CITY.

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

CITY:
CITY OF FRESNO,
a California municipal corporation

CONSULTANT:
eVerge Group of Texas, LTD.,
a Texas limited partnership

By: _____
Bruce Rudd,
Interim Chief Information Officer

By: eVerge Group, Inc., as general partner of
eVerge Group of Texas, LTD.

By: _____

ATTEST:
REBECCA E. KLISCH
City Clerk

Name: _____

Title: _____

By: _____
Deputy

By: _____

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

Name: _____

Title: _____

By: _____
Nancy A. Algier Date
Senior Deputy

Addresses:

CITY:
City of Fresno
Attention: Ken Ishimoto,
Information Services Supervisor
2600 Fresno St., Room 1059
Fresno, CA 93721-3608
Phone: (559) 621-7113
FAX: (559) 457-1024

CONSULTANT:
eVerge Group of Texas, LTD.
Attention: John Beall,
Executive Vice President
4965 Preston Park Blvd., Suite 700
Plano, TX 75093
Phone: (972) 608-1803
FAX: (972) 608-1893

Attachments:

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

Exhibit A

SCOPE OF SERVICES

**Consultant Service Agreement between City of Fresno (hereafter “City”)
and eVerge Group of Texas, Ltd. (hereafter “Consultant” or “consultant” or
“consultants”)**

Human Resources Management Systems Upgrade
and Implementation of Self Service Applications

PROJECT TITLE

Phase 1 – Human Capital Management (HCM) Applications Upgrade Approach

The objective of this Phase 1 of the project is to upgrade the PeopleSoft Human Resources Management System, Payroll, and Time & Labor systems from version 8.3 to 8.9, or 9.0 (at no additional cost to City). The City also intends to increase its “return on investment” (ROI) in PeopleSoft by identifying existing and new functionality that will benefit the City. The City welcomes suggestions to changes in existing business processes or custom technical developments.

Project Activities	Statement of Work
1. Project Documents Meet with City staff to prepare a Project Charter, a Project Scope Statement, and a Project Management Plan. Work will include identification of City requirements, resources to be applied, and overall upgrade methodology. Project milestones and time schedule of upgrade phases, resource needs, and deliverables should be included. Consultant will discuss with City the options of implementing 8.9 or 9.0, to enable City to make an election on the upgrade version.	<ul style="list-style-type: none">Working with the City staff, Consultant will lead in the development of the Project Charter, Project Scope Statement and Project Management Plan.
2. Fit Gap Analysis Document City of Fresno business process with the delivered PeopleSoft processes. Make recommendations for changes to City business process and identify existing and new functionality that will benefit the City.	<ul style="list-style-type: none">Onsite Functional consultants will conduct interviews and Fit/Gap sessions. Fit/Gap sessions will include overviews of current and new functionality. Consultants will provide insight and recommendations regarding additional functionality the City may want to implement.
3. Hardware Assessment Review and make recommendations of system architecture, infrastructure, and sizing requirement.	<ul style="list-style-type: none">Technical consultant will do an onsite assessment and provide recommendations to the City.
4. System Configuration Document system configuration including system navigation for configuration set up, business reasons for configuration, and page shots of configuration.	<ul style="list-style-type: none">Functional consultants will create and provide feedback on configuration documents. They will also provide insight regarding existing configurations.

Project Activities	Statement of Work
<p>5. Technical Migration Upgrade existing 8.3 database to 8.9/9.0 database, run compare reports, and apply current PeopleSoft patches and PeopleTool releases, Consultant to provide assistance on first and subsequent test moves and final move to production.</p>	<ul style="list-style-type: none"> Onsite technical consultant will work with City resources to complete the first upgrade pass. Remote technical support will be available if the City needs guidance on subsequent upgrade passes. Onsite technical consultant will work with City resources on Go Live preparations and the final move to production.
<p>6. Security Upgrade existing security to 8.9/9.0. Review and make recommendations to current security configuration and user access.</p>	<ul style="list-style-type: none"> Consultants will review and provide feedback regarding the City's upgraded security configuration.
<p>7. Testing Make recommendations for user, integration, system, and performance testing. Recommend/create scripts for testing system configurations and City business processes.</p>	<ul style="list-style-type: none"> Consultants will provide sample 8.9/9.0 test scripts from other engagements and make recommendations regarding user, integration, system and performance testing to enable City staff to finalize and execute the test scripts.
<p>8. Knowledge Transfer Provide experienced and knowledgeable functional and technical staff for the upgrade and knowledge transfer to City staff. The Consultant will work at a City designated location to ensure the knowledge transfer occurs.</p>	<ul style="list-style-type: none"> Technical consultant will provide knowledge transfer during initial and final upgrade pass as well as an additional week of onsite knowledge transfer on mutually agreed upon topics. Functional consultants will provide knowledge transfer through a combination of onsite and remote sessions with City staff. Web conferencing may be used to assist with knowledge transfer during remote support.
<p>9. Training Provide train the trainer training for the module leads and conduct first training class for end users. Making recommendations of PeopleSoft training classes needed by City staff is encouraged.</p>	<ul style="list-style-type: none"> Consultants will review training materials developed by City staff and make recommendations regarding the City's training plan including, without limitation, the scenarios/data created by City staff for end user training. Consultants will deliver onsite Train the Trainer session as well as the first end user class.
<p>10. Project Management The City will provide a full time Project Manager. The Consultant to provide a part-time Project Manager to provide upgrade expertise, guidance, and assessment of project status.</p>	<ul style="list-style-type: none"> Project Oversight and Quality Assurance will be provided by Consultant's Project Manager through a combination of onsite and remote efforts throughout the project. Project oversight will be provided by Consultant's Project Manager onsite during Go Live activities.

Project Activities	Statement of Work
<p>11. Post Deployment Support Consultant to provide production and end user support after go-live.</p>	<ul style="list-style-type: none"> ▪ Nine weeks of post production support will be provided through a combination of onsite and remote consultants. Onsite support will be provided immediately after go live through the first production payroll run and then will shift to remote support provided by the eVerge Service Center. It is anticipated that the need for support will decrease over time based on our experience with other upgrade support clients.
<p>12. Schedule The City has a 9 month upgrade schedule starting in May 2007. The upgrade should be completed to “Go Live” by December 1, 2007 and will be dependent on the beginning of a City employee pay period. Post production support will run 60 days from the actual “Go Live Date” and estimated to be completed by January 31, 2008.</p>	<ul style="list-style-type: none"> ▪ A jointly developed upgrade schedule, that considers the payroll calendar, will be established at the start of the project.
<p>13. New Functionality The City also intends to increase its ROI in PeopleSoft by identifying existing and new functionality that will benefit the City.</p>	<ul style="list-style-type: none"> ▪ Consultants will work with the City staff to identify functionality that will improve ROI and provide insights and recommendations regarding the implementation effort. Limited new functionality will probably go live during the upgrade timeline.

Phase 1 - HCM Upgrade Timeline

Consultant is recommending a 9 month duration with a Phase 1 start date of May 14, 2007, with an estimated Go Live Date of November 30, 2007 and Phase 1 completion (including post production support period) on January 31, 2008. Consultant acknowledges that if the parties have not completed the pre-requisite testing and acceptance in time for the estimated Go Live Date to proceed by the first City employee pay period in December 2007, then the next available estimated “Go Live Date” would be March 1, 2008.

Phase 1 - Assumptions

More consulting assistance will be required in the functional areas than in the technical areas of the upgrade; but, without diminishing any requirement of Consultant to provide any needed assistance in the technical areas, technical guidance will be provided with more support in the functional areas related to fit/gap analysis, configuration, test script development, testing, documentation, and training.

Phase 2 - Self Service Applications Implementation

The objective of this Phase 2 of the project is to implement the PeopleSoft Talent Acquisition Manager, Candidate Gateway, ePay, eProfile, eCompensation, and eDevelopment after the HCM upgrade.

Project Activities	Statement of Work
<p>1. Project Documents Meet with City staff to prepare a Project Charter, a Project Scope Statement, and a Project Management Plan. Work will include identification of City requirements, resources to be applied, and overall upgrade methodology. Project milestones and time schedule of upgrade phases, resource needs, and deliverables should be included.</p>	<ul style="list-style-type: none"> ▪ Working with the City staff, Consultant will lead in the development of the Project Charter, Project Scope Statement and Project Management Plan (may be done in conjunction with Project Documents in Phase 1).
<p>2. Fit Gap Analysis Document City of Fresno business process with the delivered PeopleSoft processes. Make recommendations for changes to City business process and identify existing and new functionality that will benefit the City.</p>	<ul style="list-style-type: none"> ▪ Onsite Functional consultant will conduct interviews and Fit/Gap sessions (may be done in conjunction with Fit/Gap analysis in Phase 1). Consultants will provide insight and recommendations regarding functionality the City may want to implement.
<p>3. Hardware Assessment Review and make recommendations of system architecture, infrastructure, and sizing requirement.</p>	<ul style="list-style-type: none"> ▪ Technical consultant will do an onsite assessment and provide recommendations to the City (may be done in conjunction with Hardware Assessment in Phase 1).
<p>4. System Configuration Document system configuration including system navigation for configuration set up, business reasons for configuration, and page shots of configuration.</p>	<ul style="list-style-type: none"> ▪ Functional consultant will create configuration documents.
<p>5. Security Configure security for new modules.</p>	<ul style="list-style-type: none"> ▪ Consultant will assist City staff in the design of roles and permission lists for new modules to enable City staff to assign roles to users and communicate users to employees.
<p>6. Testing Make recommendations for user, integration, system, and performance testing. Recommend/create scripts for testing system configurations and City business processes.</p>	<ul style="list-style-type: none"> ▪ Consultant will provide sample 8.9 test scripts from other engagements and make recommendations regarding user, integration, system and performance testing to enable City staff to finalize and execute the test scripts.

Project Activities	Statement of Work
<p>7. Knowledge Transfer Provide experienced and knowledgeable functional staff for knowledge transfer to City staff. The Consultant will work at a City designated location to ensure the knowledge transfer occurs.</p>	<ul style="list-style-type: none"> ▪ Functional and technical consultants will provide knowledge transfer through a combination of onsite and remote sessions with City staff. Web conferencing may be used to assist with knowledge transfer during remote support.
<p>8. Training Provide train the trainer training for the module leads and conduct first training class for end users. Making recommendations of PeopleSoft training classes needed by City staff is encouraged.</p>	<ul style="list-style-type: none"> ▪ Consultant will review training materials developed by City staff and make recommendations regarding the City's training plan including the scenarios/data created by City staff for end user training. Consultants will deliver onsite Train the Trainer session as well as the first end user class.
<p>9. Project Management The City will provide a full time Project Manager. The Consultant to provide a part-time Project Manager to provide implementation expertise, guidance and assessment of project status.</p>	<ul style="list-style-type: none"> ▪ Project Oversight and Quality Assurance will be provided by Consultant's Practice Vice President through a combination of onsite and remote efforts throughout Phase 2 of the project. Ongoing project management will be the responsibility of Consultant's onsite consultant.
<p>10. Post Deployment Support Consultant to provide production and end user support after go-live.</p>	<ul style="list-style-type: none"> ▪ Nine weeks of post production support will be provided through a combination of onsite and remote consultants. Onsite support will be provided immediately after go live and then will shift to remote support provided by the eVerge Service Center.
<p>11. Schedule The City has a 6.5 month schedule starting in December 2007. All modules should be completed to "Go Live" by April 15, 2008. Post production support will run 60 days from the actual "Go Live Date" and estimated to be completed by June 15, 2008.</p>	<ul style="list-style-type: none"> ▪ A jointly developed implementation schedule will be established at the start of Phase 2 consistent with the Schedule.

Phase 2 - Self Service Applications Implementation Timeline

Consultant is recommending a 6.5 month Phase 2 duration with a start date of December 1, 2007. It is currently anticipated that the Self Service module implementation will start immediately following Phase 1 Go Live Date (i.e., November 30, 2007), but in the event that such Go Live Date is delayed, the parties will work in a collaborative manner to begin in December 2007. The estimated Go Live Date for Phase 2 is April 15, 2008 for all modules with Phase 2 completion (including post production support period) on June 15, 2008.

Phase 2 - Assumptions

More consulting assistance will be required in the functional areas than in the technical areas; but, without diminishing any requirement of Consultant to provide any needed assistance in the technical areas, technical guidance will be provided with more support in the functional areas related to fit/gap analysis, configuration, test script development, testing, documentation, and training.

Schedule of Fees

Phase 1 - Upgrade Cost Summary

\$189,000 (onsite \$175/hr)
87,000 (remote \$150/hr)
28,350 (Est Expenses: 15% of Onsite)
\$304,350 Subtotal

Phase 2 – Self Service Applications Implementation Cost Summary

\$204,050 (onsite \$175/hr, remote \$150/hr)
30,608 (Est Expenses – expected to decrease in proportion to remote services provided: 15% of Onsite)
\$234,658 Subtotal

The total cost of the project will not exceed \$539,008.

Exhibit B

INSURANCE REQUIREMENTS Consultant Service Agreement between City of Fresno and eVerge Group of Texas, Ltd.

Human Resources Management Systems Upgrade and Implementation of Self Service Applications
PROJECT TITLE

Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

Minimum Limits of Insurance

CONSULTANT shall maintain limits of liability of not less than:

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

4. Professional Liability (Errors and Omissions)

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

Umbrella or Excess Insurance

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

Deductibles and Self-Insured Retentions

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

Other Insurance Provisions

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

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

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

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

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

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

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

Acceptability of Insurers

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

Verification of Coverage

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

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Human Resources Management Systems Upgrade and Implementation of Self Service Applications
PROJECT TITLE

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

Explanation: _____

 Signature

 (name)

 (company)

 (address)

 (city state zip)

Additional page(s) attached.