

AGENDA ITEM NO.	1 H
COUNCIL MEETING	3/3/2009
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

March 3, 2009

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

BY: GARTH GADDY, Assistant Director 
Department of Public Utilities-Water Division

SUBJECT: APPROVE CONSULTING AGREEMENT WITH THE HLA GROUP TO PROVIDE PROFESSIONAL LANDSCAPE ARCHITECT SERVICES FOR THE DEPARTMENT OF PUBLIC UTILITIES-WATER DIVISION IN AN AMOUNT NOT TO EXCEED \$69,405.00 AND AUTHORIZE THE DIRECTOR OF PUBLIC UTILITIES TO EXECUTE THE CONSULTING AGREEMENT ON BEHALF OF THE CITY

KEY RESULT AREA

Resource Management

RECOMMENDATION

Staff recommends that the City Council authorize the Director of Public Utilities to execute a Consulting Agreement with The HLA Group to provide Professional Landscape Architect Design services for the Department of Public Utilities-Water Division in an amount not to exceed \$69,405.00.

EXECUTIVE SUMMARY

Water Division staff recommends providing public education to the City of Fresno's water customers by demonstrating alternative landscapes, which are water-wise and will conserve water, while allowing customers to have appealing and functional landscapes. Educational garden classes and guided tours have the potential to influence Fresno's outdoor landscape water use, thereby helping to reduce water consumption. Currently the Water Division does not have a water conservation demonstration garden. Water conservation demonstration gardens are included as a public education example in the Best Management Practices (BMP) listed in the City's contract with the U. S. Bureau of Reclamation for surface water.

Following Administrative Order (A.O.) 6-19, the Water Division solicited Request for Qualifications (RFQ) to select a Professional Landscape Architect Consultant to provide design services for the preparation of plans and specifications for the Demonstration Garden. The HLA Group was selected as the most qualified consultant that responded to the RFQ, and a consultant services agreement has been negotiated for an amount not to exceed \$69,405.00. Funding for this agreement is provided in the Department of Public Utilities Capital Improvement Program.

KEY OBJECTIVE BALANCE

Professional Landscape Design services satisfy the key objectives areas of Customer Satisfaction, Employee Satisfaction and Financial Management. Customer satisfaction is accomplished through the effective use of professional services to develop facilities to help conserve a valuable resource. Employee satisfaction and financial management are derived through the use of professional services to assure timely and efficient preparation of plans and specifications to complete a capital improvement project. Financial management benefits are realized through implementation of a cost-effective planning and design services.

BACKGROUND

As the population grows in Fresno and the need for water increases, water conservation becomes increasingly important. On the average home site, landscaping consumes approximately 50-70% of the overall water used. Outdoor landscaping is one of the best areas to show water customers ways to save through water-wise plant choices and irrigation systems and have the greatest possible return on water conserved. With this public service need in mind and fulfilling the BMP requirements, the Water Division has the need to demonstrate water wise gardens. This demonstration garden will also provide the best opportunity for the City to conduct educational tours and classes to help teach the public about water-wise plants, irrigation and design for visually pleasing communities.

The Water Wise demonstration gardens will be located at the Surface Water Treatment Facility and contain four demonstration areas. The garden sites will show varying levels of water usage from a typical Fresno landscape to three different styles of water-wise landscapes. The garden areas will include four facades with landscaping to illustrate alternate water efficiency. The garden areas will illustrate not only water efficient plants, but will also illustrate styles and techniques for irrigation. The garden areas may contain, but are not limited to, focal point features and hardscapes to best illustrate water-wise landscape designs.

FISCAL IMPACT

Funding for this agreement is provided in the Department of Public Utilities FY09 Capital Improvement Program.

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

THIS AGREEMENT is made and entered into effective the ____ day of February, 2009, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and The HLA Group, Landscape Architects and Planners, Inc. (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional Landscape Architect services for the design of plans and general construction contract documents for Waterwise Demonstration Gardens (SWTF), hereinafter referred to as the "Project;" and

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

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

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

AGREEMENT

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

1. Scope of Services, Completion Schedule and Liquidated Damages. CONSULTANT shall perform the services described herein and in **Exhibit A** to complete the Project more fully described in **Exhibit A**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**. The services of CONSULTANT shall consist of five Parts as described below. A separate Notice to Proceed will be issued for each of the aforementioned Parts. By entry into this Agreement and upon CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in Part One. CONSULTANT shall not perform any other Part of the Agreement, and this Agreement shall not be a contract for any other Part, until further performance is authorized by CITY'S issuance of a written "Notice to Proceed." It shall, however, remain CONSULTANT'S offer to perform all remaining parts described herein. In the event CONSULTANT performs services without CITY'S prior written authorization, CONSULTANT will not be entitled to compensation for such services. It is agreed by CONSULTANT and CITY that in the event that services called for under this Agreement are not completed before or upon expiration of the limits as set forth in the Parts described herein, damage shall be sustained by CITY. Since it is and shall be impractical to determine the actual damage which CITY shall sustain in the event of and by reason of such delay, it is therefore agreed that CONSULTANT shall pay to CITY the amount of 0.25% of \$20,000.00 per calendar day's delay in completing the services within the limits set

forth herein. It is further agreed that CITY may deduct the amount thereof from any money due or that may become due CONSULTANT under this Agreement.

(a) Part One. Schematic Design Phase.

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

(2) [Intentionally Omitted]

(3) CONSULTANT shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible CITY department/division that is available in CITY'S records and is required by CONSULTANT in connection with the consulting services including, but not limited to, maps, reports, information, restrictions and easements.

(4) CONSULTANT shall provide a preliminary evaluation of the Project taking into consideration CITY'S estimate of the cost of construction ("Construction Budget") of \$120,000.00, including alternative approaches to design and construction of the Project.

(5) Based upon the mutually agreed upon Project requirements and any adjustments authorized by CITY in the Construction Budget, CONSULTANT shall design and prepare schematic design drawings and other documents for review, modification, if required, and acceptance by CITY staff sufficient to show the concept and scope of the proposed Project and the scale and relationship of Project components.

(6) CONSULTANT shall submit a preliminary estimate of construction cost for review and acceptance by CITY. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include CONSULTANT'S compensation as herein provided. Such estimate shall include, and shall separately state, the cost of any add or deduct alternatives, the cost of any work which may be let on a segregated bid basis and any equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget.

(7) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(8) CONSULTANT may not rely upon any as-builts provided by CITY, but shall investigate the existing conditions and ascertain the adequacy of such as-builts for CONSULTANT'S design. CONSULTANT shall bring to CITY'S attention any

discrepancies in the as-builts that are discovered by CONSULTANT. CITY makes no representations regarding any as-builts.

(9) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 7 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 3 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the 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) 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 size and character of the Project as necessary to show treatment of significant details. In addition, CONSULTANT shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents and specifications shall be subject to review and acceptance by CITY.

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

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part 1 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the revised estimate and CONSULTANT shall, at no additional cost to CITY, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by CITY. CITY shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in CONSULTANT'S compensation.

(4) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, or

waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 20 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 8 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the 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 specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. CONSULTANT shall also assist with preparation of necessary bidding information, general and special conditions of the general construction contract, technical specifications of the general construction contract, and the bid proposal and general construction contract forms. Such documents shall be subject to the review and acceptance by CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. CITY'S Standard Specifications must be used by CONSULTANT where possible. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by CITY shall be used by CONSULTANT unless the Director determines they would be impractical for this Project. CONSULTANT shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

(2) Upon request of CITY, CONSULTANT shall provide the calculations used to determine the general construction contract quantities; and structural calculations for the purpose of obtaining any building permits.

(3) CONSULTANT shall make as many submittals as may be necessary or desirable 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 shall provide CITY with Six sets of completed plans and Two sets of completed specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by

CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

(5) 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: Plans in ACAD V2007 or newer and Specifications in MS Office Word .

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

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

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 45 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 10 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the 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 estimate of construction cost previously accepted by CITY, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, CONSULTANT shall, within 14 days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, at no additional cost to CITY provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. CONSULTANT shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to CONSULTANT from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%.

(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 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. 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. Based on CONSULTANT'S best knowledge, information and belief, CONSULTANT shall provide CITY a general written assurance that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, CONSULTANT shall provide a written judgment 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) [Intentionally Omitted]

2. CITY'S responsibilities. CITY will:

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

(b) Manage and be responsible for all negotiations with owners in connection with land or easement acquisition and provide all required title reports and appraisals.

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

(d) Select the testing laboratory and pay the cost of borings, samplings, and other work involved in soils testing during construction.

(e) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release CONSULTANT from its responsibility to make periodic site visits under Section 1(e) for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to CITY.

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

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

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

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

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

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of \$69,405.00. 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. Such statements shall be for an amount no greater than that attributable to the Part upon which CONSULTANT is then engaged as provided in Section 3(c) below.

(c) For purposes of determining the division of the total compensation to CONSULTANT as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by CITY as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of CONSULTANT'S performance as follows: Part 1 - 2%, Part 2 - 14%, Part 3 - 75%, Part 4 - 1% and Part 5 - 8%. Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to CONSULTANT.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

4. Termination, Remedies, Force Majeure, and Consolidation of Disputes.

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

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

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

(d) Upon any 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, liquidated, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon the request of the Director or his/her designee, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify the Director or his/her designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or his/her designee of the cessation of such occurrence.

(g) CONSULTANT agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at CITY'S option, be joined and consolidated with any other dispute or disputes arising from or relating to the Project so that all disputes arising from or relating to the Project may be resolved in a single proceeding. CONSULTANT hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

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 the services in a skillful manner and CONSULTANT agrees to thus perform the services. Acceptance of the services by CITY shall not operate as a release of CONSULTANT from said standards of said profession.

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.

(d) CONSULTANT'S services pursuant to this Agreement shall be provided under the supervision of David Campbell, and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

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

THE HLA GROUP,
[Legal Identity]

By: _____
Rene Ramirez, Director
Department of Public Utilities

By: John H. Nicolaus

Name: John H. Nicolaus

Title: Vice President

[if corporation or LLC, Board
Chair, Pres. or Vice Pres.]

ATTEST:
REBECCA E. KLISCH
City Clerk

By: STEVE CANADA

Name: STEVE CANADA

Title: President

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

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney

Any Applicable Professional License:

Number: CPA 3266

Name: John H. Nicolaus

Date of Issuance: 1990

By: R 2-23-09
Boyle

Addresses:

CITY:
City of Fresno
Attention: Lito Bucu, Supervising
Engineering Technician
1910 E. University Ave.
Fresno, CA 93703
Phone: (559) 559-621-5323
FAX: (559) 457-1159

CONSULTANT:

The HLA Group, Landscape Architects and
Planners, Inc.
Attention: David Campbell, Project
Landscape Architect
1050 Twentieth Street, Suite 200
Sacramento, CA 95811
Phone: (916) 447-7400
FAX: (916) 447-8270

Attachments:

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



EXHIBIT A

February 11, 2009

Mrs. Leslie Feathers
City of Fresno
Department of Public Utilities
Water Division, Water Conservation Program
1910 E. University Ave

1050 Twentieth Street
Suite 200
Sacramento, CA
95811
916.447.7400
fax 916.447.8270
www.hlagroup.com
CRLA
2770
3266
4675

**RE: WATERWISE DEMONSTRATION GARDEN
FRESNO, CALIFORNIA
REVISED PROPOSAL FOR LANDSCAPE ARCHITECTURAL SERVICES**

Dear Leslie:

The HLA Group is pleased to submit this proposal for professional services on the above referenced project. Our scope of work and fee proposal, based on the RFQ, our interview, and subsequent conversations, follows.

I. Project Description

The demonstration garden will be located within the existing City of Fresno Surface Water Treatment Facility and will consist of the following: New parking lot of approximately 8-12 stalls, including required ADA parking, ADA accessible pedestrian path (similar to a model home 'tour walk'), and four plots in the approximate shape and size of a typical residential front yard (approximately 50' x 35' – not including driveway area). The existing vehicular gate will be relocated and new fencing (to match existing) will be designed to allow separate public access to the demonstration garden. Each plot will feature varying landscapes illustrating progressively lower water use. Initial thoughts and techniques for the yards follow:

- The first plot will emulate a typical production residential front yard, with minimal shrub and groundcover areas, and significant turf, irrigated by 4" pop-up spray heads and a basic programmable irrigation controller.
- The second plot will illustrate minor changes that can be readily accomplished by a homeowner to achieve greater efficiency and less landscape water use. The Landscape may feature less turf and more shrub/groundcover or paving area, including drought-tolerant plant material, irrigated by a combination of point-source drip (for shrubs), sprays, and MP rotators (for areas 10' or greater). A demonstration "conversion" of a spray zone to drip emitters may be included. An ET-based "smart controller" may also be featured.
- The third plot will be landscaped with little or no turf, using a combination of medium and low water use shrubs, groundcovers, trees, and hardscape. Various types of low-volume irrigation will be used, including point source drip or inline emitters, bubblers, and micro-sprays.
- The final plot will be landscaped using exclusively low-water use plants and drip irrigation. A larger courtyard feature may be included to illustrate the water-saving benefits of programmed "active" landscape rather than simply planted "visual" landscape.

As part of the residential setting, residential facades will be designed and engineered as described:

- Timber, I-beam, or tubular steel frames constructed to mimic the outlines of typical residential structures to provide context. This would be less expensive to design, and significantly less expensive to construct than residential facades using typical residential home construction (by limiting the number of trades required). If extended, these structures could also serve as functional trellises, providing semi-sheltered outdoor space for classes or other gatherings.

Electrical and lighting design will include pole lighting for safety and security in the parking lot. Photometric calculations will be included. City of Fresno standard pole lighting for subdivisions may be appropriate. Low-voltage lighting for safety and visual effect will be provided in the "tour walk" through the gardens. Electrical connection for four irrigation controllers and maintenance outlets will be provided. Information and as-built plans for the existing electrical panel will be provided by the City. Coordinating or designing new electrical service or on-site verification of existing electrical panel capacity is excluded.

The existing irrigation mainline or water service to the treatment plant will be used for irrigation. New water service coordination or design is excluded. Sub-meters will be installed for each residential plot for water efficiency tracking by City staff.

Five informational signs, approximately 18" x 24," will inform and direct the public throughout the project. Signs will include one welcome/overall sign, and one describing the water conserving benefits and/or "take home points" for each of the four plots.

A two-sided tri-fold brochure will also be designed, providing a self-guided tour and additional information. Plant names, water conserving tips, and resources for additional information may be included. The brochure design will be produced in Adobe Illustrator for reproduction by the City or the City's vendor.

Electronic drawings of the existing site will be provided by the City, (AutoCAD .dwg format), including existing utilities, drainage, grades, improvements (including adjacent roadway and on-site construction such as driveways, fencing, etc.), building locations, right-of-way, easements, geotechnical soils report with paving design recommendations (if available), and all other pertinent information. Surveying, converting, researching, or copying plans is excluded. If required, the City shall perform additional survey work and generate topographic base information at it's sole expense.

II. Scope of Work

A. Schematic Design

1. This brief phase of work will clarify the site orientation, circulation, and project layout. A simple sketch showing pedestrian and traffic circulation, ADA path of travel, and size and location of the demonstration garden relative to the existing site will be sent for review by the City of Fresno. This sketch will serve to establish the overall concept and location, and will be the basis of future design efforts. The following deliverables are anticipated:
 - a) Conceptual layout sketch
 - b) Preliminary Estimate of Probable Cost (based on area)
2. Walk the site, photograph for reference, obtain samples for soil fertility analysis, and meet with the Client.

B. Design Development

1. Review the Client's project schedules, programmatic design requirements, landscape and irrigation ordinances, and design recommendations.

2. Prepare preliminary landscape design drawings showing the concept for site development. A scaled plan of the proposed garden plot designs, showing layout and relationship between planting areas, facades, hardscape, focal points or other landscape features, and tree locations will be provided. Material selection, including type and/or manufacturer, paint colors, etc. will be included. A preliminary plant palette for each of the four plots, and description of the proposed irrigation system will also be included. This plan will be provided for review and comment by the city.
3. These Plans define the character and essentials of the project including selection of materials. These plans may also be used to facilitate landscape pricing and serve as a technical design guideline for working drawings and coordination between project design and planning team members.
4. We shall provide minor landscape design modifications to the Client-approved landscape design submittal as necessary for permit approvals.
5. The following deliverables are anticipated:
 - a) Preliminary Design Plan, including Preliminary plant legends, material selections, and irrigation system description.
 - b) Preliminary Residential Facade elevations/plans
 - c) Preliminary Estimate of Probable Construction Cost

C. Construction Documentation

1. Upon the Client's approval of the Design Development Plans, we shall develop in detail the necessary drawings and technical specifications to contract the work. The Client shall be responsible for bidding, contract requirements, and general requirement divisions of the specifications. The City will route finalized construction documents for plan check and approval. We will make any required modifications for plan approval.
2. The following Exhibits and Deliverables are anticipated:
 - a) Layout and Paving Plan.
 - b) Grading and Drainage Plan.
 - c) Landscape Planting Plan.
 - d) Irrigation Plan.
 - e) Low Voltage Lighting Plan.
 - f) Lighting/Electrical Plan and calculations.
 - g) Residential facade elevations, details, and structural engineering calculations
 - h) Landscape construction, pedestrian pavements, planting and irrigation details.
 - i) Specifications (CSI Format).
 - j) Itemized landscape construction cost estimate.

D. Informational Signage and Brochure

1. Simultaneously with the design development and construction documentation, the HLA Group will design the layout, graphics, and copy for five 18" x 24" freestanding informational signs. Signs are assumed to be Windsor Fireform (porcelain enamel backed onto a solid stainless steel backing in a powdercoated steel frame). We will prepare one preliminary design mockup showing placeholder content, graphic format, and color scheme that will be applied to all signs for review and comment by the City (first submittal comments). We will make any requested changes.
2. After approval of the preliminary mockup, we will develop drafts of all five signs and submit these electronically (.pdf) for review and comment. We will make any

requested changes to the drafts. Once final approval has been granted, electronic files will be submitted to the sign fabricator. Contracting/Procurement will be arranged by the City. We will coordinate as needed with the fabricator during production.

3. We will develop a print-ready take-home brochure (8.5" x 14", double sided, tri-fold). This brochure may include a sketch or rendered plan of the demonstration gardens, plant list, water conserving tips, and resources for additional information.
4. The following deliverables are anticipated:
 - a) Color print of the preliminary design mockup showing general formatting, text style, and color scheme.
 - b) Full size color prints of the five draft designs
 - c) Color reductions of the final approved designs
 - d) Electronic files of the approved designs
 - e) Construction detailing of the sign installation
 - f) Draft brochure
 - g) Final brochure design in Adobe Illustrator format (.ai)

E. Bidding and Negotiation

1. We will assist the City in preparing the bid package, and any addenda. We will provide recommendations and assist in evaluating the bids as required. The following deliverables are anticipated:
 - a) Assist in the preparation of bid documents (review and suggest any required modifications to city standard documents, and provide bid form)
 - b) Addenda (as required)
 - c) Review and comment on bid results.

F. Construction Services

1. Review and approve, or take appropriate action, upon product or sample submittals, substitutions, and shop drawings.
2. During the course of the project we propose to make five (5) visits to the site as described below to familiarize ourselves with the progress and quality of construction and to determine, in general, if the project is proceeding in accordance with the design intent and the construction documents. The cost of the five visits is included in the fee proposal below. (Note: electrical and structural engineer site visits excluded)
3. We will provide the City with associated construction support services including responses to Requests for Information, Clarifications and Change Order Preparation where associated with landscape construction.
4. We will inform the City generally of the progress of the construction that is related to our design work and what we observe on our visits.
5. We may condemn any work at the site that fails to conform to the contract documents and make recommendations to the Client related to construction. We will have the right, but not the obligation, to inform any interested third parties of any non-conforming work that is not brought into conformity within 90 days of notice to the Client. However, we do not take on any obligations whatever to any such third parties to ensure such conformity or to inform them of any nonconformity, and no third party is intended to be the beneficiary of any part of our agreement.

6. The City will give us at least a three day advance written notice that the appropriate time has come for each of the following site visits, which will be scheduled at mutually convenient times:
 - a) A pre-construction meeting at the site.
 - b) A visit to the site to review mock-ups, inspect formwork, drainage system, and grades prior to concrete or flatwork placement.
 - c) A visit to the site to inspect the installation of the irrigation system, irrigation coverage, soil preparation and fine grading, and to review plant materials for conformance to specifications.
 - d) A visit to the site to begin compiling any punch-list of non-conformities and begin the landscape maintenance period under the contract documents.
 - e) A visit to the site to perform final inspection of landscaping to complete any punch-list of non-conformities and to prepare any final recommendations to the Client.

III. Exclusions to Scope of Services

The Client shall provide the following information or services as required for performance of the Scope of Services. The HLA Group assumes no responsibility for the accuracy of such information or services and shall not be liable for errors or omissions therein. Should The HLA Group be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Additional Services.

- G. Topography and survey indicating existing conditions and utilities including base information for the project as well as boundary limits.
- H. Legal descriptions of property.
- I. Geotechnical soils report.
- J. Soils fertility testing.
- K. Discovery or removal procedures for hazardous waste, wells, underground tanks or archaeological artifacts.
- L. Street frontage improvement plans.

IV. Schedule

As listed in City's Agreement.

V. Fee Proposal

A.	Schematic Design:	\$ 3,950.00
B.	Design Development:	\$ 7,170.00
C.	Construction Documents (with timber or metal sculptural frames)	\$28,730.00
D.	Informational Signage and Brochure	\$11,685.00
E.	Bidding and Negotiation	\$ 1,600.00
F.	Construction Services	\$ 4,910.00
G.	Electrical Engineering	\$ 3,680.00
H.	Structural Engineering	\$ 2,680.00
I.	Reimbursable Allowance	\$ 5,000.00

VI. **Compensation Terms**

- A. Additional services are not included under this proposal. If requested and authorized in writing by the Client, such services shall be billed on a "time and materials" basis at the following hourly rates:

Principal Landscape Architect	\$155	Landscape Designer	\$60
Senior Assoc Landscape Architect	\$130	Project Planner	\$100
Associate Landscape Architect	\$110	Assistant Planner	\$65
Project Landscape Architect/ Project Manager	\$95	Information Systems Manager	\$90
Job Captain	\$80	Information Systems Assistant	\$60
Senior Landscape Designer	\$70	Support Staff	\$40

- B. Services and fees for surveying, civil engineering, or geotechnical engineering **are not** included in this proposal. Such services, if required, shall be retained upon authorization by the Client and billed at 1.15 times actual cost.
- C. Reimbursable expenses **are** included in the above proposed fee schedule. Such expenses include, but are not limited to, telecommunication charges, lodging, mileage, and travel out of town, blueprinting and reprographics, postage, rental of equipment and vehicles, messenger and/or delivery charges, photographic supplies, and soil fertility processing. Charges for reimbursable expenses are computed at 1.15 times actual cost.
- D. If the Client makes a decision which involves additional services and expenses for changes in the drawings, specifications or other documents, or if the Landscape Architect incurs labor or expenses due to delays caused by the Client or a Contractor, the Landscape Architect is to be paid by the Client for such additional services, expenses, or legal fees that may be incurred. This shall include changes in the site plan after work commences by the Landscape Architect.
- E. Additional expense incurred by the Landscape Architect during construction due to changes in the site plan or contract documents caused by failure of the Client to provide adequate information will not be the responsibility of the Landscape Architect. Services that may be necessary to correct the contract documents will be billed as additional services.
- F. Invoices shall be submitted on the twentieth of each month based on work completed to that date. Accounts are due and payable within thirty days of receipt at the offices of The HLA Group in Sacramento, California. A finance charge of 1 1/2% per month, or the maximum amount allowed by law, will be charged on past due accounts. Failure to remit payment will justify cessation of further services. The prevailing party will pay legal expenses necessary for the collection of delinquent fees.

VII. **Miscellaneous**

- A. The Client will identify the Landscape Architect as the Landscape Architect of record for all publicity issued on the project, including awards, job signs, magazine/periodical and newspaper articles and press releases, etc.; and the Landscape Architect will provide at its sole expense graphic materials reasonably requested by the Client for such publicity.
- B. This fee proposal shall be valid for ninety (90) days from the date of proposal. The HLA Group reserves the right to resubmit this fee proposal if the contract is not executed within this ninety (90) day period.

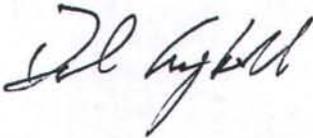
- C. Landscape architects are regulated by the State of California. Any question concerning a landscape architect may be referred to the Landscape Architects Technical Advisory Committee at: 2420 Del Paso Road, Suite 105, Sacramento, California 95834, (916) 575-7230.
- D. Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance may result in damage to property of persons. Client further acknowledges that, as between the parties to this agreement, Client is solely responsible for the results of any lack of or improper maintenance.

We look forward to working with you and the City of Fresno. If you have any questions regarding this proposal whatsoever, please do not hesitate to call me directly. We will commence work upon your direction.

Thank you for your interest in our firm.

Sincerely,

THE HLA GROUP, Landscape Architects & Planners, Inc.

A handwritten signature in black ink, appearing to read "David Campbell". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Campbell".

David Campbell
Project Landscape Architect

Exhibit B

INSURANCE REQUIREMENTS Consultant Service Agreement between City of Fresno and The HLA Group

Waterwise Demonstration Gardens (SWTF)

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.

B. The following is added to Paragraph a. of 4. **Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

However, if you specifically agree in a "contract or agreement requiring insurance" that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is

available to the additional insured when the additional insured is also an additional insured under any other insurance.

C. The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to **DEFINITIONS (Section V):**

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the

person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By:  (Authorized Representative)
Named Insured: The HLA Group Landscape Architects & Planners, Inc.	

SCHEDULE

Name of Person(s) or Organization(s): City of Fresno % Water Division, Attn: Lito Bucu 1910 E. University Avenue Fresno, CA 93703-2927	USA
--	-----

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective 12:01 AM 09/01/08 forms a part of Policy No. UB-0842T204

Issued to: The HLA Group
Landscape Architects & Planners, Inc.

By: Travelers Indemnity Company of Connecticut

Premium: INCL

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 5% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

City of Fresno
% Water Division, Attn: Lito Bucu
1910 E. University Avenue
Fresno, CA 93703-2927

Job Description

Waterwise Demo Garden

WC 04 03 06
(Ed. 4-84)

Countersigned by Res Calaveras
Authorized Representative

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Waterwise Demonstration Gardens (SWTP)
PROJECT TITLE

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

Explanation: _____



Signature

John H. Nicolaus
(name)

The HLA Group, Inc.
(company)

1050 Twentieth Street Suite 200
(address)

Additional page(s) attached.

Sacramento, CA 95811
(city state zip)