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Agenda Item: ID#16-1085 (1-E)

Date: 9/22/16

CITY CLERK, FRESNO CA

## FRESNO CITY COUNCIL



### Supplemental Information Packet

Agenda Related Item(s) – ID#15-1085 (1-E)

**Contents of Supplement: Agreement with Water Quality Treatment Solutions, Inc.**

#### Item(s)

Items related to retaining consultants for discolored water investigation:

1. Affirm the City Manager's determination that Dr. Marc Edwards of Virginia Polytechnic Institute and State University is uniquely qualified to perform consultant services, as required by AO 6-19;
2. Approve Research Agreement between the City of Fresno and Virginia Polytechnic Institute and State University in an amount not to exceed \$150,000;
3. Affirm the City Manager's determination that Dr. Vernon Snoeyink of Water Quality & Treatment Solutions, Inc., is uniquely qualified to perform consultant services as required by AO 6-19; and
4. Approve Consultant Agreement with Water Quality & Treatment Solutions, Inc. in an amount not to exceed \$200,000.

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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

THIS AGREEMENT is made and entered into effective the 22nd day of September, 2016, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Water Quality & Treatment Solutions, Inc., a California corporation (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain professional consultant services for discolored water investigation, hereinafter referred to as the "Project," and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a water chemistry and plumbing corrosion expert 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 Director of Public Utilities (hereinafter referred to as "Administrator") or his/her designee.

**AGREEMENT**

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

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

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through December 31, 2017, 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 of not to exceed \$200,000.00. Such fee includes all expenses incurred by CONSULTANT in performance of the services.

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

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

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

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

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

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of

common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

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

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

(c) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) 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 and its subcontractors, if any, are 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 and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify and hold harmless 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 reimbursement of reasonable attorney's fees and litigation expenses) that arise out of 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**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants 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) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the 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. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using The most current

version of Insurance Service Office (ISO) form CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in the above stated forms.

9. Deposition and Testimony by Consultant.

Notwithstanding anything else in this AGREEMENT to the contrary, should CONSULTANT be required by any party to be deposed or testify in any legal proceedings ("Testimony") related to CONSULTANT's services under this AGREEMENT, except for professional malfeasance by CONSULTANT, the Parties agree that they will first use their individual and collective best efforts to obtain payment for CONSULTANT's Testimony from the entity seeking Testimony. If payment is not forthcoming within fifteen (15) days after the Testimony, CITY agrees – if it is legally and ethically proper – to advance compensation to CONSULTANT for all of its time to prepare for and spent during the Testimony, including any out of pocket expenses incurred by CONSULTANT, according to the fee schedule described in Exhibit A. Such payments shall be made within 30 days of receipt of monthly invoices from CONSULTANT. Said compensation is subject to recovery from the party seeking Testimony or any other entity that is potentially responsible for said costs ("Responsible Party"), other than CONSULTANT. Parties agree that they shall, for a reasonable time thereafter, use their individual and collective best efforts to recover all funds advanced by CITY from the Responsible Party.

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 9(b), above.

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

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

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 for the purpose of making audits, examinations,

excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. 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.

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.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 12.

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 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.

17. 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.

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.

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

CITY OF FRESNO,  
a California municipal corporation

By: \_\_\_\_\_  
THOMAS C. ESQUEDA,  
Director  
Department of Public Utilities

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

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

APPROVED AS TO FORM:  
City Attorney's Office

By: Amanda B. Freeman  
AMANDA B. FREEMAN Date  
Senior Deputy/Deputy City Attorney

Addresses:

CITY:  
City of Fresno  
Attention: Thomas C. Esqueda,  
Director  
Department of Public Utilities  
2600 Fresno Street, Room 4019  
Fresno, CA 93721  
Phone: (559) 621-8610  
FAX: (559) 457-1233

Attachments:

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

WATER QUALITY & TREATMENT  
SOLUTIONS, INC.,  
a California corporation

By: Issam Najm  
Name: Issam Najm

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

By: Helene Najm  
Name: Helene Najm

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

Any Applicable Professional License:  
Number: C 57496  
Name: Issam Najm  
Date of Issuance: 1997

CONSULTANT:  
Water Quality & Treatment Solutions, Inc.  
Attention: Issam Najm,  
President  
21018 Osborne Street, Suite 1  
Canoga Park, CA 91304  
Phone: (818) 366-8340  
FAX: (818) 484-3100

**Exhibit A**

**SCOPE OF SERVICES**  
**Consultant Service Agreement between City of Fresno ("City")**  
**and WQTS ("Consultant")**  
Discolored Water Investigation  
PROJECT TITLE

See attached August 29, 2016 memorandum from WQTS incorporated herein by reference.

Date: August 29, 2016

To: Thomas Esqueda  
*Public Utilities Director  
City of Fresno*

Jim Meyerhofer, P.E.  
*Carollo Engineers*

From: Vernon Snoeyink, Ph.D.  
Issam Najm, Ph.D., P.E.  
Jeanine D. Plummer, Ph.D., P.E.

Copy to: Marc Edwards, Ph.D.  
*Virginia Polytechnic Institute and State University*

Re: Follow up Data Collection and Analysis for City of Fresno's Colored Water

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As we analyze the additional data provided by the City on the colored water investigation in the NESWTF service area as well as historical data throughout the City, some data gaps were identified that we believe require additional sampling, data collection and data analysis to address. This memorandum provides a brief description of our proposal for additional work.

#### **Task 1: Desktop Study of WTPs Treating Similar Surface Water Quality**

WQTS will research and identify water systems that utilize surface water sources of similar quality as that treated at the NESWTF and new SESWTF. The objective of this task is to gather information on their treatment practices and contrast them to those at the NESWTF. Potential systems to be analyzed include the Kent County Water Authority, South San Joaquin Irrigation District, the City of Sacramento, the El Dorado Irrigation District, the Stockton East Water District, and others. After appropriate systems are identified, data will be requested on raw water quality, treatment practice, and treated water quality.

#### **Task 2: Home Profiling of Water Quality Before and After Plant Shut Down**

WQTS will work with City staff to develop and implement a water quality profiling program to assess whether current corrosion control strategies are having a short-term impact on discolored water and whether the switch to 100% groundwater during the fall season when the NESWTF is off for canal maintenance will have an impact on discolored water occurrences over a 3 to 4 month timeframe. Baseline sampling in the Southeast will serve as a control group and will allow collection of representative samples from homes with corrosion issues with Fresno's traditional groundwater source without the influence of surface water. The sampling plan will include the following targeted homes:

- 5 Northeast region homes with galvanized service lines
- 2 Northeast region homes with galvanized service lines that have been replaced with non-galvanized service lines
- 1 control home with copper service line
- 5 Southeast region homes with galvanized service lines
- 1 house with replaced service line and premise plumbing

The sampling plan will be executed by a team of two including one utility representative and one technical expert from WQTS. Samples will be collected as described below, and analyzed for lead, copper, iron, zinc, cadmium, tin, pH, PO<sub>4</sub> and alkalinity (unless otherwise noted).

- **Sample 1: LCR Protocol Sample:** These samples will be collected from the cold water tap used for drinking and cooking water. The sampling procedure will follow LCR recommendations per *Suggested Directions for Homeowner Tap Sample Collection Procedures (Revised Version: February 2016)* as provided in the EPA memorandum dated February 29, 2016 and titled *Clarification of Recommended Tap Sampling Procedures for Purposes of the Lead and Copper Rule*. The full memorandum is provided in Appendix A. In brief, sample collection recommendations are as follows:
  - Location: Cold water kitchen faucet or bathroom faucet (kitchen faucets will be used in this study)
  - Stagnation: prior to sampling, 6-hour stagnation at sampling tap and adjacent/close taps, with no pre-stagnation flushing
  - Flow Rate: flow rate that would be used to fill a glass of water
  - Aerator: Do not remove aerator
  - Sample Bottles: Use wide-mouth bottles
  - Additional details as provided in Appendix A
- **Samples 2 to 15: Profile Samples:** These samples will provide a profile of the premise plumbing and service line and will be collected immediately after Sample 1 from the kitchen cold water faucet. Sample collection will mimic that of Sample 1. A series of 1-L bottles will be filled to capture water in the premise plumbing, the service line, and well-flushed water from the main.
  - As an approximation of volume requirements, the length of piping represented by each 1-L sample of water was calculated for new ½ inch and ¾ inch copper piping, and new ½ inch and ¾ inch galvanized piping. The values are shown in Table 1 below. Unfortunately, the applicability of the values in Table 1 to existing plumbing will vary depending on the extent of corrosion in each pipe, especially galvanized pipes.
  - Assuming the premise and service line plumbing consists of the materials in Table 1, each 1-L sample would represent approximately 10 to 20 feet of piping. Therefore, collecting 15 profile samples (including Sample 1) will be collected to represent 150 to 300 feet of piping.

**Table 1 - Estimation of Pipe Lengths per 1 L of Water Volume**

Material	Nominal Size (in)	Actual OD (in)	Wall Thickness (in)	ID (in)	Length (ft) for 1 L	Notes
Copper	1/2	0.625	0.040	0.545	21.8	Type L - medium thickness
Copper	3/4	0.875	0.045	0.785	10.5	Type L - medium thickness
Galvanized	1/2	0.840	0.109	0.622	16.7	Schedule 40
Galvanized	3/4	1.050	0.113	0.824	9.5	Schedule 40

- **Sample 16: Hot Water Sample:** This sample will be collected from the master bathroom sink, hot water tap. The tap will be flushed the night beforehand until hot, then allowed to stagnate until sampling.
- **Sample 17: Worst Water Quality Sample:** This sample will be collected from the indoor fixture which is reported by the resident to have the worst water quality problems. Information on the sample location and temperature will be recorded. In addition to the analyses noted above, this sample will additionally include a full suite of metals, minerals, physical water quality, inorganic water quality and odor (per City of Fresno discussion with State of California).

The sampling plan includes 2 – 3 sampling events at each residence before plant shutdown on September 30, 2016, and 3 sampling events after plant shutdown (at approximately 1, 2 and 3 months after shutdown). The data will be analyzed to identify changes in water quality at customer taps, if any, before and after plant shut down.

**Task 3: Sediment and Pipe Scale Analysis**

In coordination with Task 2, Task 3 will incorporate sampling and analysis of sediments and pipe scales, as follows:

- **Sediment Sampling:** Sediment will be collected from the bottom of hot water heaters from 6 homes including three Northeast region homes and 3 Southeast region homes. Samples will be collected by flushing the water heater, collecting the water and allowing it to settle. The supernatant will be decanted and the remaining solids dried. The solids will be acidified and analyzed for lead, copper, zinc, iron, cadmium, tin, and PO<sub>4</sub>.
- **Pipe Scale:** Pipe segments will be removed from service lines and/or premise plumbing for analysis of elements in the scale. Both hot and cold water samples will be analyzed to discern whether the scale composition changes in hot versus cold water, and also whether there are differences in the type of corrosive attack occurring in hot water such as electrochemical reversal or deposition corrosion. The analysis of pipe segment scale will be conducted using scanning electron microscopy with energy dispersive spectroscopy detection (SEM/EDS).



**Task 4: Updated Survey on Colored Water Perceptions**

A survey of residents in the Northeast region was conducted in early July, with approximately 900 responses. A follow-up survey with targeted questions on changes in water quality, if any, is proposed for mid-September and again for late 2015 or early 2016, before plant start-up. The objective is to determine if residents' perceptions of water quality issues change during the approximately 6 month period from early July to late December 2016. A copy of the original survey is provided in Appendix B. Updated questions are provided in Appendix C.

In addition, during Task 2, residents participating in the sampling program will be asked more detailed questions regarding water quality issues, if any, and changes in water quality issues over time.

**Task 5: Bench-scale Testing of Scaling and Galvanized Iron Corrosion**

A series of bench-scale tests will be conducted by Virginia Polytechnic Institute and State University to assess scale formation and corrosion as affected by water chemistry. A separate scope of work will be provided by Virginia Tech for this work.

**Task 6: Pipe Loop Study**

Based on results obtained from Tasks 1 – 5, a pipe loop study will be proposed to evaluate corrosion of pipe materials harvested from the distribution system and exposed to waters with different chemistries and corrosion control strategies. A separate scope of work will be provided by WQTS for this work.

**APPENDICES**


**Appendix A: Clarification of Recommended Tap Sampling Procedures for Purposes of the Lead and Copper Rule – EPA, February 29, 2016**

**Appendix B: Fresno Survey, July 2016**

**Appendix C: Proposed Updated Survey Questions**

Appendix A: Clarification of Recommended Tap Sampling Procedures for Purposes of the Lead and Copper Rule – EPA, February 29, 2016

WSG 197  
Date Signed: February 29, 2016

 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Clarification of Recommended Tap Sampling Procedures for Purposes of the Lead and Copper Rule

**FROM:** Peter C. Grevatt, Director  
Office of Ground Water & Drinking Water

**TO:** Water Division Directors  
Regions I - X

The Lead and Copper Rule, 40 C.F.R. Sections 141.80 to 141.91, requires monitoring at consumer taps to identify levels of lead in drinking water that may result from corrosion of lead-bearing components in a public water system's distribution system or in household plumbing. These samples help assess the need for, or the effectiveness of, corrosion control treatment. The purpose of this memorandum is to provide recommendations on how public water systems should address the removal and cleaning of aerators, pre-stagnation flushing, and bottle configuration for the purpose of Lead and Copper Rule sampling.

Removal and Cleaning of Aerators

EPA issued a memorandum on *Management of Aerators during Collection of Tap Samples to Comply with the Lead and Copper Rule* on October 20, 2006. This memorandum stated that EPA recommends that homeowners regularly clean their aerators to remove particulate matter as a general practice, but states that public water systems should not recommend the removal or cleaning of aerators prior to or during the collection of tap samples gathered for purposes of the Lead and Copper Rule. EPA continues to recommend this approach. The removal or cleaning of aerators during collection of tap samples could mask the added contribution of lead at the tap, which may potentially lead to the public water system not taking additional actions needed to reduce exposure to lead in drinking water. EPA's recommendation about the removal and cleaning of aerators during sample collection applies only to monitoring for lead and copper conducted pursuant to 40 C.F.R. 141.86.

Pre-Stagnation Flushing

EPA is aware that some sampling instructions provided to residents include recommendations to flush the tap for a specified period of time prior to starting the minimum 6-hour stagnation time required for samples collected under the Lead and Copper Rule. This practice is called pre-stagnation flushing. Pre-stagnation flushing may potentially lower the lead levels as compared to when it is not practiced.

Flushing removes water that may have been in contact with the lead service line for extended periods, which is when lead typically leaches into drinking water. Therefore, EPA recommends that sampling instructions not contain a pre-stagnation flushing step.

#### Bottle Configuration

EPA recommends that wide-mouth bottles be used to collect Lead and Copper compliance samples. It has become apparent that wide-mouth bottles offer advantages over narrow-necked bottles because wide-mouth bottles allow for a higher flow rate during sample collection which is more representative of the flow that a consumer may use to fill up a glass of water. In addition, a higher flow rate can result in greater release of particulate and colloidal lead and therefore is more conservative in terms of identifying lead concentrations.

#### Conclusion

EPA is providing these recommendations for collection of Lead and Copper Rule tap samples to better reflect the state of knowledge about the fate and transport of lead in distribution systems. The three areas discussed above may potentially lead to samples that erroneously reflect lower levels of lead concentrations. The recommendations in this memorandum are also consistent with the recommendations provided by the EPA's Flint Task Force. For more information about the Task Force please view EPA's website at: <http://www.epa.gov/flint>.

To provide further information on this topic, EPA included an amended "Suggested Directions for Homeowner Tap Sample Collection Procedures" in Appendix D of the 2010 revision of *Lead and Copper Rule Monitoring and Reporting Guidance for Public Water Systems* (EPA 816-R-10-004). This document can be found at: <http://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100DP2P.txt>

Please share these recommendations with your state drinking water program directors. If you have any questions, please contact Anita Thompkins at [thompkins.anita@epa.gov](mailto:thompkins.anita@epa.gov).

#### Attachment

cc: James Taft, Association of State Drinking Water Administrators

**Suggested Directions for Homeowner Tap Sample Collection Procedures**  
**Revised Version: February 2016**

These samples are being collected to determine the lead and copper levels in your tap water. This sampling effort is required by the U.S. Environmental Protection Agency and your State under the Lead and Copper Rule, and is being accomplished through a collaboration between the public water system and their consumers (e.g. residents).

Collect samples from a tap that has not been used for at least 6 hours. To ensure the water has not been used for at least 6 hours, the best time to collect samples is either early in the morning or in the evening upon returning from work. Be sure to use a kitchen or bathroom cold water tap that has been used for drinking water consumption in the past few weeks. The collection procedure is described below.

1. Prior arrangements will be made with you, the customer, to coordinate the sample collection. Dates will be set for sample kit delivery and pick-up by water system staff.
2. There must be a minimum of 6 hours during which there is no water used from the tap where the sample will be collected and any taps adjacent or close to that tap. Either early mornings or evenings upon returning home are the best sampling times to ensure that the necessary stagnant water conditions exist. Do not intentionally flush the water line before the start of the 6 hour period.
3. Use a kitchen or bathroom cold-water faucet for sampling. If you have water softeners on your kitchen taps, collect your sample from the bathroom tap that is not attached to a water softener, or a point of use filter, if possible. Do not remove the aerator prior to sampling. Place the opened sample bottle below the faucet and open the cold water tap as you would do to fill a glass of water. Fill the sample bottle to the line marked "1000-ml," and turn off the water.
4. Tightly cap the sample bottle and place in the sample kit provided. Please review the sample kit label at this time to ensure that all information contained on the label is correct.
5. If any plumbing repairs or replacement has been done in the home since the previous sampling event, note this information on the label as provided. Also if your sample was collected from a tap with a water softener, note this as well.
6. Place the sample kit in the same location the kit was delivered to so that water system staff may pick up the sample kit.
7. Results from this monitoring effort and information about lead will be provided to you as soon as practical but no later than 30 days after the system learns of the tap monitoring results. However, if excessive lead and/or copper levels are found, immediate notification will be provided (usually 1-2 working days after the system learns of the tap monitoring results).

Call \_\_\_\_\_ at \_\_\_\_\_ if you have any questions regarding these instructions.

**TO BE COMPLETED BY RESIDENT**

Water was last used:	Time _____	Date _____
Sample was collected:	Time _____	Date _____
Sample Location & faucet (e.g. Bathroom sink) _____		

I have read the above directions and have taken a tap sample in accordance with these directions.

Signature _____	Date _____
-----------------	------------

Appendix B: Fresno Survey, July 2016

**The City of Fresno Discolored Water Survey 2016**

\* **1. Contact Information**

Name

ZIP/Postal Code

Phone Number

\* **2. What is the address of the property with discolored water?**

\* **3. What year did you move into the home?**

1980 to 1989

1990 to 1999

2000 to 2010

After 2011

Prior to 1979

\* **4. What year was the home constructed?**

1980 to 1989

1990 to 1999

2000 to 2010

None of the above

\* **5. Have you ever experienced discolored water at an indoor plumbing fixture in your home?**

Yes

No

\* **6. Which faucet or faucets showed discolored water? (Mark all that apply)**

Garage

Spare Bathroom

Other

Laundry Room

Kitchen

Master Bathroom

Other (please specify):

7. When did you observe discolored water at the faucets or faucets (approximately what year)?

- This year
- Last year
- In the past 5 years
- In the past 10 years
- Since I moved into the home

8. Do you notice a difference in discoloration between hot water and cold water?

- Yes
- No

9. Is the discoloration persistent or infrequent?

- My water is discolored all the time
- My water is discolored after an extended period of time not using the faucet
- The discoloration events are random and do not appear to follow a pattern

10. What have you done to address the water discoloration? (Mark all that apply)

- Bypass water softener
- Other
- Replace water heater
- Purchased a water filter
- Re-plumbed the home
- Flush the water
- Purchase bottled water

Other (please specify)

Done

## Appendix C: Proposed Updated Survey

- Contact information
  - Name
  - Phone Number
- Address of property with discolored water
  - Street Address
  - Zip Code
- What year did you move into the home?
  - Prior to 1979
  - 1980 to 1989
  - 1990 to 1999
  - 2000 to 2009
  - 2010 or later
- What year was the home constructed?
  - Prior to 1979
  - 1980 to 1989
  - 1990 to 1999
  - 2000 to 2009
  - 2010 or later
  - Unsure
- Which faucet(s) show discolored water (mark all that apply)?
  - Kitchen
  - Master Bathroom
    - Sink
    - Bathtub
    - Shower
  - Spare Full Bathroom
    - Sink
    - Bathtub
    - Shower
  - Half Bathroom
    - Sink
  - Laundry Room
  - Basement
  - Garage (interior)
  - Outdoor fixture
  - Other (please specify)
- Are you currently experiencing discolored water?
  - Yes
  - No
- If Yes, for how long have you been experiencing discolored water at your home?
  - (to provide relevant time frames)
- If No, when was the last time you had discolored water in your home?
  - (to provide relevant time frames)
- When the water has been discolored, what temperature water is affected?
  - Cold water only
  - Hot water only
  - Both hot and cold water



- How frequent is the problem of discolored water?
  - (7 Radio buttons from 1 = Never to 7 = All the time)
- Please indicate how likely each event is to occur in your household:
  - (All questions with 7 Radio buttons from 1 = Not at All to 7 = Very Likely)
  - The water is discolored all the time and does not clear even after running the water for a few minutes
  - The water discoloration happens when the faucet has not been used for an extended period of time but it clears up after running the water for a while
  - The water discoloration happens if a faucet has not been used in a few days, but it clears up after running the water for a while
  - The water discoloration happens randomly so it does not matter how frequently the faucet is used
  - The water discoloration is random on each occurrence such that the faucet could run clear and then turn discolored and back to clear in the same session of running the water
- What have you done to address the discolored water issue?
  - Flush the affected fixtures
  - Purchase bottle water
  - Bypass water softener
  - Purchased water filter
  - Replace water heater
  - Replace household plumbing
  - Other (please specify)
- Since \_\_\_\_ (time frame of City of Fresno changes), has your water discoloration:
  - (7 Radio buttons: 1 = Gotten Worse ; 4 = Stayed the Same; 7 = Gotten Better)

**Exhibit B**

**INSURANCE REQUIREMENTS**  
**Consultant Service Agreement between City of Fresno ("CITY")**  
**and WQTS ("CONSULTANT")**  
Discolored Water Investigation  
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, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession.

**MINIMUM LIMITS OF INSURANCE**

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

OR\*

**PERSONAL AUTOMOBILE LIABILITY** insurance with limits of liability not less than:

- (i) \$100,000 per person;
- (ii) \$300,000 per accident for bodily injury; and,
- (iii) \$50,000 per accident for property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$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). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, 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/ENDORSEMENTS**

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

CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in the above stated forms.

1. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
2. For any claims related to this Agreement, CONSULTANT'S Commercial General and Automobile Liability insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

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 retroactive 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 five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first.

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 herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, except after thirty (30) calendar days written notice by mail, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. 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 fifteen (15) calendar days prior to the expiration date of the expiring policy.

#### **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. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. 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.

**Exhibit C**

**DISCLOSURE OF CONFLICT OF INTEREST**

Discolored Water Investigation  
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 checked="" 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 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: Carollo Engineers is one of  
our clients, and they are currently  
doing business with the City.

  
Signature

September 16, 2016  
Date

Issam Najm  
(name)

Water Quality & Treatment Solutions, Inc.  
(company)

21018 Osborne Street, Suite 1  
(address)

Canoga Park, California 91304  
(city state zip)

Additional page(s) attached.