

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

THIS AGREEMENT (Agreement) is made and entered into effective \_\_\_\_\_, by and between the CITY OF FRESNO, a California municipal corporation (City), and Haley & Aldrich Incorporated, a Delaware corporation (Consultant).

**RECITALS**

WHEREAS, the City desires to obtain professional engineering services for Forensic Investigation of Structural Components at the City of Fresno's Northeast Surface Water Treatment Facility Ozone Contact Basin and Filter Gallery (Project); and

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

WHEREAS, the 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 the City by its Director of Public Utilities (Director) or 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. The Consultant shall perform to the satisfaction of the City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or June 30, 2025, subject to any earlier termination in accordance with this Agreement. The services of the Consultant as described in **Exhibit A** are to commence upon the City's issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion.

3. Compensation.

(a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed Two Hundred Eighty Nine Thousand Five Hundred Dollars (\$289,500), paid on a time and materials basis in accordance with the schedule of fees contained in **Exhibit A**, and a contingency amount not to exceed Twenty Nine Thousand Dollars (\$29,000) for any additional work rendered pursuant to Subsection (c) below and authorized in writing by the Director.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of City business. The City shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to the 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. The 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 the City to the Consultant upon the earlier of: (i) the Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days prior written notice with or without cause by the City to the Consultant; (iii) the 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, the Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The 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 the Consultant to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.

(d) Upon any breach of this Agreement by the Consultant, the 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 the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

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

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

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

(a) Any reports, information, or other data prepared or assembled by the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the 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 the 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 the 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 the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Consultant. The Consultant grants the City a copyright license to use such drawings and writings. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the 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 the Consultant will be at the City's sole risk and without liability or legal exposure to the Consultant. The Consultant may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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 the Consultant represents to the City that the 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, the City relies upon the skill of the

Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782.8, 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, litigation expenses and cost to enforce this agreement) 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, the 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 the City's Risk Manager or designee at any time and in its 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.

(b) If at any time during the life of the Agreement or any extension, the 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 the Consultant shall be withheld until notice is received by the 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 the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the 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 the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the 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 the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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 the Consultant and the City prior to the commencement of any services by the subcontractor. The Consultant and any subcontractor/sub-consultant shall establish additional insured status for the City, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both 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 ISO Form CG 20 10 11 85.

#### 9. Conflict of Interest and Non-Solicitation.

(a) Prior to the City's execution of this Agreement, the 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, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.

(b) The 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 the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The 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, the Consultant shall immediately notify the City of these facts in writing.

(c) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either is employed by the 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) The 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 the Consultant, nor any of the 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. The 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 the Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the 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 the 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, the Consultant at its sole cost and expense shall:

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

(b) Immediately contact the 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.

(c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) above and the ongoing maintenance thereof.

11. General Terms.

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

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the 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 the 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 the City until such action is

resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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 the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, the 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, the Consultant agrees as follows:

(a) The 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) The 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. The 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 the 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the 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) The 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 the 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 the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 12.

### 13. Independent Contractor.

(a) In the furnishing of the services provided for herein, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the 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 the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, the Consultant and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. The 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, the Consultant shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of the 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 the City employment benefits, entitlements, programs and/or funds offered employees of the 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, the Consultant may be providing services to others unrelated to the 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 the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by the Consultant, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

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

17. Compliance With Law. In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, the State of California and the 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 the City and the Consultant.

29. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

**[Signatures follow on the next page.]**

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

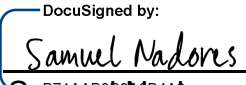
CITY OF FRESNO,  
a California municipal corporation

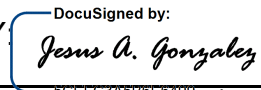
By: \_\_\_\_\_  
Brock D. Buche, PE, PLS, Director  
Department of Public Utilities

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

No signature of City Attorney required.  
Standard Document **#DPU-S Eng. CSA, Short Form T&M - Contingency (05-2023)** has been used without modification, as certified by the undersigned.

By:  6/20/2023  
Samuel Nadores,  
Professional Engineer  
Department of Public Utilities

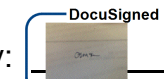
REVIEWED BY  6/29/2023  
Jesus A. Gonzalez, PE  
Assistant Director  
Department of Public Utilities

Addresses:  
CITY:  
City of Fresno  
Attention: Samuel Nadores, PE  
1626 E Street  
Fresno, CA 93706  
Phone: (559) 621-1602  
Facsimile (559) [#]  
E-mail: Samuel.Nadores@fresno.gov

HALEY & ALDRICH INCORPORATED,  
a Delaware corporation

By:  6/20/2023  
Name: Philip J. Lagas

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

By:  6/28/2023  
Name: Patricia McKee

Title: General Counsel  
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

Any Applicable Professional License:  
Number: C 40728  
Name: Phillip Orson Gregory  
Date of Issuance: August 1, 1986

CONSULTANT:  
Haley & Aldrich Incorporated.  
Attention: Gary Mochizuki, PE, SE  
Principal Engineer  
785 Ygnacio Valley Road  
Walnut Creek, CA 94596  
Phone: (925)949-1032  
Facsimile" [area code and #]  
E-mail gmochizuki@haleyaldrich.com

Attachments:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **Consultant Service Agreement between City of Fresno (City) and Haley & Aldrich Incorporated (Consultant)**

#### **Forensic Investigation of Structural Components at the City of Fresno's NESWTF Ozone Contact Basin and Filter Gallery**

### **GENERAL SCOPE OF SERVICES**

Generally, the consultant will evaluate the extent of degradation and potential adverse impacts on the structural integrity along sections of the ozone contact basin and filters gallery tunnel. The consultant shall then submit a report of findings and provide recommendations of preventative maintenance and/or corrective measures that also minimize disruption to continued facility operations.

More specifically, the Consultant shall provide all labor, materials, equipment, and incidentals required to complete the following tasks that include, but are not limited to:

#### **TASK 1 PROJECT MANAGEMENT AND ADMINISTRATION**

Consultant will control the budget and schedule by reviewing each task's status and the overall Project every two weeks and comparing to the level of effort to complete the task. If the scope of services remains unchanged, but the tasks require more hours than anticipated, Consultant will not charge for the additional hours. If the scope of services does need to change for a legitimate reason, then Consultant will immediately meet with the City's project manager to determine how to proceed. Consultant will evaluate the project schedule concurrently with the budget. Consultant will compare actual progress with the original baseline schedule, present status updates to the City, and make adjustments to keep the Project on schedule. The individual task leaders, and Lead Reviewer, will complete quality reviews of all deliverables and supporting documents. The documents will be re-reviewed and verified after changes are made.

Each month, Consultant will prepare a progress report and present each invoice. The report will include budget and schedule status and document progress made over the prior month, ongoing/upcoming tasks, the status of near-term deliverables and milestones, identified significant technical issues and proposed resolutions and actions, scope, budget, and schedule issues, and proposed resolutions/actions.

An initial project schedule that identifies timelines related to all consultant efforts and services throughout the project's life has been prepared and will be updated and maintained as the project progresses.

Consultant will schedule and conduct a Project Kick-off meeting which will include review of project objectives, scope of work, approach, schedule, and development of coordination procedures.

An initial list of information to be provided by the City that is needed to perform the work has been developed and will be updated during the project.

Detailed billing will be prepared and sent to the City on a monthly basis.

## TASK 2 STRUCTURAL ASSESSMENT AND CONDITIONS SURVEY

### DOCUMENTS REQUESTED FROM THE CITY

Prior to the initial field visit, Consultant will work with the City to obtain the CAD version of the as-built drawings of the structures, if they are available. If the CADD version of the record drawings are not available, a pdf version of the drawings will be required prior to the site reconnaissance.

### SITE RECONNAISSANCE AND MAPPING

Acquire data to provide the basis for analysis and design. This data will come in the form of oral and written communications with the City, and site-specific field mapping.

### STRUCTURAL ASSESSMENT AND CONDITIONS SURVEY

Preparation:

1. Document Review: Review the drawings and existing documentation for the facilities to determine the requirements for the field assessment, such as determining the access locations, staging of safety equipment, and testing locations.
2. Equipment: Prepare equipment, including gas meters, ventilation equipment, davit assembly, mechanical winch, fall arrest, ladder, and testing equipment for the field assessment.
3. Safety Work Plan: Submit a safety work plan prior to the field assessment. The safety work plan will document the condition assessment approach, confined space entry approach, identify possible hazards, and provide rescue procedures for confined space entry. The safety work plan will include training certifications for staff that will conduct the assessment. A draft electronic copy of the safety work plan will be submitted for review. Comments will be incorporated, and a final electronic copy of the safety work plan will be provided.

Condition Assessment: Consultant will provide a 3-person confined space entry and rescue trained team to conduct confined space entry assessments in the basins. It is anticipated that the assessments will take three (3) days and three (3) separate mobilizations to complete. It is assumed that two (2) filtration chambers will be isolated, cleaned, and dewatered by others for assessment for each mobilization and that the ozone contractor will also be isolated, cleaned, and dewatered for one (1) of the mobilizations. The following assessment methods will be employed:

1. Confined space entry assessment of each filtration chamber and ozone contactor basin. No scaffolding will be used to reach elevated portions of the structures.

2. Visual assessment and digital photographs of structural and corrosion observations of the concrete and metal surfaces. Visually assess the coatings on the structure by noting defect areas and severity in accordance with ASTM D610. The general location and size of defects that may or may not require repair will be annotated on a schematic relative to notable features or cardinal directions.

3. Thickness measurement of concrete protecting reinforcing steel and spacing measurement of reinforcing steel using surface penetrating radar (ASTM D4748). Scans will be performed on four (4) accessible concrete surfaces in each filtration chamber, ozone contractor basin, and filter gallery.

4. Delamination survey on accessible concrete from the floor by striking a hammer on the surface of the concrete. Delaminated areas will be marked with chalk for documentation and reporting.

5. In-situ concrete surface pH and penetration depth to sound concrete at one (1) location in each filtration chamber and ozone contractor. Tests will not be performed on areas with intact liner.

6. Half-cell potential testing (ASTM C876) at one (1) location to evaluate reinforcing steel corrosion in each filtration basin, ozone contactor, and filter gallery. Tests will not be performed on areas with intact liner.

7. On each day of assessment, obtain two (2) pairs of 3-inch diameter by 6-inch-deep concrete cores (from two (2) representative locations) for laboratory analysis. Core locations will be selected in the field based on visual assessment and non-destructive testing. A total of six (6) pairs of cores will be obtained over the course of three (3) days. Concrete coring will be performed on the lower wall, as accessible from an access point. Cores will not be drilled through intact lining. Core holes will be repaired using a hand-applied, quick-setting repair mortar such as SikaQuick VOH or similar. Laboratory analysis will be as follows:

- Visual and macro evaluation of each core.
- Compressive strength testing per ASTM C42 on six (6) cores.
- Incremental chloride testing per ASTM C1218 on six (6) cores (four half-inch increments).
- Incremental pH testing on six (6) cores (four half-inch increments).
- Macro-section and phenolphthalein indicator testing on six (6) cores (carbonation).

#### Assumptions

The following is a list of additional assumptions used to develop the scope of work for Task 2:

- The filtration basins and ozone contactor will be shut-down, isolated, cleaned, and dewatered by others prior to Consultant's arrival to the site.
- At least two filtration chambers can be taken offline for each mobilization.
- The ozone contactor will also be taken offline for one of the mobilizations.
- All project labor subject to prevailing wage requirements will incur a 25% markup on the

associated labor fee. This markup covers the higher base hourly labor rates associated with prevailing wage rates, additional overtime requirements, and Department of Industrial Relations reporting requirements.

#### Exclusions and Limitations

The following items, unless otherwise indicated, are not included in the scope of work:

- Supplied Air during the confined space entries
- Shutdown, dewatering, and cleaning of structures
- Structure access such as scaffolding, aerial/scissor lifts, and cranes

### TASK 3 ASSESSMENT TECHNICAL MEMORANDUM

Based on the structural assessment and conditions survey a technical memorandum will be prepared. The report will include photographs of the existing conditions, data tables, and graphical and illustrative figures, as required, to present the information gathered during this assessment. A summary of the materials testing and analytical methodologies used to determine the causes and extent of structural deterioration will be included. The locations and severity of defects will be noted, and the current condition of the structure regarding its state of degradation will be described. Recommendations for rehabilitation or repair including any project alternative solutions and proposed phasing of work, will be presented in the report, along with the associated opinion of probable costs.

#### Deliverables:

A Draft Forensic Assessment Technical Memorandum will be submitted for review by the City. (Four (4) hard copies; One (1) electronic copy each PDF & MS Word).

Consultant will schedule and conduct a review meeting to discuss the draft of the Forensic Assessment Technical Memorandum and the City's review comments.

Based on the meeting, the Final Technical Memorandum will be prepared and sent to the City.

#### Deliverables:

The Final Assessment Technical Memorandum will be submitted for review by the City. (Four (4) hard copies; One (1) electronic copy each PDF & MS Word).

Consultant will then schedule and conduct a meeting with City to discuss the Final Technical Memorandum. The intent of the meeting will be to reach agreement on general design concepts and to establish the plan sheet list and a table of contents for project technical specifications.

### TASK 4 CONSTRUCTION DOCUMENTS

Following the meeting with the City on the Final Technical Memorandum, Consultant will prepare the construction document consisting of plans, specifications, and an engineer's opinion of probable cost. Until the extent of damages and the required repairs are known, the number of drawings is uncertain. However, it is anticipated that the drawings may be as follows:



ID	Description	Dwg Scale	No of Dwg
G1	Title Sheet Layout, Key Map	NTS	1
G2	General Notes	NTS	1
A1	Site Access and Staging	1" = 400'	2
S0	Structural Notes		2
S1	Plans	1" = 8'	3
S2	Elevations	1'=8"	3
S3	Structural Sections	1"=8'	3
S4	Structural Details	1" = 1'	3
	Preliminary PS&E Drawing Totals		18

Consultant will develop plans using AutoCAD Civil 3D 2021 and provide them as full-size (22x34 inch) and half-size (11x17 inch) PDF files. Specifications will be developed using the City's format and will be provided in both Word and PDF formats. An engineer's estimate will be provided in PDF format.

Consultant will:

- a. Prepare 60% design and specification submittals. This submittal will include an updated opinion of probable cost and a draft basis of design memorandum.
- b. Schedule and conduct a review meeting to discuss 60% Plans, Specifications and City review comments.
- c. Address (60%) Submittal review comments.
- d. Prepare and provide 90% design and specification submittals. This submittal will include an updated opinion of probable cost and final Basis of Design Memorandum.
- e. Submit 100% project plans and specifications documents for competitive bidding upon final review and acceptance by City. Consultant will provide California licensed professional engineer signed and sealed detailed construction plans and technical specifications, and updated opinion of probable cost.

Deliverables:

(1) Draft (90%) Construction Plans and Specifications for review by City.

(Four (4) – half sized plan sets -11x17; four (4) specification sets, 8-1/2x 11, including one (1) electronic set each in Word, PDF & AUTOCAD).

(2) Final signed and stamped 100% (Bid Set) Construction Plans and Technical Specifications for use in the solicitation of competitive construction bids. (Four (4) – full sized plans and specs; w/ one (1) electronic copy each; Word, PDF & AUTOCAD)

## TASK 5 SERVICES DURING CONSTRUCTION

During the construction process, Consultant will assist the City to have the project completed on time and under budget. To achieve this, Consultanth will:

- a. Attend pre-bid/pre-construction meetings.
- b. Provide assistance to the City staff during construction by responding to contractor requests for information and clarifications during construction or repair works, reviewing submittals, schedule and change orders, etc.
- c. Provide project management assistance, including monthly project coordination and status meetings, preparation of meeting agenda and minutes, schedule updates, etc.
- d. Prepare and track punch list items upon substantial completion of the project.
- e. Prepare and submit Record Drawings to the City.

All documents for public review should be submitted in an electronic format compliant with the Americans with Disabilities Act (ADA). Per City Administrative Order 8-16, "Documents must be provided as accessible PDFs or in another accessible format. Accessible PDFs are PDF documents created so that they are not read solely as an image by assistive technology and screen readers. This is usually achieved through the use of tags, or a structured, textual representation of the PDF that is presented to screen readers but have no visible effect on the PDF file."

The City may elect to further expand the scope of services or add new scope of service tasks, should such services assist the City in completing the forensic investigation and identifying suitable repair solutions. Examples of such expansion may include, but not be limited to, additional efforts needed to complete the Scope of Work not expressly written and preparation of secondary supportive or implementation documents. Such scope of service expansion will be subject to City and Consultant negotiating a mutually agreeable scope and fee, and approval by the City Council, if required.

## **SCHEDULE OF FEES**

<b>Classification</b>	<b>Hourly Rate</b>
Project Support	\$130
Technician	\$130
Project Technician	\$141
Senior Technician	\$151
Project Controls	\$172
Staff Professional 1	\$182
Staff Professional 2	\$191
Project Professional	\$214
Technical Specialist	\$225
Project Manager / Senior Technical Specialist	\$236
Senior Project Manager / Technical Expert	\$296
Program Manager / Senior Technical Expert	\$359
Principal	\$422

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

#### **Consultant Service Agreement between City of Fresno (City) and Haley & Aldrich Incorporated (Consultant)**

#### **Forensic Investigation of Structural Components at the City of Fresno's NESWTF Ozone Contact Basin and Filter Gallery**

### **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 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).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. 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.
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 to on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or 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 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:

1. 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 11 85 or both 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 ISO Form CG 20 10 11 85.

2. 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.
3. For any claims relating to this Agreement, Consultant's 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 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-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 years 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, reduced in coverage or in limits except after 30 calendar days written notice by certified mail, return receipt requested, 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 15 calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

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 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.

### **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 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. 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.

**SUBCONTRACTORS** - If Consultant subcontracts any or all of the services to be performed under this Agreement, Consultant shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no side agreement is required, Consultant shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Consultant, and City, prior to commencement of any work by the subcontractor.

**EXHIBIT C****DISCLOSURE OF CONFLICT OF INTEREST**Forensic Investigation of Structural Components at the City of Fresno's NESWTF  
Ozone Contact Basin and Filter Gallery

		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: \_\_\_\_\_  
 NA

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☐ Additional page(s) attached.

DocuSigned by:

Gary Mochizuki  
 Signature

6/29/2023

Date

Gary Mochizuki

(Name)

Haley & Aldrich, Inc.

(Company)

785 Ygnacio Valley Road

(Address)

Walnut Creek, CA 94596

(City, State Zip)