

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

THIS AGREEMENT is made and entered into effective the _____ day of August, 2016, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and CDM Smith, Inc, a Massachusetts Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional Engineering services for Power Generation and credit optimization, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a Professional Engineering 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 "Director") or his/her designee.

AGREEMENT

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

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

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or August 31, 2017, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within 365 consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed two hundred four thousand seven hundred thirteen dollars (\$204,713.00)], 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 five thousand dollars (\$25,000.00)] 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. 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 CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

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

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

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

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

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

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault

or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

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

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

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

(c) 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, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, 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 Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 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 CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

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

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in

accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

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

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

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

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

11. General Terms.

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

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

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

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

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

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

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

(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.

13. Independent Contractor.

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

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

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

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

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

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

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

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

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

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

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

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

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

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

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

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

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

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

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

///

///

///

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

No signature of City Attorney required.
Standard Document #DPU-S 8.3 has been
used without modification, as certified by
the undersigned.

By: _____
Kevin L. Norgaard
Supervising Professional Engineer
Department of Public Utilities

REVIEWED BY:

Kevin L. Norgaard, Supervising Professional
Engineer
Department of Public Utilities

Addresses:

CITY:
City of Fresno
Attention: Kevin L. Norgaard,
Supervising Professional Engineer
5607 West Jensen
Fresno, CA 93706
Phone: (559) 621-5297
FAX: (559) 498-1700

Attachments:

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

CDM Smith, Inc,
a Massachusetts Corporation

By: _____

Name: SERVANDO MOLINA

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

By: _____

Name: Paul Meyerhofer

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

Any Applicable Professional License:

Number: 25666

Name: L. Thomas Warriner

Date of Issuance: 2/1/1988

CONSULTANT:

CDM Smith
Attention: L. Thomas Warriner, PE, CEM,
Vice President
100 Pringle Avenue, Suite 300
Walnut Creek, CA 94596
Phone: 925-296-8040
FAX: 925-667-7865

Exhibit A

SCOPE OF SERVICES
Consultant Service Agreement between City of Fresno (“City”)
and CDM Smith, Inc (“Consultant”)
Power Generation and credit optimization
PROJECT TITLE

SECTION 1: BACKGROUND

The goal of this project is to assist the City of Fresno Department of Public Utilities (City) with selecting the most beneficial digester gas utilization technology at its Regional Wastewater Reclamation Facility (RWF). This will be an interactive process, relying on input from the plant, and bringing subject matter experts to the table to establish the gas utilization technology that meets the City's most important goals. The analysis will incorporate projected plant operation forecasts for the 20-year study horizon.

Digester gas production is an integral part of this discussion. It is a valuable fuel source that can be utilized in many ways. CDM Smith will coordinate with the other consultants who are working with the City to increase gas production to understand the projected increases in gas flow and the timing of the increased flows.

Section 2 describes the Scope of Work, Section 3 is a preliminary project schedule and Section 4 is the Project Budget. The work breakdown structure and fee calculation used to calculate the project budget is included as Attachment A, and the project schedule is included as Attachment B.

SECTION 2: SCOPE OF WORK

CDM Smith and our Subcontractor Environmental Compliance Solutions (ECS) have organized the scope into 7 major tasks as follows:

- Task 1 – Project Management and Quality Management
- Task 2 – Project Kick-Off / Develop Evaluation Criteria
- Task 3 – Evaluate The Existing Plant and Energy Systems
- Task 4 – Identify Credits and Grants
- Task 5 – Select Alternatives and Further Analysis
- Task 6 – Draft and Final Report
- Task 7 – Energy Usage Evaluation of the Plant (Optional)

The following sections define each of the tasks.

TASK 1 – PROJECT MANAGEMENT AND QA/QC

Objective:

The objective of this task is to facilitate communication between the City and the consultant (CDM Smith and our subcontractor, Environmental Compliance Solutions) and to provide for the CDM Smith quality assurance procedures as documented in the CDM Smith Quality Management System.

Under this task, CDM will carry out the project management functions of the project, including the preparation of a Project Management Plan, as well as monthly progress reports and invoices. Included under this task is a scheduled Kickoff Meeting involving key CDM team members along with City Program Management and Stakeholder Group members to discuss project objectives and efforts. Also included are 18 joint monthly meetings with the City and 2 other consultants at the RWRP to coordinate the work being performed by all consultants. We will also conduct bi-weekly telephone call meetings during the projected 9-month project schedule with CDM Smith personnel and the City's project manager to ensure smooth progress of the project, and have included quality review checks to deliver a quality final product to the City.

Subtask 1.1 – Communicate with, Monitor and Manage Project Team

Approach:

CDM Smith's project manager, will coordinate the work of CDM Smith internal team members and consultants, and provide for communication and control. CDM Smith will establish internal accounting and filing (project management plan), coordinate internal procedures, standards, and communications, and maintain project records. This task includes the development and/or continued maintenance of CDM Smith's document management system (DMS) in ProjectWise. CDM Smith will provide monthly progress reports that include a narrative of specific accomplishments during the month, problems encountered or anticipated and planned corrective actions, project decision log, and work scheduled for the next month. The report will also provide the City with a summary of the percent complete to date for each task. The monthly report will be accompanied by an invoice for the project, providing a summary of labor hours and expenditures by task, direct costs, and ODCs for the current billing period and to date.

Meetings and Workshops:

- CDM Smith internal team Bi-Weekly coordination calls and meetings

Deliverables:

- Correspondence as appropriate
- Project Work Plan including finalized scope of work, schedule and budget prior to project start.
- Monthly progress report (9); electronic copy to the City
- Monthly invoice (9); electronic copy to the City

Assumptions:

- 9-month project duration
- CDM Smith's Project Manager will discuss and resolve any City comments on the monthly progress report and invoice with City's Project Manager as required

Subtask 1.2 –Quality Management Activities

Approach:

CDM Smith will implement quality assurance and quality control (QA/QC) activities as required by the City and by CDM Smith's Quality Management Plan including:

- Technical checking of all deliverables including calculations, and presentation materials
- Independent review of the draft report and technical memos

Deliverables:

- Comment logs for each deliverable with written responses to City comments

Assumptions:

- Calculations reviewed in accordance with CDM Smith Quality Assurance processes will be submitted to the City with the draft report

Subtask 1.3 – Monthly On Site Coordination Meetings

Approach:

The CDM Smith Project Manager will attend the 18 joint monthly meetings with the City and 2 other consultants to coordinate the work being performed.

Meetings and Workshops:

- 18 meetings at the RWRF attended by PM

Deliverables:

- Meeting Minutes with a decision log for all CDM Smith discussion items
- Meeting Minutes will be delivered in electronic format.

TASK 2 – PROJECT KICK-OFF / DEVELOP EVALUATION CRITERIA

Objective:

The objectives of this task are to:

- Kick off the project by setting a common vision and establishing the keys for measuring success
- Establish the criteria for evaluating the gas utilization alternatives, and decide which alternatives to evaluate

Approach:

The Kick-off meeting will be an opportunity to create a vision for the project, and present the pathway to completion of the project. It is anticipated the kick-off meeting will be attended by interested stake holders from the City, and facilitated by CDM Smith.

CDM Smith is proposing to conduct the kick-off meeting and the first workshop on the same day. For this to be successful, there will be some work prior to the kick-off. CDM Smith will work with the City's Project Manager to define the scope of the project to ensure that it remains focused on the needs of the City. We will provide a list of potential criteria to use in the evaluation of different gas utilization technologies and create the list of criteria and technologies to be presented. This pre-work will define the universe of technologies and criteria to be presented during the workshop. It does not take the place of Workshop 1 but will help sharpen the focus of the group during the workshop.

After the Kick-off meeting, the Project Team will meet in a facilitated workshop setting (Workshop 1) to finalize the decision making criteria, and to be briefed on the gas utilization technologies to be considered. It is anticipated that the workshop will be attended by interested stake holders from the City, and facilitated by CDM Smith. During the meeting, the stakeholders will be asked for their input to help prioritize the decision making criteria. After the workshop the prioritized criteria will be used in a decision matrix to inform the selection of the gas utilization technology that is the best choice for the City.

Potential criteria could include, but is not limited to:

- Lifecycle cost
- Up-front cost
- In-house vs contract maintenance
- Scalability of the system
- Environmental considerations
- Proven vs experimental technology

The stakeholders will be asked to rank the criteria on a scale of 1 to 3, with the scale being 3 = very important, 2= somewhat important and 1= not important. Each criteria will be assigned a weighting factor based on the number of votes received for each.

Also prior to the Workshop CDM Smith will provide a draft list of the gas utilization technologies to be considered during the study. This list can be edited prior to and during the workshop. At the workshop, CDM Smith will present information concerning each technology and solicit feedback from the stakeholders.

The potential list of technologies will include:

- Rebuild the existing direct fired gas turbines to extend the life of the existing system.
- New direct fired gas turbines
- New medium speed gas fired internal combustion engines
- New low speed gas fired internal combustion engines
- Steam boiler and steam turbine
- Direct pipeline injection into PG&E's gas transmission mains; and vehicle fueling. (While this technology will be included in the overall plant analysis and report, the technical and economic analysis will be conducted by a different consultant. CDM Smith will coordinate with this consultant to get the data required for our work.)
- Stand-alone vehicle fueling, without using the utility pipeline for gas transport.

After the workshop, the potential technologies will be ranked using the decision matrix. Based on the results, top-ranking criteria emerge that reflect the shared priorities of the City stakeholders. Correctly selecting the City's prioritized criteria is the first step to efficiently shorten a long list of alternatives.

A follow-on workshop will be held in Task 5 to narrow the list of technologies. In addition to this screening, the plant data collected in Task 3 and the grant and credit information gathered in Task 4 will be considered to select the top 3 scenarios to be further developed.

Meetings and Workshops:

- Kick-off Meeting and Workshop 1 (6 hours total) (occur on the same day, but may have different attendees)

Assumptions:

- Kick-off meeting and workshop 1 will occur on the same day. It is possible that the City may want different staff attending each session. For example, the project managers will attend the kick-off meeting, and the stake holders will attend workshop 1 to provide input.
- A list of criteria will be provided and agreed to prior to Workshop 1. This list will serve as a starting point; it can be modified during the workshop based on input from the attendees.
- The criteria will be ranked during the workshop, but final results will be calculated and presented at the second workshop.

CDM Smith will submit a request for information after the notice to proceed is received formally requesting the information required for this project. The City will provide the information in electronic format at the kick-off meeting.

Deliverables:

- Kickoff Meeting agenda and materials
- Kickoff Meeting minutes with a decision log
- Workshop 1 agenda and materials
- Workshop 1 minutes with a decision log
- Preliminary list of evaluation criteria
- Criteria ranking based on the outcome of the workshop
- Final list of potential gas utilization technologies to be considered

TASK 3 – EVALUATE THE EXISTING PLANT AND ENERGY SYSTEMS

Objective:

The objective of this task is to understand the existing plant and its operation by visiting the site, reviewing existing documentation and interviewing the plant staff. To recommend the optimized gas utilization strategy for the RWRF, we must understand the energy supplies and demands for the plant. In this task we will quantify the anticipated gas generation during the 20-year planning horizon as well as anticipated plant heating requirements, electric and natural gas demand and consumption. We will also interview plant staff to understand how the plant is operated, and any anticipated future projects that will affect plant energy production and usage.

Approach:

After the first workshop but before the list of technologies is narrowed to a short list, CDM Smith will evaluate the plant energy supply and demand requirements. Each cogeneration technology has a “sweet spot” where the combination of first cost, operating cost and capacity favors its selection based on economics. To recommend the optimum technology for the City is important to understand plant operations and match the technology to the plant.

Activities for this task include:

- We will review existing information provided by the City such as drawings, utility bills, electricity generation records, gas production and utilization records, maintenance records and costs.
- We will evaluate, assess and score the overall performance, efficiency and effectiveness of the City’s existing gas conditioning and power generation facilities using the established criteria. This will be used as the baseline case for the economic analyses in Task 5.
- We will conduct onsite interviews and inspections with City Staff of the City’s existing gas conditioning system and power generation facilities, and the process control and operating strategies for both.
- We will review any planned projects that will affect the plant energy operation.
- We will also review any previous studies prepared for the City concerning the energy producing and consuming systems so that we are not reproducing work that has been evaluated previously.

Digester gas production is an integral part of the energy discussion. It is a valuable fuel source that can be utilized in many ways. CDM Smith will coordinate with the other consultants who are working with the City to increase gas production to understand the projected increases in gas flow and the timing of the increased flows.

We will look at the electrical generating capacity available from the produced gas. The potential for generating electricity will be weighed against the electrical plant requirements and the digester heating requirements to optimize the recommended generator size. Based on review of other methane uses such as pipeline quality gas, we will weigh the possibility of the cogeneration facility being a secondary use of digester gas.

From this information, CDM will prepare an overall energy balance for the plant. The analysis will show how much electricity is being purchased from PG&E and how much is being self-generated. It will show how much digester gas is being generated, how much is being used to generate electricity and how much is being flared. The analysis will also look at the heating requirements for the plant (digesters and buildings). The supply and demand will be calculated on a yearly basis for each year of the 20-year planning horizon.

Meetings and Workshops:

- Time on site to review records and interview staff will be 3-4 days in 2 visits

Assumptions:

- The City will provide data on energy supplies, demands and costs, including historic gas generation and gas forecasts, utility bills, maintenance records for the existing systems, information on planned projects. It is assumed this data will be available in electronic format such as excel file or CSV format.
- The City will make the appropriate staff available for interviews during the site visit or by phone.
- All documentation will be provided to CDM Smith within one week of the kick-off meeting.
- This will serve as the benchmark for the cost per kWh generated compared to the cost of purchased power plus natural gas displaced by the reclaimed heat utilized at the plant.

Deliverables:

- Summaries of conversations with the staff.
- Technical memorandum on the energy usage and condition of the existing systems, including a summary of maintenance costs over the last 5 years.
- Technical memorandum describing the changes to the energy supply and demand over the anticipated 20-year planning horizon. Potential changes include: Increased digester gas from population increases, increased FOG receiving and food waste; process changes like recycled water, pipeline injection of the digester gas, changes from installing new cogeneration equipment.
- Tables and graphs showing anticipated supplies and demands for digester gas, natural gas, electricity and heating loads
- All deliverables will be presented to the City in electronic format as PDF files.

TASK 4 – IDENTIFY CREDITS AND GRANTS

Objective:

The objective of this task is to identify and present the available potential funding for gas utilization projects including available grants and generating value from green credits. This work will be completed by Environmental Compliance Solutions, (ECS). This information will be incorporated into the financial analyses completed in Task 5.

Approach:

ECS will assist the City by summarizing potential grant opportunities for clean energy projects and methane reuse. At this time, we don't believe greenhouse gas credit generation (via a previous approved CARB protocol) will yield significant potential revenues. So, review of credit generation will not be studied as part of this scope of work.

The City seeks to explore opportunities to accomplish several goals, including:

- Understand how potential revenues that are generated from carbon credit transactions in a carbon market can be used to finance potential infrastructure;
- Determine types of projects that are most likely going to get funded through carbon market mechanisms; and
- Use existing studies and other grant application to determine trends on how to maximize potential revenue sources.

As part of this scope of work, ECS will conduct an initial review of potential local, state and federal grant opportunities available for clean and renewable power projects.

The study will focus primarily on a review of potential funding opportunities for this project. An additional goal is to utilize sustainable energy ideas, which may be suitable for a public/private partnership with the City.

Subtask 4.1 – Review of AB32

The study will include reviewing California's AB32 cap and trade revenues. AB32 is generating approximately \$1 billion per year in cap and trade revenues. As part of this task, we will review which types of City projects may be eligible for funding via this program. Credit revenues could also be used to help offset capital and construction costs associated with modifications to the facility.

Subtask 4.2 - Research Other Potential Funding Mechanisms

There are numerous other potential revenue sources which the City could explore. This is not intended to be an exhaustive search of any and all potential revenue sources. In addition to potential AB 32 revenues both from the state's auction and from credit generation itself, ECS will identify potential funding and grant opportunities that may be available to help offset the cost of some of the green energy options. Grants could be available from SCAQMD, SJVAPCD, CARB: Carl Moyer, CARB's Low Carbon Fuel Standard (LCSF), EPA, Proposition 1B, California Energy Commission, Southern California Gas Company GHG mitigation fund, and/or other federal green energy funds. In addition to review of AB32 potential funds, we will research and summarize no more than seven additional funding sources.

Meetings and Workshops:

- ECS will attend the kickoff meeting/workshop (6 hours)
- ECS will be needed for nine of the 18 status meetings via telephone (assumes 2 hours each or 18 hours total)
- ECS will attend Workshop 2 (4 hours)

Assumptions:

- Data collection (as needed) will occur during the site visit.
- If needed, the City will make the appropriate staff available for interviews by phone.
- No more than 10 programs total will be evaluated and summarized.

Deliverables:

- Technical memorandum on available credits and grants including anticipated financial data and relevant terms and conditions.

- All deliverables will be presented to the City in electronic format as PDF files

TASK 5 – SELECT ALTERNATIVES AND FURTHER ANALYSIS

Objective:

The objective of this task is to define the three alternative scenarios for in depth analysis and complete the analysis.

Approach:

The findings from Tasks 2, 3 and 4 will be presented in a workshop, (Workshop 2), and a short list of gas utilization technologies to be further analyzed will be selected by the City as the outcome from the of the workshop. In Task 2 the long list of technologies was ranked based on criteria established during the first workshop. In Task 3, the plant energy demands and supplies were characterized over time. In Task 4, the financial benefits from green credits and grants were identified.

Workshop 2 will present the information contained in the technical memoranda produced from each of these tasks. The workshop presentation will include an evaluation of the features, benefits, advantages, and disadvantages of the different technologies. The outcome of this workshop will be to decide on 3 scenarios to be further developed and incorporated into the final report, Task 6.

Also during the workshop, CDM Smith will present any “quick start” activities. These are activities which would present immediate benefit to the plant that are discovered during the work to date, and do not require any further analysis.

For the 3 selected scenarios, a full lifecycle cost analysis will be completed, including working with vendors and CDM Constructors, Inc., (CCI) to validate first costs and O&M costs. The planning horizon for the lifecycle study will be 20 years. The 3 selected scenarios will be compared against the baseline scenario which is to continue to operate the existing system by returning the existing generators to service, and maintaining them.

An energy supply/demand graph will be prepared for each scenario. The energy supplies will include digester gas, electricity generated, heat generated, electricity purchased, and natural gas purchased. The energy demands will include electricity demand, hot water demand, steam demand, digester gas demand. For each year of the planning horizon, the supplies and demands will be calculated. The changes will be caused by changes in the gas generation, process changes that increase or decrease electrical use, alternative uses for the digester gas, adding additional cogeneration capacity, etc.

When the analysis is completed the results will be presented at a workshop, (Workshop 3). The results of the workshop will form the basis of the report.

Meetings and Workshops:

- Workshop 2 (4 hours).
 - Present the TM's
 - Present the results of the selection criteria
 - Rank the gas utilization technologies
 - Select the 3 technologies for further analysis
 - Present the quick start items
- Workshop 3 (4 hours)

- Present the in-depth analysis of the baseline (existing system) and the 3 alternative technologies
- Build consensus for the conclusions to be included in the report

Assumptions:

- Presentation materials will be sent to the City one week prior to the workshops.
- Vendor quotes and/or CDM Constructors, Inc., (CCI) will be used to estimate construction costs for the 3 scenarios.
- All deliverables will be presented to the City in electronic format as PDF files.

Deliverables:

- Results of the criteria screening
- Energy Supply/demand graphs
- Technical Memorandum describing the 3 scenarios to be further analyzed.
- Technical memorandum on "Quick Start" items
- Minutes from Workshop 2 with decision log
- Presentation for Workshop 3, the in-depth analysis of the baseline (existing system) and the 3 alternative technologies
- Minutes from Workshop 3 with decision log

TASK 6 – DRAFT AND FINAL REPORT

Objective:

The objective of this task is to present the results of the study for discussion as a written report. The report will be submitted in draft form for review and comment, then formalized into a final, actionable plan for the future of the City's gas utilization systems.

Approach:

The results from this project will be a twenty-year capital and operating cost plan for the Top 3 scored and ranked alternative digester gas utilization options compared against the baseline scenario. The results will be vetted and approved by the City prior to being included in the report.

The report will present the background information, assumptions, analysis, conclusions and recommendations of the effort conducted by the CDM Smith team, and will include results provided by ECS concerning the economic benefits available from grants. It will also consider the work of other consultants concerning increasing digester gas flows and selling pipeline quality gas as it affects the life cycle costs and supply demand energy balance for the plant. In addition, this report will include an Executive Summary, an Action Plan and Appendices for additional reference materials prepared during the course of the project. A Wrap-up Meeting (Workshop 4) will be held to review and discuss the draft report with the City.

A draft report will be provided to the City for review. Once the City's comments on the report are received, they will be incorporated and the report will be issued as final.

Meetings and Workshops:

- Workshop 4 (2 hours)

Assumptions:

- The draft report will be sent to the City 2 weeks prior to the review meeting, (Workshop 4)
- All deliverables will be presented to the City in electronic format as PDF files

- 4 printed copies of the final report will be delivered to the City

Deliverables:

- Draft Report
- Minutes from Workshop 4 with decision log
- Final Report in PDF format and 4 printed copies.

TASK 7 – ENERGY USAGE EVALUATION OF THE PLANT (OPTIONAL)

Objective:

The objective of this optional task is to identify ways to further reduce the energy usage and operating costs at the plant by completing an energy audit. A guiding principle for energy efficiency is to reduce energy usage prior to applying alternative energy sources. It is oftentimes the least expensive way to reduce plant energy costs. While this task was not included in the Statement of Qualifications solicitation, it is recommended.

Approach:

Much of the preliminary work will be done to prepare the supply/demand analysis. This task will be to prepare an energy balance for the electric usage at the plant. This involves inventorying the electrical loads, and assigning the hours of operation to each piece of equipment. The result will provide an understanding of how electricity is used in the plant. The usage will be presented by end use, for example, pumping energy, secondary treatment, solids handling, etc. During the collection and analysis of the plant data, energy conservation measures (ECM) will be documented. The ECM's will be quantified for potential electric demand and energy reduction and energy cost reduction. The implementation cost will be estimated, and a simple payback will be calculated.

CDM Smith will also input the plant energy into the EPA Energy Star portfolio and benchmark the plant energy against other regional wastewater treatment plants participating in the program.

Meetings and Workshops:

- Data collection will require an additional 2 days on site.

Assumptions:

- Data collection will occur during the Task 3 site visits.

Deliverables:

- Plant energy analysis (Energy audit)
- EPA Energy Star Portfolio with Benchmark

SECTION 3: PROJECT SCHEDULE

The anticipated project duration is 9 months from the notice to proceed. See preliminary project schedule, Attachment B.

SECTION 4: PROJECT BUDGET

This work will be completed on a time and materials basis with a Not to Exceed Upper Limit of \$204,713, including CDM Smith labor, subconsultants and all reimbursable expenses. Similar to other existing contracts between the City and CDM Smith, the budget for this project is based on a labor multiplier of 3.05 times raw salary, and expenses will be marked up 5%. Other Terms and Conditions will be defined in the contract to be negotiated between CDM Smith and the City.

ACTIVITY	BUDGET
LABOR TASKS	
TASK 1 – PROJECT MANAGEMENT AND QA/QC	\$17,065
Subtask 1.3 – Monthly On Site Coordination Meetings	\$37,332
TASK 2 – PROJECT KICK-OFF / DEVELOP EVALUATION CRITERIA	\$ 7,351
TASK 3 – EVALUATE THE EXISTING PLANT AND ENERGY SYSTEMS	\$24,278
TASK 5 – SELECT ALTERNATIVES AND FURTHER ANALYSIS	\$51,792
TASK 6 – DRAFT AND FINAL REPORT	\$22,180
TASK 7 – ENERGY USAGE EVALUATION OF THE PLANT (OPTIONAL)	\$15,616
LABOR SUBTOTAL	\$175,613
OUTSIDE PROFESSIONAL SERVICES	
TASK 4 – IDENTIFY CREDITS AND GRANTS (ECS)	\$23,100
Cost Estimating (CDM Constructors, Inc.)	\$ 2,500
OTHER DIRECT COSTS: PRINTING, SHIPPING, TRAVEL, ETC.	\$ 3,500
TOTAL	\$204,713

SCHEDULE OF FEES

Refer to Exhibit A Section 4

Exhibit B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno ("CITY") and CDM Smith, Inc ("CONSULTANT")

Power Generation and credit optimization
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.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

CONSULTANT, 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:

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 10 01 and CG 20 37 10 01 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 related 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 (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, reduced in coverage or in limits except after thirty (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 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. 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

Power Generation and credit optimization
PROJECT TITLE

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

Explanation: _____

Additional page(s) attached.


Signature

July 28, 2016
Date

SERVANDO MOLINA, P.E.
(name)

COM SMITH INC.
(company)

100 Pringle Avenue, Suite 300
(address)

Walnut Creek, CA 94596
(city state zip)

