

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

THIS AGREEMENT is made and entered into effective the ____ day of December 2017, by and between the CITY OF FRESNO, a California municipal corporation (City), and THE WATER GROUP, a California Limited Liability Corporation (Contractor).

RECITALS

WHEREAS, City desires to obtain construction services for The Leaky Acres Groundwater Recharge Enhancement Project (Project); and

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

WHEREAS, Contractor acknowledges that this Agreement is subject to the requirements of Fresno City Charter and Fresno Municipal Code; and

WHEREAS, this Agreement will be administered for City by its Director of Public Utilities (Administrator) or designee.

AGREEMENT

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

1. Scope of Services. Contractor 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**. Contractor shall comply with the City's general conditions, special conditions standard specifications, attached as **Exhibit B**. In the event of conflict between Exhibit B and the body of this Agreement, **Exhibit B** shall take precedence.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through 820 calendar days from the effective date first noted above, subject to any earlier termination in accordance with this Agreement. The services of Contractor as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) Contractor's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of \$212,326.82 as further described in Exhibit A.. Such fee includes all expenses incurred by Contractor in performance of the services.

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

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to Contractor'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. Contractor 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 Contractor upon the earlier of: (i) Contractor's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Contractor; (ii) 7 calendar days prior written notice with or without cause by City to Contractor; (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, Contractor 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 Contractor that are owned by City. Subject to the terms of this Agreement, Contractor shall be paid compensation for services satisfactorily performed prior to the effective date of termination. Contractor 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 Contractor 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 Contractor, 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 Contractor, 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) Contractor shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Contractor fails to comply with any terms or conditions of this Agreement.

(f) Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Contractor 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. Contractor shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

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

(b) Any and all writings and documents prepared or provided by Contractor 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. Contractor shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor 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 Contractor represents to City that Contractor 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 Contractor and any subcontractors to do and perform such services in a skillful manner and Contractor 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 Contractor or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law including California Civil Code section 2782, Contractor 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) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful

misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor 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 Contract.

8. Insurance.

(a) Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all insurance as required in **Exhibit C**, 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, Contractor 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 Contractor 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 Contractor 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 Contractor shall not be deemed to release or diminish the liability of Contractor, 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 Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor 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 Contractor and City prior to the commencement of any services by the subcontractor. Contractor 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, Contractor shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit D**. During the term of this Agreement, Contractor shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Contractor in such statement.

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

(c) In performing the work or services to be provided hereunder, Contractor 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) Contractor 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 Contractor, nor any of Contractor's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. Contractor and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Contractor shall remain responsible for complying with Section 9(b), above.

(f) If Contractor should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Contractor 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 Contractor 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, Contractor 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 Administrator or his/her designee.

(b) Records of Contractor'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 Contractor 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 Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor 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, Contractor shall have provided evidence to City that Contractor is licensed to perform the services called for by this Agreement (or that no license is required). If Contractor should subcontract all or any portion of the work or services to be performed under this Agreement, Contractor 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, Contractor 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, Contractor agrees as follows:

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

(c) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor 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) Contractor 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 Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor 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, Contractor is acting solely as an independent contractor. Neither Contractor, 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 Contractor shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions thereof.

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

(c) Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor 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, Contractor shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Contractor'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, Contractor may be providing services to others unrelated to City or to this Agreement.

14. Trench Shoring Detailed Plan. Contractor acknowledges the provisions of Section 6705 of the California Labor Code and, if said provisions are applicable to this Contract, agrees to comply therewith.

15. Worker's Compensation Certification. In compliance with the provisions of Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this Contract and will make my subcontractors aware of this provision.

16. Prevailing Wage. The work hereunder constitutes a "public work" as defined in Chapter 1, Part 7, Division 2 of the California Labor Code, and Design/Builder shall cause the work to be performed as a "public work" in accordance with such Chapter of the California Labor Code. The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of worker needed in the execution of Contracts for the City. Information specific to the Work to be done under this Contract can be obtained by contacting the Contract Compliance Officer at the City of Fresno office of Construction Management, (559) 621-5600.

17. Federal Immigration Reform and Control Act. As a material part of any Contract for a City of Fresno project, every Design/Builder who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, the Contractor will make any employee documentation required to comply with the Act immediately available to the City upon its request for each individual employee working on a City of Fresno project.

18. Prompt Progress Payment to Subcontractors. All Contracts and Subcontracts (all tiers), shall contain the following provisions:

(a) Prompt Payment To Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the City's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

19. Prompt Payment Of Funds Withheld To Subcontractors. All Contracts and Subcontracts (all tiers), shall contain the following provisions:

(a) Prompt Payment To Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the City's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

(b) Prompt Payment Of Funds Withheld To Subcontractors. The City shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Federal regulations (49 CFR 26.29) require that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

19. Precedence of Documents. Generally, whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order of precedence. The order of precedence of documents shall be, from highest (i.e., "1") to lowest (i.e., "8"): (1) Permits from other agencies as may be required by law; (2) Supplemental Contracts, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Project Technical Requirements; (6) City Standard Specifications.

20. 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.

21. 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.

22. Assignment.

(a) This Agreement is personal to Contractor and there shall be no assignment by Contractor 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 Contractor, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) Contractor hereby agrees not to assign the payment of any monies due Contractor 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 Contractor directly to Contractor.

23. Compliance With Law. In providing the services required under this Agreement, Contractor 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

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

31. 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.

32. 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.

33. 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.

34. 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 Contractor.

[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: _____
Thomas C. Esqueda,
Director of Public Utilities

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: BA 11/21/17
Brandon Collet Date
Deputy City Attorney

Addresses:

CITY:
City of Fresno
Attention: *Glenn A. Knapp*,
Professional Engineer
2101 G. Street, Building A
Fresno, CA 93706
Phone: (559) 621-1624
FAX: (559) 498-4126

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B City Standard Terms and Conditions
3. Exhibit C - Insurance Requirements
4. Exhibit D - Conflict of Interest Disclosure Form

THE WATER GROUP,
a Limited Liability Corporation

By: David Sanders

Name: David L Sanders

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

By: Ryan Sanders

Name: Ryan Sanders

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

Any Applicable Professional License:

Number: _____

Name: _____

Date of Issuance: _____

CONTRACTOR:

The Water Group, LLC
Attention: Gary Luiz,
Managing Partner
251 E. 4th Street
Ripon, CA 95366
Phone: (844) 799-3777
FAX: (209) 599-9219

EXHIBIT A

SCOPE OF SERVICES

Consultant Service Agreement between City of Fresno (City) and The Water Group, LLC. (Contractor)

Leaky Acres Groundwater Recharge Enhancement Project

Upon Notice to Proceed (NTP), the Water Group, LLC., in cooperation with Parjana Distribution will provide the following services:

Project Background:

It is the intent of the Water Group to install and demonstrate the effectiveness of the patented Parjana "Energy Passive Groundwater Recharge Product (EGRP System) at the City of Fresno's Leaky Acres Groundwater Recharge Facility. The Water Group, LLC., retains all the required State of California Licenses and has been Certified by Parjana Distribution® as qualified to install the system.

The goal of this project is to verify EGRP system potential in providing a 4-fold increase of current infiltration rates within a designated groundwater recharge basin at Leaky Acres.

The designated basin for this project, "SB6" (Desilting Bay #6), is one of four lead basins which capture delivered surface water from the Fresno Irrigation District's (FID's) Gould Canal. These lead basins provide for initial settling of organic and other suspended material prior to distributing water to other downstream infiltration basins throughout the facility.

The Water Group anticipates that the project will require installation of approximately 43,960 linear feet of the Parjana EGRP system at one-half (1/2) of the MSRP of \$9.20 per linear foot. Installation of the EGRP system and other appurtenances necessary in conducting the project shall result in a Total Project Baseline Cost of \$212,386.82 including all interest

The Water Group will install this system and other necessary appurtenances at no cost to the City. Repayment of Total Project Baseline Costs by City to The Water Group shall be in accordance with, and contingent upon those performance milestones as identified below under "Project Milestones and Costs".

Overall Project Timelines

Mobilization and System Installation:	30 calendar days
Project Operations:	730 calendar days
De-Mobilization/System Removal (if necessary)	60 calendar days
Total Project Duration:	820 calendar days from Notice to Proceed

Project Implementation

Work Tasks:

1.0 The Water Group will coordinate with the City and other stakeholding agencies and entities in development of project plans and all documents necessary for system installation. Project plans and documents shall be reviewed and approved by City prior to installation. Costs of any required permits for the project and laboratory testing will be paid for by the City. There will be a total of three (3) Certified Prajana Installers on-site through completion of installation which is expected to take approximately twelve (12) to fourteen (14) working days. City staff may assist during system installation for training purposes related to potential future system installations by City crews.

1.1 City will ensure SB6 remains drained prior to system installation, and install a flowmeter between the Bypass Channel and SB6 to record the quantity of water delivered to the basin.

1.2 The Water Group will mobilize and install the Parjana System within 30 days from receipt of Notice to Proceed.

2.0 Upon completion of system installation, City will refill the basin in two-foot (2ft) increments recording the volume delivered and water elevation for each increment. Prior to the filling of the second two-foot increment, and for each increment thereafter, City shall re-isolate the basin and record infiltration rates for four days. Once the basin has been filled to its standard operating level, the average four-day infiltration rate for each increment shall be totaled and averaged to define the overall project Baseline Infiltration Rate (BIR). The BIR shall be used to define performance/payment milestones and determine system efficiencies and effectiveness.

2.1 Subsequent to establishing the BIR, the basin shall be re-filled to its standard operating level.

3.0 The date that final filling of SB6 has reached standard operating level will be the Initial Operations Date requiring implementation and recordation of the following information by City:

Daily –

Weather:

1. Anticipated daily high/low temperatures and existing air temperature at site.
2. Extent of cloud cover (light, medium, heavy)
3. Precipitation
4. Wind speed
5. Evaporation (ET_o)

Basin Readings:

1. Water temperature
2. Staff gauge reading (water level reading)
3. Flowrate/Volume – (When applicable)

Comments:

1. Any and all physical and environmental factors influencing operations.

Weekly:

1. Source water turbidities (within ½ mile of facility – grab sample)
2. Bypass channel turbidity (grab sample)
3. SB6 turbidity

Monthly:

1. Suspended Solids – (within ½ mile of facility – grab sample)
2. Suspended Solids – in bypass channel downstream of traveling screen (grab sample)
3. Suspended Solids – nearest to center of SB6 (grab sample)
4. Weather Data (CSUF or other approved designated site), information as may be needed to support the project

Semi-Annually:

All data received and collected by the City shall be forwarded to the Water Group/Parjana on a weekly basis for generation of Semi-Annual Technical Memorandums that will be submitted to the City of Fresno for documentation and approval of performance milestones. The first Technical Memorandum shall be due to the City six (6) months from the date of the executed agreement between City and the Water Group. LLC, and every 6 months thereafter, with a Final Report provide within two (2) months after completion of project operations.

Performance Milestones and Costs

Upon completion of system installation, and within the above noted "Overall Project Timelines", reimbursement of project costs to the Water Group, LLC will be in accordance with the following performance milestones and timelines:

The City of Fresno shall not pay for initial system installation, or other appurtenances related to project set-up and operations. All initial costs for system installation and maintenance shall be paid for by the WaterGroup/Parjana.

When it is demonstrated and approved by City that infiltration rates have increased and maintain twice the originally established BIR value , the City will within 6 months, pay the WaterGroup, LLC, an initial one-third of the Total Project Baseline Cost: or \$67,405.34

When it is confirmed by City that infiltration rates have increased and maintain three times the originally established BIR, the City will within 6 months, provide a second 'one-third' payment (\$67,405.34) of the Total Project Baseline Cost including 5% interest (\$6,740.53) on the remaining balance (\$134,810.66) existing from the date of the initial one-third payment, for a total payment of \$74,145.87.

Subsequent to demonstration and approval by City that the original BIR has been quadrupled , the City will within 6 months, pay the final 'one-third' balance (\$67,405.34) of the Total Project Baseline Cost including 5% interest (\$3,370.27) on the remaining balance (\$67,405.34) from the date of the second 'one-third' payment for a total and final payment of \$70,775.61

Total payments (including interest) to the Water Group by City shall not exceed a total of \$212,326.82.

Guarantees/ Warranties & Options

Within the defined project timelines, and upon successfully achieving a 4-fold increase to the BIR, an additional 5-Year Performance Guarantee will become effective to run concurrent with the 25 Year Manufacturer's Guarantee offered by Parjana Distribution.

If the system fails to achieve double the BIR within the defined project operations timelines, the system will be removed by the manufacturer without cost to City. For the first five years of the 25 Year Manufacturer's Guarantee, a personal guarantee, by the majority owners of Parjana Distribution and The Water Group, LLC, that the average infiltration rate, during this period, will maintain a minimum of three times the originally established BIR . If it does not meet this requirement, the system will be removed and the City reimbursed the full amount paid including all interest.

Upon City acceptance of the terms of this Agreement, The Water Group, LLC agree to lease the drilling rigs on an as-needed basis , sell EGRP at a fixed rate, and assist in training employees of the City for future installations, thus reducing future installation costs on City owned property.

Upon mutual agreement of satisfactory system performance, The Water Group/Parjana shall enter into a separate equipment lease agreement with the City at least 60 days prior to the end date of this service/installation agreement and provide such training as necessary prior to the termination date of said agreement..

The City retains the right to accept any infiltration rate greater than the BIR for this project.

EXHIBIT B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno (City) and The Water Group, LLC (Contractor)

Leaky Acres Groundwater Recharge Enhancement Project

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 Contractor's profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

Contractor, or any party the Contractor 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 Contractor 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

Contractor shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Contractor 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) Contractor 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. Contractor 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, Contractor'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 Contractor's insurance and shall not contribute with it. Contractor's 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: Contractor 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 Contractor.
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 Contractor, Contractor 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, Contractor 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, Contractor 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

Contractor 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, Contractor 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

Leaky Acres Groundwater Recharge Enhancement Project
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☒
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☒
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☒
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?	☐	☒
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?	☐	☒
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?	☐	☒
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.

David L. Sanders

Signature

11-2-17

Date

David L Sanders

(name)

The Water Group

(company)

PO Box 1434

(address)

Ripon CA 95366

(city state zip)