

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

THIS AGREEMENT (Agreement) is made and entered into effective _____, by and between the CITY OF FRESNO, a California municipal corporation (City), and Partners in Control Inc., dba Enterprise Automation, a California corporation (Consultant).

RECITALS

WHEREAS, the City desires to obtain professional consulting services for on-call Supervisory Control and Data Acquisition support services (Project); and

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

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

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

AGREEMENT

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

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

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or December 31, 2027, subject to any earlier termination in accordance with this Agreement. The services of the Consultant as described in **Exhibit A** are to commence upon the City's issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion.

3. Compensation.

(a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed Four-Hundred Fifty Thousand Dollars (\$450,000), paid on a time and materials basis in accordance with the schedule of fees contained in **Exhibit A**, pursuant to Subsection (c) below and authorized in writing by the Director.

(b) Detailed statements shall be rendered monthly and will be payable

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

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to the Consultant's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. The Consultant shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies, and Force Majeure.

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

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

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

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

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

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

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

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

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

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

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as the Consultant represents to the City that the Consultant and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the

services agreed to be done by it under this Agreement, the City relies upon the skill of the Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782.8, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials and employees from any loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, the Consultant shall pay for and maintain in full force and effect all insurance as required in Exhibit B, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by the City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the 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, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance, all services and work under this Agreement shall be discontinued immediately, and all payments due, or that become due, to the Consultant shall be withheld until insurance is in compliance with the requirements. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to the City's execution of this Agreement, the Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.

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

(c) Consultant's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

(d) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either

is employed by the City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

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

(e) Neither the Consultant, nor any of the Consultant's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. The Consultant and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

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

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

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

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

(b) Immediately contact the City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

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

11. General Terms.

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

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for

any period required by law. In addition, all books, documents, papers, and records of the Consultant pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

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

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

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

setting forth the provision of this nondiscrimination clause.

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

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

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

13. Independent Contractor.

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

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

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

services to others unrelated to the City or to this Agreement.

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

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

16. Assignment.

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

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

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

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

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

20. Headings. The section headings in this Agreement are for convenience and

reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

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

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

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

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

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

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

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

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

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

[Signatures follow on the next page.]

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

CITY OF FRESNO,
a California municipal corporation

By: _____
Brock D. Buche, PE, PLS
Director of Public Utilities

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Clerk Attesting
Deputy

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: Christine Charitar 2/27/2024
66086C14103B4F5...
Christine C. Charitar Date
Deputy City Attorney

DocuSigned by:
REVIEWED BY:
Joseph De George 2/26/2024
06535EF0DA74454...
Joseph De George, MS, MBA
Project Manager
Department of Public Utilities

Addresses:

CITY:
City of Fresno
Attention: Joseph De George
Project Manager
1626 E Street
Fresno, CA 93706
Phone: (559) 621-1619
E-mail: Joseph.DeGeorge@fresno.gov

PARTNERS IN CONTROL INC., dba
ENTERPRISE AUTOMATION,
A California Corporation

By: [Signature] 2/26/2024
AD955065AF9C498...
Name: Josh Riley

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

By: Preston Hopson 2/26/2024
ED00001A20D9402...
Name: Preston Hopson

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

Any Applicable Professional License:
Number: N/A
Name: _____
Date of Issuance: _____

CONSULTANT:
Enterprise Automation
Attention: Josh Riley
President
9050 Irvine Center Dr.
Irvine, CA 92618
Phone: (949) 769-6000
E-mail: Josh.Riley@eaintegrator.com

Attachments:

1. Exhibit A - Scope of Services

2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

EXHIBIT A

SCOPE OF SERVICES

**Consultant Service Agreement between City of Fresno (City)
and Enterprise Automation (Consultant)
On-Call Supervisory Control and Data Acquisition support
services**

1.1 Source Control

EA established a Source Control system for the City in 2010 that contains backups of all SCADA asset configurations for the NE SWTF, T3 SWTF, and Distribution systems. EA will continue to manage this system and will work with the City to ensure we have the latest versions.

1.2 Test Platform

EA currently hosts the City's test platform at our office in Irvine, which consists of a City owned server configured with all software required to replicate the City's on-site NE SWTF, T3, and Groundwater Distribution SCADA systems. The City also manages their own on-premises test platform, which EA helped implement. EA will continue to maintain the off-site test platform, which acts as an important tool to develop and test system software modifications in an isolated environment, eliminating risks to personnel, equipment, and system operation.

1.3 Software and Operating System Update Support

EA follows a proven strategy of establishing a Windows Server Update Services (WSUS) server that enables the efficient management and distribution of updates and hotfixes released by Microsoft for their Operating Systems (OS) and related software. Since successfully implementing a WSUS server on the City's test platform, WSUS updates have been executed no less than twice a year.

In addition to OS updates, EA routinely monitors the City's SCADA software vendors for new version releases, patches, and service packs. EA will advise the City when upgrades can be safely deployed, and when the City is ready, EA will work with the City to deploy those upgrades. EA will also ensure that a fallback plan is in place to ensure that the system can be recovered if an update fails.

1.4 Change Management System

In 2017, EA implemented a Change Management system for the City which allows EA's engineers to log a change request, develop a proposed solution and price, obtain authorization to implement the change, and log all notes within a single interface. The Change Management system allows EA to seamlessly track and address all change requests that the City may require.

1.5 Software License Renewals

The City's SCADA platforms consist of a wide variety of hardware and software components. Due to the mission critical nature of these systems, EA previously established an automated software support contract tracking system leveraging 'Mantis' software for the City.

If we are awarded, this system will be updated to ensure all SCADA software and hardware support licenses are logged and tracked for all sites associated with this contract. EA has provided license renewal services for the City through previous support contracts and will continue to do so through this contract.

1.6 Annual Operational Training

EA will provide training to City staff, which is typically provided in conjunction with the deployment of new software or features through SCADA and Capital Projects but can also be pre-planned to support staff development. EA will prepare a training manual for each topic covered and will accommodate a variety of shift schedules and staff skill levels to provide customized courses.

1.7 Planning and Budgeting

The best approach to ensure the needs of our clients are met is to establish a multi-year action plan which provides a clear, measurable roadmap to achieving the desired results. This action plan also sets long term financial expectations and ensures that each project undertaken is consistent with the overall goals. Annually, EA will conduct one or more planning meetings with the City to review scheduled and suggested projects on a five-year timeline.

1.8 Routine and Emergency Troubleshooting

EA will provide phone support, remote support, and on-site support in that order. Phone support will be provided 24/7. Support outside of normal business hours is reserved for critical problems that are threatening safety or production. Remote support and diagnosis of problems by EA engineers can be provided, where necessary, via a City maintained VPN. When necessary, EA engineers will be available for on-site support, with the City receiving priority scheduling.

1.9 Monthly Reporting and Data Backfill

EA will assist the City in generating monthly "Automated Operational Metrics" reports and can assist the City in performing necessary backfill of data across various levels of SCADA. This backfill is potentially necessary due to gaps in processed data or errors discovered in data. EA will provide support to the City's IS staff to ensure reliable and complete data collection when systems are taken offline for windows updates or for when other updates are made.

1.10 Security Constraints

EA understands the importance of adhering to security constraints. EA has access to members of the American Waterworks Association's Cybersecurity Subcommittee,

members of the Water Environment Federation Safety's Cyber and Infrastructure Security Committee, certified encryption specialists, secure infrastructure specialists, and CISSP certified specialists. EA has also performed cyber security audits with personnel from the Department of Homeland Security. We are committed to helping the City maintain and improve security levels and will adhere to each of the security concerns discussed in the City's RFQ.

1.11 Design and Construction Capital Project Support

In addition to annual support, EA understands the need for and is capable of supporting capital projects for the City throughout both the design and construction phases. EA will provide services such as meeting facilitation/attendance, control strategy design/implementation, controls design documentation development, design specification reviews, PLC/SCADA programming, testing, deployment, and as-needed support through the construction phase.

1.12 Project Risk Management

Our project managers act as a conduit for communications to our clients and are responsible for ensuring all parties are actively identifying and mitigating risks. Our standard communication protocols are designed to systematize the process of keeping our client's and EA's project teams in sync. We believe that our clients should know what we are working on, the status of their budget, and that their schedule is being maintained. Project Managers accomplish this by using these tools:

Internal Team check-ins:

The PM and project team regularly meet to discuss task progress, budget forecasting, the schedule, opportunities for efficiency and added value, and risk scenarios. These formal meetings are a critical component to our success as they facilitate team coordination and collaboration.

Risk Register

Risk mitigation starts before a project is initiated. When we challenge the project team to develop a list of potential risks and maintain it on a regular basis, risk mitigation becomes ingrained in the project approach.

Bi-weekly updates

Every other week, the PM will provide our client a summary of all ongoing activities. Via email, we detail the status of upcoming tasks, deadlines, and milestones while highlighting possible risks or budget conflicts. Schedule permitting and per client preference, we will host webinars or calls to discuss updates.

Project tracking report

Once a month, the PM will develop a project tracking report that details the current progress on all tasks. It allows our client to see, on a per-task basis, how much budget will be required to complete a project and how we have performed on completed tasks. It is easily compared to the original project estimate and empowers our clients to direct their budget according to their priorities.

1.13 Quality Assurance and Quality Control

We have a mandatory quality assurance and quality control (QA/QC) program for all

projects. We maintain this program based on the concept of continually improving quality by:

- Identifying and resolving problems early so they do not re-occur
- Identifying and eliminating inefficiency and waste
- Reducing variability
- Increasing performance

Every document, program, or other deliverable, whether draft or final, undergoes a formal review process prior to submittal. We accomplish this in the form of desk checks, peer reviews, lead reviews, and architect consultations. We use these methods to ensure that anything being delivered to the client has been reviewed by many qualified team members. This QA/QC process covers all aspects of project delivery and integrates with project management processes so that quality is maintained throughout the development of each deliverable. Our quality plan will be included in each of our design submittals and follows the Plan-Do-Check-Act model of improvement.

SCHEDULE OF FEES

Engineering Rates

Rate Classification¹	Standard Rate
<i>Admin</i>	\$ 105.00 / hr.
<i>Engineering Intern</i>	\$ 105.00 / hr.
<i>I&C Technician 1*</i>	\$ 140.00 / hr.
<i>I&C Technician 2*</i>	\$ 180.00 / hr.
<i>Electrical Engineer 2*</i>	\$ 180.00 / hr.
<i>Electrical Engineer 3*</i>	\$ 215.00 / hr.
<i>CAD*</i>	\$ 155.00 / hr.
<i>Automation Project Engineer 1</i>	\$ 212.00 / hr.
<i>Automation Project Engineer 2</i>	\$ 258.00 / hr.
<i>Project Technical Lead</i>	\$ 270.00 / hr.
<i>Project Manager 1</i>	\$ 220.00 / hr.
<i>Project Manager 2</i>	\$ 265.00 / hr.
<i>Automation Architect</i>	\$ 280.00 / hr.
<i>Principal</i>	\$ 335.00 / hr.

**Through Tetra Tech*

¹ Rate classifications charged are based on a project role/responsibility basis, not title, and could be adjusted during a project's duration if meaningful staff changes occur with prior notification.

Service Calls

Service calls covered by an Enterprise Automation service contract are prioritized while all other service requests are dependent on existing schedules and the availability of engineering staff.

Overtime

Item	Description
<i>Time and a half</i>	Outside of normal business hours (8am-5pm), or time in excess of 10 hours per day (unless otherwise arranged)
<i>Double time</i>	Saturday, Sunday, and holidays (unless otherwise arranged)

General

Item	Description
<i>Travel time</i>	Charged at engineering rates
<i>Vehicle mileage</i>	As per the published IRS mileage rate (if applicable)
<i>Travel expenses</i>	At cost (if applicable)
<i>Meals and incidentals</i>	GSA established per diem rate (if applicable)
<i>Payment terms</i>	Net 30 days

Rates effective 11/1/2023 through 9/30/2024

EXHIBIT B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno (City) and Enterprise Automation (Consultant)

On-Call Supervisory Control and Data Acquisition support services

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to the Consultant's profession.

MINIMUM LIMITS OF INSURANCE

The Consultant, or any party the Consultant subcontracts with, shall maintain limits of liability of not less than those set forth below.

1. **COMMERCIAL GENERAL LIABILITY:**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$2,000,000 per accident for bodily injury and property damage.

3. WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.
4. EMPLOYER'S LIABILITY:
 - (i) \$2,000,000 each accident for bodily injury;
 - (ii) \$2,000,000 disease each employee; and,
 - (iii) \$2,000,000 disease policy limit.
5. PROFESSIONAL LIABILITY (Errors and Omissions):
 - (i) \$2,000,000 per claim/occurrence; and,
 - (ii) \$4,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event the 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

The Consultant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the Consultant shall also be responsible for payment of any 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. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. The Consultant shall establish additional insured status for the City and for all ongoing and completed operations by use of endorsements providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85 or CG 20 10 04 13.
2. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, and volunteers.
3. The 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 the Consultant's insurance and shall not contribute with it. The Consultant shall establish primary and non-contributory status on the General Liability policy by use of ISO Form CG 20 01 04 13, or by an executed endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

4. The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: the Consultant and its insurer shall waive any right of subrogation against the City, its officers, officials, employees, agents, and volunteers.

5. 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 the City. The 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, the Consultant shall furnish the 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 the City, the 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.

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

7. The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

CLAIMS-MADE POLICIES

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 the 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 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 the Consultant, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to the City for review.

5. These requirements shall survive expiration or termination of the Agreement.

VERIFICATION OF COVERAGE

The Consultant shall furnish the City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or designee prior to the 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 the City, the Consultant shall immediately furnish City with certificates of insurance for all insurance policies required under this Agreement, including all endorsements. In the event of a claim against the Consultant relating to the Consultant's Scope of Services, the City reserves the right to require complete, certified copies of all relevant insurance policies, including endorsements required by these specifications, upon notice. This requirement shall survive expiration or termination of this Agreement.

SUBCONTRACTORS

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

EXHIBIT C**DISCLOSURE OF CONFLICT OF INTEREST****On-Call Supervisory Control and Data Acquisition support services**

		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: _____

N/A

DocuSigned by:

 AD955065AF9C496...
 Signature

2/26/2024

Date

Josh Riley

(Name)

Partners in Control Inc

(Company)

Irvine, Ca 92618

(Address)

☐ Additional page(s) attached.

(City, State Zip)