

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

THIS AGREEMENT is made and entered into effective the 1st day of September, 2014, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and EMG, Clampett Industries LLC dba EMG (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional Facility Assessment services for City of Fresno Facilities Assessment Project, hereinafter referred to as the "Project;" and

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

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

WHEREAS, this Agreement will be administered for CITY by its Public Works Director (hereinafter referred to as "Director") or his/her designee.

AGREEMENT

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

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

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or September 1, 2017, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within One Thousand Ninety Five (1,095) consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of Thirty Eight Thousand Eight Hundred and Sixty Dollars (\$38,860.00), and a contingency amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00) for any additional work rendered pursuant to Subsection (c) below and authorized in writing by the Director. Such fees include all expenses incurred by CONSULTANT in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business.

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

4. Termination, Remedies and Force Majeure.

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

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

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

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

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

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

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

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

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

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

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

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

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its

officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

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

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

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

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

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

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

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

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

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

11. General Terms.

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

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

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

perform the services called for by this Agreement (or that no license is required) before beginning work.

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

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

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

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

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

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

13. Independent Contractor.

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

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

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

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

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

16. Assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF FRESNO,
a California municipal corporation

By: _____
Robert N. Andersen, PE,
Assistant Director of Public Works
Public Works Department

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

No signature of City Attorney required.
Standard Document #DPW-S 28.1 has
been used without modification, as certified
by the undersigned.

By: _____
Mark M. Johnson
Facilities Manager
Public Works Department

REVIEWED BY:

Eric Johnson, Engineer II,
Public Works Department

Addresses:

CITY:
City of Fresno
Attention: Mark M. Johnson,
Facilities Manager
2101 'G' Street, Building 'A'
Fresno, CA 93706
Phone: (559) 621-1017
FAX: (559) 457-1160

EMG,
Clampett Industries LLC

By: _____

Name: ERIK PILLER

Title: Vice President

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

By: _____

Name: _____

Title: _____

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

Any Applicable Professional License:

Number: _____

Name: _____

Date of Issuance: _____

CONSULTANT:

EMG
Attention: Erik S. Piller,
Vice President
2121 N. California Blvd., Suite 290
Walnut Creek, California 94596
Phone: (800) 733-0660
FAX: (410) 785-6200

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 EMG ("Consultant")
City of Fresno Facilities Assessment Project
Project Title

PROPERTY(IES)

EMG will conduct facility assessments on the following Municipal Service Corporation buildings, including 19 buildings, 10 shelters, and 5 parking lots, buildings totaling 218,644 SF and parking lots totaling 317,800 SF:

- | | | |
|---|--|--|
| ▪ Building A (9,532 SF) | ▪ Building T1 (350 SF) | ▪ Shelter P (7,400 SF) |
| ▪ Building B (6,342 SF) | ▪ Building T2 (1,035 SF) | ▪ Shelter Q (16,170 SF) |
| ▪ Building C (3,642 SF) | ▪ Building V (1,580 SF) | ▪ Shelter R (8,830 SF) |
| ▪ Building D (2,450 SF) | ▪ Building W (7,240 SF) | ▪ Shelter U (8,495 SF) |
| ▪ Building E (3,739 SF) | ▪ Building X (3,130 SF) | ▪ Shelter V (4,070 SF) |
| ▪ Building E-1 (7,040 SF) | ▪ Building Y (6,616 SF
and adjacent parking/
roadway) | ▪ Parking Lot 1 (88,900 SF) |
| ▪ Building F (47,250 SF) | ▪ Shelter K (3,300 SF) | ▪ Parking Lot 2 (58,900 SF) |
| ▪ Building G (7,961 SF) | ▪ Shelter L (8,830 SF) | ▪ Parking Lot 3 (63,600 SF) |
| ▪ Building H (7,961 SF) | ▪ Shelter M (8,830 SF) | ▪ Parking Lot 4 (50,900 SF) |
| ▪ Building I (7,821 SF) | ▪ Shelter N (8,830 SF) | ▪ Parking Lot 5 (55,500 SF) |
| ▪ Building TOC (2,100 SF) | ▪ Shelter O (7,400 SF) | ▪ Gate Entrance / Guard
Shack (El Dorado and G
Street) |
| ▪ Building S1 (6,500 SF
and adjacent parking/
roadway) | | |
| ▪ Building S2 (4,200 SF) | | |

SERVICE(S) & FEE(S)

Municipal Service Corporation Facilities Assessment

\$38,860.00

The fees are limited to the specific Services described herein, performed according to the requirements of the corresponding ASTM standard practices, or other specified Protocols.

TIMING

EMG's report(s) will be delivered within **30 full business/working days** after receipt and approval of the signed proposal document. EMG reserves the right to extend the report delivery schedule as a result of any delay caused by:

- Delay by City in providing EMG an acceptable written authorization to proceed; or
- Failure by City to provide an accurate site address or an accurately identified and cooperative point of contact for access to the property, where applicable.

During the course of the assignment, a call will be placed to the designated onsite Point-of-Contact (POC) provided by the Client in order to schedule the site visit(s), where applicable. *The Client acknowledges that the Point of Contact provided shall be deemed an agent of the Client for the purposes of providing access and conveying information pertaining to the Site.*

DELIVERABLE(S)

The quoted price includes the delivery of:

# of	Report Type	Method of Delivery
1	Draft	Email Full Report (PDF)
1	Final	Email Full Report (PDF) and One (1) Hardcopy
1	Final	AssetCALC™ Webposting

Timing for completion of any requested post-delivery modifications to the report will be determined at the time of the request. Factors affecting this timing include (but are not limited to): (a) Complexity of the requested modification(s); (b) Number of reports affected by the request, and (c) EMG's capacity at the time of the request. In order to serve you best, we require that all requests for changes to reports be submitted within 30 days of initial delivery. If different deliverables are required, please indicate the correct quantities, types and methods of delivery on the Project Authorization page of this proposal.

DOCUMENTS TO BE FURNISHED BY CLIENT

In order to facilitate a cursory review of pre-existing documents for each Project, EMG asks to be furnished with electronic or printed copies of **readily available** site information. Documents may include:

CITY OF FRESNO TO PROVIDE:

Facility Condition Assessment Services

- Inspection Reports (sewer, boiler, chiller, etc.)
- Zoning Reports
- Capital Expenditure Schedules (prior or planned)
- Rehabilitation Budget & Scope (draft or final)
- Prior Assessments (CAN, PNA, PCA, FCA, etc.)
- Building Systems Maintenance Records
- Owner Elected Repair List (if available)
- Original Building Plans (can be viewed on-site)
- Fire Protection/Life Safety Plans
- Certificates of Occupancy/Facility License
- Site Plan/Floor Plans
- Accessibility Transition Plans/Self Evaluations

Note: Documents to be reviewed should be provided to EMG prior to the on-site visit. In the event that documents can only be made available at the Site, EMG will perform a cursory review during the site visit as time permits. If documents are received after the site visit date, or if the volume of documentation is determined by EMG to be excessive, then the Project may be subject to additional review fees at the rate of \$175.00 per hour. Any additional review fees will be mutually agreed upon by EMG and the Client at the time of review request, and will be authorized using a Change Order.

DESCRIPTION OF SERVICES

Scope of Work

EMG will compile an **Assessment Report** of each facility prepared in a manner consistent with industry standards, ASTM E 2018 08. Deliverables will include a narrative report for each building and web-accessible database with a summary report of all buildings identified for review.

The Facility Condition Assessment for the City of Fresno will consist of the following:

- Present condition and estimated life expectancy of building systems and components.
- Anticipated maintenance and replacement costs for the systems and components.
- Identification/documentation of condition of physical assets (grounds, facilities, infrastructure).
- Recommendations for corrections of all deficiencies and cost estimates for corrections.
- Resources needed to routinely maintain operability, sustainability, and value of the physical assets given their current function.
- Prioritization, categorization, and classification of deficient conditions, corrective actions, and information concerning building systems and deficiency categories.

The study will serve as a guide for future replacement, repairs, and improvements for the City of Fresno to keep facilities, grounds, and infrastructure in proper working condition. EMG will survey and assess all building systems and components to identify deficient conditions and accurately estimate the cost to correct each deficiency. At project implementation, EMG will conduct a **Kick-off Meeting** to introduce team members and present key activities. Within this meeting we will address the following:

- Availability, condition, and location of existing drawings and documentation.
- Review of available descriptive building information (year built, history, major renovations).
- Interview with those familiar with the properties to collect pertinent data (building problems, operating difficulties, equipment characteristics) for integration into the assessment.
- Review of the work plan and schedule for the contract with key milestones.
- Confirmation of the final scope of work.

EMG will conduct bi-weekly **Progress Meetings** to maintain communication with the Project Team and the City of Fresno. EMG will lead with an agenda focusing on work plan, schedule, and project needs. This will permit the opportunity to proactively address challenges encountered so that course adjustments may be made. Each meeting will conclude with task assignments, schedules, and goals to be met. EMG will provide the City of Fresno with a weekly written status report that tracks and monitors the progress of the assessments against the schedule.

General Observation Scope

- The field observer(s) will visit the property to assess the general condition of the building(s) and site improvements, review provided construction documents in order to become familiar with and be able to comment on the in-place construction systems, life safety, mechanical, electrical, and plumbing systems, and the general built environment. The field observer will conduct a walk-through survey (non-invasive visual) of the building(s) to observe building systems and components, identify reported physical deficiencies, and formulate recommendations to remedy the physical deficiencies.
- The field observer will interview the property personnel/representative(s) (i.e., the owner or owner's representative or the individual(s) designated by the Client) to inquire about the subject property's significant historical repairs and replacements and their costs, level of preventive maintenance exercised, pending repairs and improvements, and frequency of repairs and replacements.
- The field observer will attempt to interview the property's maintenance providers of the major building systems, such as roofing, HVAC, and the like, in an attempt to gain greater insight to the historic preventative maintenance, recent capital improvements, and remaining useful life that may not be obtained otherwise. This information will not be used in lieu of EMG's site assessment, but is anticipated to complement the due diligence performed by the EMG field observer.
- The field observer will develop opinions based on their walk-through survey, interviews with the property personnel, relevant maintenance contractors (if arranged by the Client) and municipal authorities, and experience gained on similar properties assessed. The field observer may also question others who are knowledgeable of the subject property's physical condition and operation, or knowledgeable of similar systems to gain comparative information to use in the assessment of the property.
- The field observer may review documents and information provided by the property personnel that could assist in identifying the subject property's physical improvements, extent and type of use, and/or help to identify material discrepancies between reported information and observed conditions. The review of documents submitted is not to opine on the accuracy of such documents, adequacy of design, or their preparation methodology or protocol.
- The field observer will conduct the site assessment and follow-up interviews with the interests of an equity involvement in the property. The specific interests of the field observer will be to identify capital repairs and deferred maintenance that can substantially impact the Immediate (90 days), Short-term (one-year), and Replacement Reserves (10 years) operation of the property.
- The field observer will **not** be providing any information on the condition, operation, serviceability, or capability of process, manufacturing, or business specific equipment for facilities that have specific equipment installed. If there is a requirement to provide information regarding process and/or manufacturing equipment, then this information must be identified by adding a specific and separate page to this proposal that identifies the specific equipment that is to be observed and included in the scope of work.
- It is inherent in the selection of the field observer that some bias will be introduced into the report based on the technical background of the observer (structural, mechanical,

architectural, etc.). At the Client's discretion, a specific technical expertise may be requested. This request must be included in the signed contract and may require an additional fee to accommodate the logistics of scheduling and transportation associated with the request. The scope of work, regardless of the technical background of the field observer, is inherently the same for these services.

Site – As Required

- Topography, Landscaping and Appurtenances: Observe general topography, material landscaping features, and site appurtenances (irrigation systems, lighting, signage, ponds, etc.) at the subject property and note any reported physical deficiencies or unusual conditions observed or reported.
- Stormwater Drainage: Identify the storm water collection and drainage system at the subject property. Observe general conditions and note reported physical deficiencies or any unusual items or conditions observed or reported.
- Ingress and Egress: Identify and note the locations of the major means of access and egress, and note any unusual items or conditions observed or reported.
- Flatwork: Identify the material flatwork at the subject property (paving, parking, sidewalks, plazas, patios). Observe general conditions and note reported physical deficiencies or unusual items or conditions observed or reported.
- Utilities: Identify the type and provider of the material utilities provided to the property (water, electricity, natural gas, etc.). Observe general conditions and note reported physical deficiencies or material problems or system inadequacies reported.
- Special Utility Systems: Note the presence of any material special on-site utility systems (water or wastewater treatment systems, special power generation systems). Identify material system information (system type, manufacturer, reported capacity, age).

Out of Scope Issues: Calculating capacities or determining the operating conditions of any systems, observations of sub-surface utilities, or accessing manholes, utility pits, or confined spaces.

Structural Frame and Building Envelope

- Identify material elements of the structural frame and building envelope (if identified on provided drawings). Observe general conditions and note reported physical deficiencies or unusual items or conditions reported or observed in readily apparent conditions. Observations are limited to grade and may include accessible balconies or rooftop vantage points. If provided, review as-built construction plans, previously prepared property reports, and records of remedial actions or repairs.
- In the event more information or exploratory testing is required to provide remedial measures, the report will include associated recommendations for further investigation requiring a specific expertise. Recommendations of this nature will include a summarized scope and a general estimate of cost for budgetary purposes.

Out of Scope Issues: Entering of confined areas (however, field observer should report on conditions to the extent safely observable from the area point of access), determination of previous substructure flooding or water penetration, seismic and wind load considerations, determination of Probable Maximum Loss (PML), or calculations of any kind.

Curtain Wall

- Review curtain wall condition and a sampling of fixed panels on facades to assess hardware and visually review exterior conditions and the condition of waterproofing seals, where accessible without the use of lifts, ladders, scaffolding, suspension devices, or the like; this may include observations from internal and external vantage points, as well as from adjacent structures. Observations are limited to grade and may include accessible balconies or rooftop vantage points.
- Review provided drawings and records of repair, replacement, and maintenance of framing and glazing.

Roofing

- Identify material roof systems (roof type, reported age, slope, drainage). Identify unusual roofing conditions or rooftop equipment. Observe general conditions of the roof system (attachment methods, flashings, parapets, miscellaneous appurtenances). Observe for evidence of material repairs, significant ponding, or evidence of roof leaks. Note whether a roof warranty is in effect, and reported physical deficiencies or unusual items observed or reported.
- The scope for the walk-through survey of the roof(s) and associated fee provided herein are based on the assumption the property contains buildings with flat roofs and built-in roof access. If the buildings do not contain built-in roof access, a ladder or lift to permit such access shall be provided by the property personnel/representative(s). The field observer may refuse to attempt to gain roof access and/or the use of ladders or lifts if they present a safety or operational concern. Property conditions discovered while on site may also preclude the field observer from gaining roof access on any or all roofs. EMG will endeavor to inform the Client when no or insufficient access is provided.

Out of Scope Issues: Walking on pitched roofs, roofs that appear to be unsafe or where access is impacted by adverse or weather conditions at the time of the site observation, or roofs lacking built-in access. Determining any roof design criteria.

Plumbing

Identify the material plumbing systems including domestic water supply and hot water production, sanitary sewer, or any special or unusual plumbing systems (water features, grease traps, fuel systems, gas systems). Identify the type and condition of observed restroom fixtures, drinking fountains, and/or other miscellaneous plumbing equipment. Where readily visible, observe general conditions and note reported physical deficiencies or any unusual items or conditions observed or reported.

Out of Scope Issues: Determining fixture counts, pipe sizes, pressure, flow rates, and capacities of any plumbing systems; verification of point of discharge for underground systems; and assessing concealed materials or equipment.

Heating

Identify material heat generating systems. Observe general conditions, identify reported age of the equipment, note reported component replacements/upgrades, note apparent level of maintenance, and identify whether a maintenance contract is in place (name the contractor). If heating equipment is not operational at the time of the walk-through survey, provide an opinion of the condition to the extent reasonably possible. Note reported physical deficiencies or unusual items or conditions observed or reported. Include reported system problems. Identify and observe special or unusual heating systems or equipment (fireplaces, solar heat).

Out of Scope Issues: Operating equipment; removal of equipment cover panels and entering ductwork associated with air handling systems; observing flue connections; observing the interiors of chimneys, flues, or boiler stacks; performing any capacity calculations; and assessing concealed materials or equipment.

Air-Conditioning and Ventilation

Identify material air-conditioning and ventilation systems. Include material equipment (cooling towers, chillers, package units, split systems, air handlers). Identify material distribution systems at the subject property. Generally note reported tenant-owned equipment/systems not included in this review. Observe general conditions, identify reported age of the equipment, note reported component upgrades/replacements, note apparent level of maintenance, and identify whether a maintenance contract is in place (name the contractor). If air-conditioning and ventilation systems are not operational at the time of the walk-through survey, provide an opinion of the condition to the extent reasonably possible. Note reported physical deficiencies or any unusual items or conditions observed or reported. Include any reported system problems. Identify and observe special or unusual air-conditioning and ventilation systems or equipment (ice skating rinks, cold storage systems, special computer cooling equipment).

Out of Scope Issues: Operating equipment; removal of equipment cover panels and entering ductwork associated with air handling systems; assessing process related equipment, tenant owned equipment, concealed materials (i.e., insulation, vapor retarders, etc.) or equipment; and performing any capacity calculations.

Electrical

Identify electrical service provided and distribution system. Include primary electrical equipment such as material switchgear disconnects, circuit breakers, transformers, meters, emergency generators, general lighting systems, and other such equipment or systems. Where readily visible, observe general electrical items (distribution panels, type of wiring, energy management systems). Observe general conditions and note reported physical

deficiencies or any unusual items or conditions observed or reported. Include any reported material system problems. Identify special or unusual electrical systems or equipment present.

Out of Scope Issues: Operating equipment; removal of electrical panel and device covers; determination of EMF issues; electrical testing; operation of any electrical devices or discussion of process systems; performing any capacity calculations; and assessing concealed materials or equipment.

Vertical Transportation (If Required)

Identify vertical transportation systems. Include the equipment manufacturer, type, location, number, etc. Observe elevator cabs, finishes, call and communication equipment, etc. Identify the company that provides elevator/escalator maintenance at the subject property. Observe general conditions and note reported physical deficiencies or unusual items or conditions observed or reported. Include reported material system problems.

Out of Scope Issues: Performing any calculations, examination of operating system components such as cables, controller, motors, etc. Entering elevator/escalator pits or shafts.

Life Safety/Fire Protection

Identify material life safety/fire protection systems, including sprinklers and stand pipes, fire hydrants, presence of fire alarm systems, smoke detectors, fire extinguishers, emergency lighting, and other like safety systems that are readily visible. Observe general conditions and note reported material physical deficiencies or unusual items or conditions observed or reported. Include any reported material system problems.

Out of Scope Issues: Determining NFPA hazard classifications, classifying or fire rating of assemblies, or performing any system testing. Assessing concealed materials or equipment.

Interior Elements

Identify typical common areas (lobbies, corridors, assembly areas, restrooms) and building standard finishes (flooring, ceilings, walls). Identify material building amenities or special features (spas, fountains, clubs, shops). Observe general conditions and note reported physical deficiencies or unusual items or conditions observed or reported.

ADA

Provide a general statement of the Property's conformity to Title III of the Americans with Disabilities Act (ADA). This is based upon limited visual observation during the walk-through survey and will not constitute a full ADA survey, nor include measurements, to verify compliance. Only a limited sample of areas will be observed.

Mold

On a limited visual basis during the walk-through survey, the field observer will note observed suspect mold and/or evidence of moisture in the observed areas. The field observer will interview the property representative regarding his/her knowledge of the

presence of any known or suspected mold, elevated relative humidity, water intrusion, or mildew-like odors.

Out of Scope Issues: Conducting sampling and/or testing. Assessing concealed materials and equipment. This observation does not constitute a comprehensive mold survey. The reported observations and conclusions will be based solely on interviews with property personnel and conditions observed at the time of the assessment.

Special Systems and Equipment

Include all special systems and equipment, such as pull-up/roll-up doors, unique hoist systems, hydraulic lifts, fueling facilities, chillers, equipment lifts, chair lifts, storage tanks, dumbwaiters, vaults, public address systems, and telephone systems.

Energy Conservation Analysis

Analyzing all evaluated systems mentioned above and providing projected installed cost and savings estimates resulting from each improvement recommended; and prioritizing projects with the most attractive payback potential.

Analysis of Building Condition Information

Based upon our observations, research, and judgment, along with consulting commonly accepted empirical expected useful life (EUL) tables, EMG will render an opinion as to when a system or component will most probably necessitate replacement. Accurate historical replacement records provided by the Facility Manager are typically the best source for this data. Exposure to weather elements, initial system quality and installation, extent of use, quality, and amount of preventive maintenance exercised are all factors that impact the effective age of a system or component. A system or component may have an effective age +/- its actual age. The RUL of a component or system equals the EUL less its effective age. In addition to determining the EUL and the RUL for each system/component, EMG will categorize each cited deficiency within one of the following **Five Priorities**:

- **Priority 1: Currently Critical** (Immediate): Deficiencies requiring immediate action including a cited safety hazard and areas of accelerated deterioration, returning a building component to normal operation.
- **Priority 2: Potentially Critical** (Year 1): Deficiencies requiring action in the next year including components experiencing intermittent operations, potential life safety issues, and rapid deterioration, returning a building component to normal operation.
- **Priority 3: Necessary – Not Yet Critical** (Years 2-3): Deficiencies requiring appropriate attention to preclude predictable deterioration, potential downtime, additional damage, and higher costs to remediation if deferred further.
- **Priority 4: Recommended** (Years 4-5): Deficiencies representing a sensible improvement to the existing conditions. These are not required for the most basic function of the facility; however, Priority 4 projects will improve overall usability and/or reduce long-term maintenance costs.

- **Priority 5: Does Not Meet Current Code but “Grandfathered”:** No Action required at this time, but should substantial work be undertaken, correction would be required.

Classification

Deficiencies observed will be classified into categories such as the following, using the Unifomat System:

- | | |
|---|--|
| ▪ Site | ▪ Special Electrical Systems |
| ▪ Architectural | ▪ Fire Suppression Systems |
| ▪ Exterior Systems | ▪ Special Construction |
| ▪ Exterior Finishes | ▪ Interior Systems |
| ▪ Life Safety Systems | ▪ Interior Finishes |
| ▪ Heating, Ventilation, and A/C Systems | ▪ Telephone Infrastructure and Systems |
| ▪ Plumbing Systems | ▪ Data Infrastructure and Server Rooms |
| ▪ Electrical Distribution Systems | |
| ▪ Service Distribution Systems | |

Cost Estimating

Each report will include a Capital Needs Analysis with estimated cost for each system or component repair or replacement anticipated during the evaluation term. The report narrative will discuss options for deficiency repair, and the analysis will be presented in Excel including a summary of the description of each component, age, estimated RUL, anticipated year of repair/replacement, quantity, unit cost, and total cost for repair of each line item. A consolidated Capital Needs Analysis will be presented including all anticipated capital needs for all buildings. EMG will provide cost estimates for deficiencies noted based on maintenance and repair estimates, and may include project management, construction, and design fees derived using actual costs from previous projects. Costs will be confirmed with the City of Fresno. EMG uses the Unifomat System and RS Means Model for the baseline of cost estimating. EMG maintains this system with information received from the field. Through construction monitoring work, we have current cost data from hundreds of in-progress construction and rehabilitation projects. This allows us to project costs based on local conditions and maintain a database that is more current than published RS Means' models.

Report Deliverables

EMG will provide a written analysis including a detailed description of each building component and system. Each report will be organized by building system including a description of all systems and components, and will include color digital photos of major systems and components, and photos of all deficiencies identified. In addition to the narrative description, each report will include discussion of current and anticipated repairs

and deficiencies, and of any applicable options for repair or maintenance of building components. These deficiencies will be summarized in a Capital Needs Analysis Table included throughout each report. All EMG reports are submitted as drafts. Once individual assessments are finalized, a program summary report will be provided to include a roll-up of all prioritized capital needs across all facilities. The program summary report will reflect a 10-year capital plan based upon EMG's 20-year building system evaluation. The capital needs analysis will include a cost table sorted by building and system, and ranked by priority for repair. The format of the table will allow for the customization of reporting by building, system, or priority for repair, and a year-by-year analysis of capital needs. EMG will provide both a digital copy (PDF) and one (1) hard copy of the reports to the City.

Interaction with the City of Fresno Staff

The Facility Condition Assessment will be a collaborative process between EMG and City of Fresno Staff. There will be weekly conference calls to track progress against the schedule and discuss recommendations observed in the field and while writing the report. EMG will provide a rolling delivery of draft reports to the City of Fresno for review and comment. Upon completion and acceptance of the reports, EMG will conduct a training session for City of Fresno Staff on the AssetCALC™ database.

Assessment Software: AssetCALC™

EMG will utilize AssetCALC™ as the platform for all data collected on this project. AssetCALC™ is a web-based SQL system that allows users to query information regarding specific items or across the entire asset portfolio. This streamlines the capital planning process by compiling funding requirements for deficiencies to create budget models based on project priority and life cycle maintenance and repair requirements.

Prior to populating the database, EMG will work with the City of Fresno to establish attributes and data points required to be associated with each asset. This will include a discussion of relative priority of the asset. The first step in populating the database is to create an asset inventory. This will include all of the City of Fresno's assets and will be grouped in a hierarchy based on site location, asset group, and function. At the facility assessment/data collection phase, EMG will use AssetCALC™ as the platform in the field for collection and analysis of asset conditions and needs. AssetCALC™ data can be exported to a format compatible for upload into the City of Fresno's CMMS software (if applicable).

AssetCALC™ features include:

- **Location Hierarchy**
- **Deficiency Classifications**
- **Deficiency Priority Codes**
- **Reporting:** Standard Excel reports have deficiencies grouped by priority, location, replacement year, and deficiency classification. A cost summary is also included.
- **Searching:** Individual deficiencies can be searched by location, deficiency classification, and priority.

- **Deficiency management:** Add deficiencies, calculate Facility Condition Index by building or site, and re-prioritize and re-classify existing deficiencies.
- **Proprietary EMG Cost Database** (with adjustable inflation assumptions)
- **Facility Condition Index Calculation Report** (by building)
- **Backlog and Funding Projection Module** (recalculates FCI based on funding assumptions)

AssetCALC™ includes many features applicable to asset managers and budget officials, including:

- **Rank and Prioritize Capital Improvement Projects**
- **View Complete Deferred Maintenance Backlog**
- **Report** (by building, priority, system, or dollar deficiency amount)
- **Innovative Search Screen:** Allows deficiency classifications, reporting, and management.
- **Capital Budget Planning**
- **Year-by-Year Capital Needs Analysis**
- **5, 10, or 20-Year Breakdown Reports**
- **Priority Codes**
- **Standardized Cost Database**
- **Searching Ability** (property names, age, cost, deficiency status/priority)

EXHIBIT 1a
MSC SITE PLAN

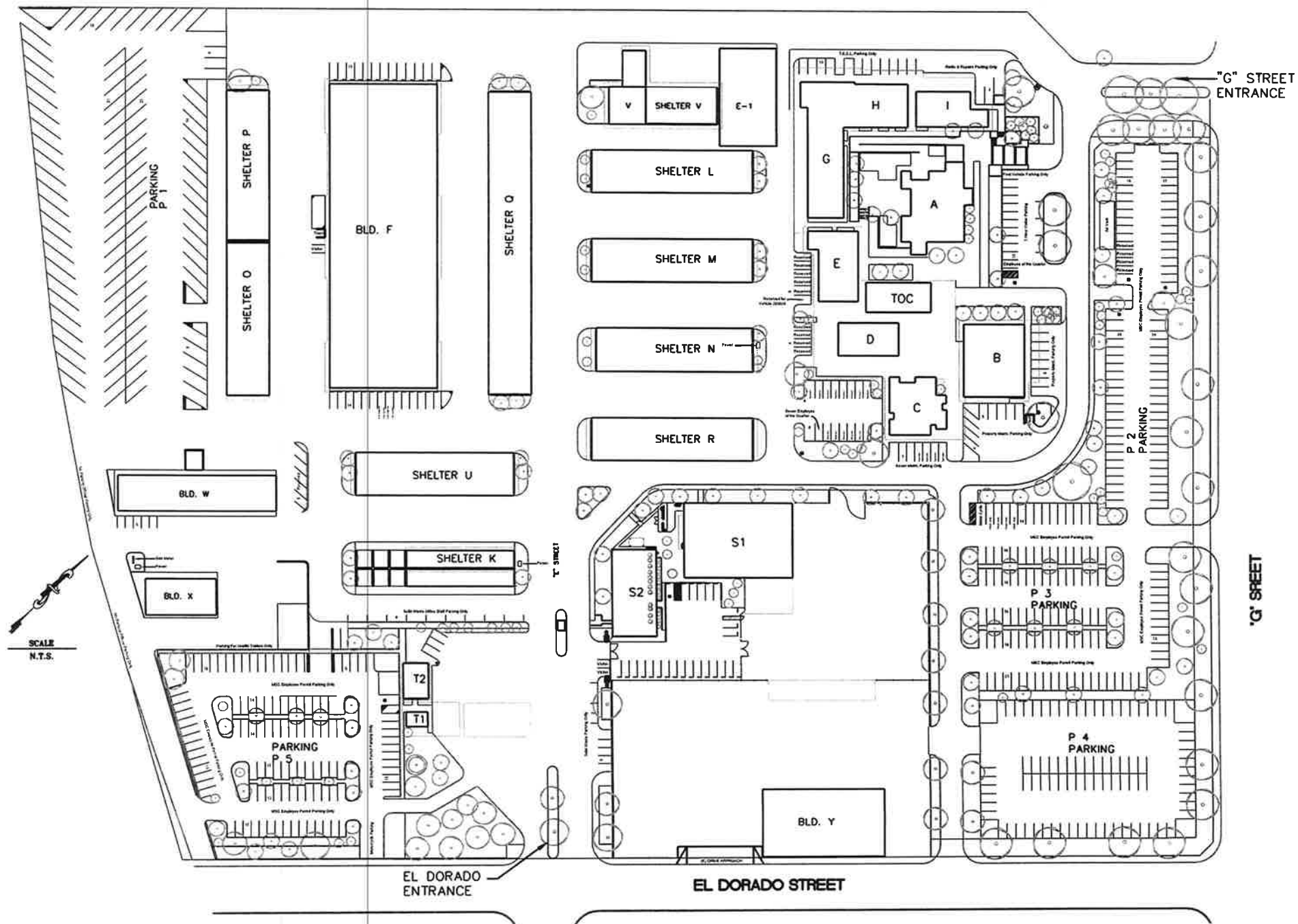


Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and EMG ("CONSULTANT")
City of Fresno Facilities Assessment Project
PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

MINIMUM LIMITS OF INSURANCE

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

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

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

OR*

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

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

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

4. **EMPLOYER'S LIABILITY:**

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

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

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

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

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work, or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT

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

4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

VERIFICATION OF COVERAGE

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONSULTANT shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

City of Fresno Facilities Assessment Project
PROJECT TITLE

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

Explanation: _____

☐ Additional page(s) attached.


Signature

7/29/14
Date

ERIK PILLER
(name)

EMG
(company)

2121 N California Blvd #240
(address)

Walnut Creek, CA 94596
(city state zip)