

AGREEMENT FOR PROFESSIONAL SERVICES (Design Professional)

THIS AGREEMENT is made and entered into this 15th day of September, 2016, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Carollo Engineers, Inc., a Delaware Corporation, whose address of record is 710 West Pinedale Avenue, Fresno, California 93711 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to update the 2015 Urban Water Management Plan; and

WHEREAS, Consultant represents that it possesses the professional skills to provide the engineering services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the engineering services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Public Works or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "B" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance

with the fee schedule set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "C". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Forty Thousand, Five Hundred Dollars (\$40,500).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance, and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City,

Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. To the fullest extent permitted by law, the Consultant shall (a) immediately defend and (b) indemnify the City, and its councilmembers, officers, employees, volunteers, and agents from and against all liabilities, regardless of nature or type that arises out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorney's fees; court costs; and costs of alternative dispute resolution. The Consultant's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its councilmembers, officers, and employees, immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorney's fees and defense costs in proportion to the established comparative liability of the indemnified party.

10. **INSURANCE.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. **Workers' Compensation Insurance.** Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. **General Liability.**

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents, and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers, and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules, and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not

constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

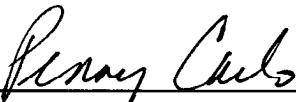
APPROVED AS TO FORM:

BY:  9-28-2016
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
CAROLLO ENGINEERS, INC.,
A Delaware Corporation

BY: 
(Signature)

Penny Carlo
(Typed Name)

Its: Associate Vice President
(Title)

Taxpayer I.D. No. 86-0899222

ADDRESS: 710 W. Pinedale Ave.
Fresno, CA 93711

TELEPHONE: (559) 436-6616

FAX: (559) 436-1191

E-MAIL: pcarlo@carollo.com

EXHIBIT "A"

CITY OF MERCED UPDATED 2015 URBAN WATER MANAGEMENT PLAN

SCOPE OF WORK

This project will update the City's 2010 UWMP as set forth under the Urban Water Management Planning Act and amendments to date (since 2010). The 2015 UWMP requires public input and City Council adoption by July 1, 2016, per DWR's current schedule.

Task 1A – Project Management and Meetings

Task 1A will involve typical project management duties, including, but not limited to, client communication and billing. Carollo will, at a minimum, attend the following meetings:

- Kickoff meeting
- Administrative draft report comment review meeting
- Public hearing presentation review meeting
- Two other meetings to be determined

Carollo will prepare agendas for all meetings with City staff, as well as minutes summarizing the meetings.

Task 1B – Obtain Information and Coordination with City

Task 1B will involve preparation of a data request matrix that identifies all necessary information needed from the City to prepare the UWMP and the format in which the data is required. Carollo will identify all agencies to be informed that the City is updating its 2010 UWMP and will prepare notification letters. The City will distribute all notification letters to the appropriate public agencies. Carollo will also identify all stakeholders to be informed that the City is circulating an update to its 2010 UWMP for public comment and will prepare notification letters. The City will distribute all notification letters to the appropriate stakeholders.

Deliverables:

- Data request technical memorandum
- Notification letters for the City to distribute to agencies and stakeholders

Task 2 – Prepare Urban Water Management Plan

Task 2 will involve preparation of the UWMP report in accordance with the draft guidance document (and final when issued) from the Department of Water Resources (DWR). The DWR guidance document identifies a total of ten sections that constitute the UWMP. The optional discussions on climate change and water energy will be included or excluded from this update based on the City's preference. Carollo will prepare a preliminary draft report for City review in electronic (PDF) format. The preliminary draft report will include all sections of the UWMP, 2015 UWMP standardized tables, and SBX7-7 verification form. If applicable, Carollo will identify and

incorporate into the UWMP any proposed development projects that would trigger a Water Supply Assessment per SB 221 and SB 610, based on identification of possible development projects during the five-year window of this UWMP.

Carollo will prepare a final draft version of the UWMP, responding to all City comments on the administrative draft UWMP. Carollo will provide the draft final version in electronic (PDF) format for City back-check to verify all comments were addressed to the satisfaction of the City. Once accepted by the City, Carollo will provide paper copies of the required number of reports for City use for the public review period, in accordance with legal guidelines. Carollo will also provide three additional sets of paper copies for City use.

Carollo will prepare a final version of the UWMP, reflective of any comments received at the Public Hearing that warrant changes. Carollo will provide the final draft version in electronic (PDF) format for City back-check to verify all comments were addressed to the satisfaction of the City. Once accepted by the City, Carollo will provide paper copies of the required number of reports for submission, in accordance with legal guidelines. Carollo will also provide three additional sets of paper copies for City use.

Carollo will also complete the electronic submission to DWR on behalf of the City.

Deliverables:

- Administrative Draft UWMP report in PDF format
- Final Draft UWMP report in PDF format and hard copies (for City use and public review)
- Final UWMP report in PDF format and hard copies (for City use and submission to DWR and the California State Library)

Task 3 – Public Hearing Assistance

Carollo will prepare a presentation to City Council at the public hearing required for adoption of the report. Carollo will review the presentation and slides with City staff at least one week prior to the Public Hearing. At the City's request, a Carollo team member will be available to attend the public hearing and present a portion or all of the presentation to City Council.

Deliverables:

- Presentation to City Council

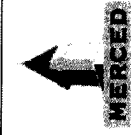
EXHIBIT "B"

CITY OF MERCED UPDATED 2015 URBAN WATER MANAGEMENT PLAN SCHEDULE

The Urban Water Management Plan (UWMP) will be completed within four (4) months following Notice-to-Proceed. The schedule below lists estimated dates for task milestones, assuming the Notice-to-Proceed is issued on October 3, 2016. The dates may be adjusted or extended during the course of the project, upon approval by the City.

Task	Estimated Milestone Dates
Notice to Proceed	October 3, 2016
Task 1A – Project Management Meetings	
Kickoff Meeting	October 10, 2016
Meeting No. 2	November 15, 2016
Meeting No. 3	December 20, 2016
Task 1B – Obtain Information and Coordination with City	October 20, 2016
Task 2 – Prepare Urban Water Management Plan	
Draft UWMP	December 5, 2016
Public Review Draft UWMP	December 30, 2016
Task 3 – Public Hearing Assistance	
Public Review Period	January 3, 2016
Public Hearing	January 17, 2016
Submit to DWR/California Library	January 30, 2016

EXHIBIT C



City of Merced Updated 2015 Urban Water Management Plan Fee Schedule



Task Description	Hours by Classification						Labor	Subs and Other Direct Expenses ⁽¹⁾	Estimated Fee
	Senior Professional	Lead Project Professional	Professional	Professional	Technician	Word Processing	Total Hours		
2016 Rates	PLC \$259	TJL \$259	NF \$240	RFO \$202	KC \$124	AW \$109			
Task 1A - Project Management and Meetings	2	12		12	0	4	30	\$ 6,500	\$ 7,100
Task 1B - Data Collection and Review	0	3		6	2	0	11	\$ 2,200	\$ 2,300
Task 2 - Prepare Draft/Final Urban Water Management Plan Report	2	17	10	78	9	12	128	\$ 25,600	\$ 28,100
Task 2.1 System Description/Population Updates		1		6			7	\$ 1,500	\$ 1,600
Task 2.2 Demand Analysis/SB X7-7 Baselines and Water Use Targets		1		8			9	\$ 1,900	\$ 2,000
Task 2.3 Water System Supply and Reliability Assessment		2		8			10	\$ 2,100	\$ 2,200
Task 2.4 Water Shortage Contingency Plan		2		8			10	\$ 2,100	\$ 2,200
Task 2.5 Summarize DMMs		1		8			9	\$ 1,900	\$ 2,000
Task 2.6 Prepare Admin Draft/Revised Draft UWMP	1	4	6	24	6	6	47	\$ 9,000	\$ 10,000
Task 2.7 Respond to DWR Questions		1		6			7	\$ 1,500	\$ 1,600
Task 2.8 Prepare Final UWMP	1	3	4	6	2	6	22	\$ 4,100	\$ 4,900
Task 2.9 Electronic Submission of Final UWMP Document/Data		2		4	1		7	\$ 1,500	\$ 1,600
Task 3 - Public Hearing Assistance	1	6		4		2	13	\$ 2,800	\$ 3,000
Total Hours and Fee	5	38	10	100	11	18	182	\$ 37,100	\$ 40,500

Notes:

(1) Other direct expenses include mileage travelling to/from meetings at IRS Federal Rate, reproduction at cost plus 5%, and Project Equipment and Communication Expense billed at \$11.70 per hour.