

FOURTH AMENDMENT TO AGREEMENT

THIS FOURTH AMENDMENT TO AGREEMENT (Amendment) made and entered into as of this ____ day of _____, 2019, amends the Agreement entered into between the CITY OF FRESNO, a California municipal corporation (CITY), and Blair, Church and Flynn Consulting Engineers, a California Corporation (CONSULTANT).

RECITALS

WHEREAS, CITY and CONSULTANT entered into an agreement, dated July 2, 2013, in the amount of \$3,324,000 for professional engineering services for the design of the Recycled Water Distribution System Design, Southwest Quadrant (Agreement); and

WHEREAS, the First Amendment to the Agreement was executed on June 30, 2016, in the amount of \$674,240; and

WHEREAS, the Second Amendment to the Agreement was executed on January 12, 2017, in the amount of \$141,540; and

WHEREAS, the Third Amendment to the Agreement was executed on September 1, 2017, in the amount of \$940,280; and

WHEREAS, CITY desires to expand scope of work including, but not limited to, provide conformed construction documents, engineering services during construction, and construction compliance mitigation monitoring support; and

WHEREAS, due to the need for additional services, the parties desire to increase the total compensation by an additional \$285,900 to complete the expanded Scope of Work; and

WHEREAS, with entry into this Amendment, CONSULTANT agrees that CONSULTANT has no claim, demands, or disputes against CITY.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, the parties agree that the aforesaid Agreement be amended as follows:

1. CONSULTANT shall provide additional services as described in **Exhibit 1**, attached hereto and incorporated herein by reference.

2. Exhibit A of the Agreement is amended to add the additional professional scope of services in **Exhibit 1**, attached hereto and incorporated herein by reference.

3. Section 3(a) of the Agreement dated July 2, 2013, is amended in its entirety to read as follows:

“(a) CONSULTANT’S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$5,365,960 and a contingency amount not to exceed \$100,000 for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director.”

4. In the event of any conflict between the body of this Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment 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 or restate any terms or conditions, or modify the allocation of risk between the parties, provided for within the body of this Amendment or the body of the Agreement, shall be null and void.

5. Except as otherwise provided herein, the Agreement remains in full force and effect.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

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

CITY OF FRESNO,
a California municipal corporation

Blair, Church & Flynn Consulting Engineers,
a California corporation

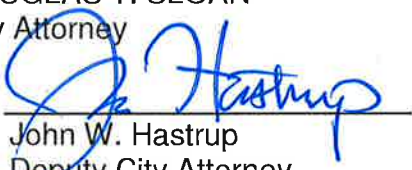
By: _____
Michael Carbajal,
Director of Public Utilities

By:  _____

Name: DAVID MWANGI

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

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

By:  _____
John W. Hastrup
Deputy City Attorney

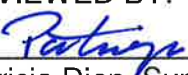
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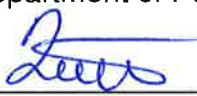
Name: ADAM K. HOLT

ATTEST:
YVONNE SPENCE, MMC, GRM
City Clerk

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

By: _____
Deputy

REVIEWED BY:
 _____
Patricia Diep, Supervising
Engineering Technician
Department of Public Utilities

 _____
Dejan Pavic, PE
Public Utilities Manager

Addresses:
CITY:
City of Fresno
Attention: Patricia Diep
Supervising Engineering Technician
2101 G Street, Building A
Fresno, CA 93706
Telephone No: (559) 621-1609
FAX: (559) 498-4126

CONSULTANT:
Blair, Church & Flynn Consulting Engineers
Attention: Karl Kienow, Vice President
451 Clovis Ave, Suite 200
Clovis, CA 93612
Phone: (559) 326-1400
Fax: (559) 326-1500

Attachment: Exhibit 1

EXHIBIT 1

ADDITIONAL PROFESSIONAL SERVICES

Blair, Church & Flynn is pleased to present this engineering services proposal for the provision of conform documents for Project SW1D, and engineering services during construction (ESDCs) for Projects SW1D and SW4. This proposal includes construction mitigation monitoring support.

As of the date of this proposal, there are three amendments that have been approved for the project, and a scope revision. The First Amendment was executed on 30 June 2016, the Second Amendment was executed on 12 January 2017, and the Third Amendment was executed on 1 September 2017. The scope revision was approved on 20 November 2018. The compensation for each of these executed amendments and the utilized contingency is shown in the Compensation section below.

Our services for Project SW1D originally included ESDCs, but they were removed as documented in the Third Amendment. Project SW4 also included ESDCs, but they were removed in the approved scope revision.

PROPOSED ADDITIONAL ENGINEERING SERVICES

Project SW1D Conform Documents and Engineering Services During Construction

Neither the original agreement nor any amendments contained provisions for the preparation of conform construction documents for Project SW1D, and the City has determined that conform construction documents (incorporating all addenda prepared during bidding) should be prepared to facilitate project construction and inspection.

Additionally, as documented in our proposal dated 16 June 2017 (which was accepted by the City and approved as Amendment No. 3), the budget for providing engineering services during construction (ESDCs) for Project SW1D was used for design purposes. Accordingly, there is no scope or budget remaining in the contract for ESDCs for Project SW1D. The City has determined that ESDCs are necessary to facilitate project construction.

Scope of Services

The following Scope of Services outline describes the additional services we propose to provide to the City of Fresno for Project SW1D.

I. CONFORM DOCUMENT PREPARATION

A. Prepare conform drawings and specifications

1. Incorporate all relevant addenda content into the plans and specifications
2. Provide the following:
 - a) 10 full-size bound sets of conform plans

- b) 5 half-size bound sets of conform plans
- c) 10 bound sets of conform specifications
- d) PDFs of the conform plans and specifications

II. ENGINEERING SERVICES DURING CONSTRUCTION

- A. Project management
 - 1. Prepare and submit monthly progress reports and invoices covering Blair, Church & Flynn activities
 - 2. Construction duration assumed to be 13 months
- B. Attend pre-construction conference
 - 1. Project manager and project engineer, up to four hours
- C. Attend progress meetings
 - 1. By invitation of the Construction Manager
 - 2. Project engineer and assistant engineer, up to four hours
 - 3. Up to seven meetings
- D. Review shop drawings and other contractor submittals
 - 1. Assume 100 submittals at 4 hours each and 66 resubmittals at 2 hours each
- E. Review and provide technical information to City for contractor change orders
 - 1. Assume 100 hours total
- F. Respond to requests for information (RFIs)
 - 1. Assume 45 RFIs at 8 hours each
- G. Provide periodic worksite observation
 - 1. Assume 4 site visits at 3 hours each for a project engineer and assistant engineer
- H. Prepare record drawings
 - 1. Assume 20 sheets at two hours of CAD time per sheet and one hour of engineering time per drawing
 - 2. Provide the following:
 - a) 1 full-size hard copy set of as-built plans
 - b) PDFs of the as-built plans

Assumptions

- 1. All City permits required for construction activities will be issued by the City as no-fee permits.

2. Construction contractor will pay all permit fees for permits that cover construction activities and are obtained by the contractor under the provisions of the construction contract.

Project SW4 Engineering Services During Construction

As documented in the scope revision dated 23 October 2018 (which was accepted by the City on 20 November 2018), the scope for ESDCs for Project SW4 was eliminated, and the related fees were used for design purposes. Accordingly, there is no scope or budget remaining in the contract for ESDCs for Project SW4. The City has determined that ESDCs are necessary to facilitate project construction. The scope and fees that were removed assumed potholing would be performed during design, so conflicts with existing utilities and resulting design changes would be minimized during construction. The City has now determined that potholing will not be performed during design, and based on experience with similar projects, it is assumed that there will be significant conflicts with existing utilities which will require more requests for information (RFIs) and contract change orders (CCOs) than were included in the ESDCs removed during the scope revision.

Scope of Services

The following Scope of Services outline describes the additional services we propose to provide to the City of Fresno for Project SW4.

I. ENGINEERING SERVICES DURING CONSTRUCTION

A. Project management

1. Prepare and submit monthly progress reports and invoices covering Blair, Church & Flynn activities
2. Construction duration assumed to be 9 months

B. Attend pre-construction conference

1. Project manager and project engineer, up to four hours

C. Attend progress meetings

1. By invitation of the Construction Manager
2. Project engineer and assistant engineer, up to four hours
3. Up to five meetings

D. Review shop drawings and other contractor submittals

1. Assume 85 submittals at 3 hours each and 57 resubmittals at 1.5 hours each

E. Review and provide technical information to City for contractor change orders

1. Assume 50 hours total

F. Respond to requests for information (RFIs)

1. Assume 50 RFIs at 6 hours each

- G. Provide periodic worksite observation
 - 1. Assume 4 site visits at 3 hours each for a project engineer and assistant engineer
- H. Prepare record drawings
 - 1. Assume 15 sheets at two hours of CAD time per sheet and one hour of engineering time per drawing
 - 2. Provide the following:
 - a) 1 full-size hard copy set of as-built plans
 - b) PDFs of the as-built plans

Assumptions

- 1. All City permits required for construction activities will be issued by the City as no-fee permits.
- 2. Construction contractor will pay all permit fees for permits that cover construction activities and are obtained by the contractor under the provisions of the construction contract.

Projects SW1D and SW4 Construction Compliance Mitigation Monitoring Support

The construction compliance mitigation monitoring support will consist of two tasks for each project: Worker Awareness Training and Pre-Construction Surveys.

Worker Awareness Training

Training will be provided to all on-site personnel by a qualified biologist and a Registered Professional Archaeologist before the commencement of materials staging or ground disturbing activities.

The biologist will explain to construction workers how best to avoid impacts to sensitive resources (i.e., nesting birds, western pond turtle, burrowing owls, and San Joaquin kit fox) and the presentation will include topics on resource/species identification, life history descriptions, and habitat requirements during various life stages. Handouts, illustrations, photographs, and project mapping showing areas where minimization and avoidance measures will be included as part of this worker training.

The training provided by the archaeologist will address the requirements of Mitigation Measure 4.12.2b in the Mitigation Monitoring and Reporting Program (MMRP). The training will detail the potential for prehistoric and historic-period subsurface archaeological resources to be uncovered and/or disturbed by proposed project-related earth moving, where such remains are most likely to be encountered during earth moving, and procedures to be employed if archaeological resources are discovered during excavations.

Pre-Construction Surveys

Nesting and Breeding Birds. To the extent feasible, tree trimming and removal activities associated with the project will be conducted outside the breeding season (which generally occurs between March 1 and August 15) for migratory birds and raptors. If tree trimming and removal activities are to take place during the breeding season for these species, we will provide a qualified wildlife biologist to conduct focused preconstruction nest surveys for active special and non-special status migratory bird and raptor nests. Preconstruction surveys for tree-nesting raptors and migratory songbirds shall be conducted within 15 days prior to any project activities that will occur between March 1 and August 15 of any given year. All suitable nesting habitat for tree nesting raptors and migratory songbirds within 250 feet of the proposed activity areas shall be surveyed. Should active nests be identified by these surveys, the nest sites shall be protected from all project activities within 250 feet of the nest site until the young have fledged. Project activities that must occur within 250 feet of an active nest shall not take place without prior consultation with the CDFW.

San Joaquin Kit Fox. Pre-construction surveys for the San Joaquin kit fox shall be conducted no less than two calendar weeks and no more than thirty calendar days prior to commencement of ground disturbance. Surveys shall be conducted by qualified biologists. When surveys identify potential dens (defined as burrows at least four inches in diameter which open up within two feet), potential den entrances shall be dusted for three calendar days to register and track activity of any San Joaquin kit fox present. If no San Joaquin kit fox activity is identified, the den may be destroyed.

Western Pond Turtle. No more than two weeks prior to the commencement of ground-disturbing activities a qualified biologist shall perform surveys for western pond turtle within suitable aquatic and upland habitat on the project site. Surveys shall include western pond turtle nests as well as individuals. The biologist (with the appropriate agency permits or approvals) shall temporarily move any identified western pond turtles upstream of the construction site, and temporary barriers shall be placed around the construction site to prevent ingress. The results of these surveys shall be documented in a technical memorandum that shall be submitted to the CDFW (if turtles are documented) and/or the City.

Burrowing Owls. Pre-construction surveys for burrowing owls shall be conducted at any proposed project site containing suitable habitat by a qualified biologist (as approved by CDFW) within 30 days prior to the start of work activities where land construction is planned in known or suitable habitat for burrowing owls. If construction activities are delayed for more than 30 days after the initial preconstruction surveys, then a new preconstruction survey shall be required. All surveys shall be conducted in accordance with survey protocols from Appendix C and D of the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game, 2012).

Special-Status Bats. A qualified bat biologist shall survey for special-status bats prior to construction activities within 200 feet of trees from construction activities. If no evidence of bats (i.e., direct observation, guano, staining, or strong odor) is observed, no further mitigation shall be required. Should evidence of bats be observed, a no-disturbance buffer of 250-feet shall be created around active bat roosts during the breeding season.

Sensitive Trees. If any sensitive tree resources are observed during the pre-construction surveys to be within the project footprint/alignment and may potentially be damaged as a result, they will be included in the survey report and recommended for protection within a tree protection zone (TPZ). In that case, weekly monitoring visits to check on the condition of the TPZ may be needed. If weekly visits are needed, additional scope and budget would be required.