

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

THIS AGREEMENT is made and entered into effective the \_\_\_\_\_ day of June, 2022, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Toole Design Group, a Maryland Limited Liability Company (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain professional engineering services for Fancher Creek Trail Plan, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a Transportation Engineer 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 February 28, 2023, 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 Hundred Ninety-Eight (198) 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 One Hundred Forty One Thousand Fifteen (\$141,015.00), and a contingency amount not to exceed Ten Thousand Dollars (\$10,000) 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: \_\_\_\_\_  
Randall W. Morrison, PE, MCE,  
Assistant Director  
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: \_\_\_\_\_  
Cassie Scholz, PE  
Supervising Professional Engineer  
Public Works Department

REVIEWED BY:

\_\_\_\_\_  
Jesus Avitia, PE  
Deputy City Engineer  
Public Works Department

Addresses:  
CITY:  
City of Fresno  
Attention: Cassie Scholz, PE,  
Supervising Professional Engineer  
2600 Fresno Street  
Fresno, CA 93721  
Phone: (559) 621-8720  
FAX: (559) n/a

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

Toole Design Group,  
a Maryland LLC

By: \_\_\_\_\_  
Name: Roswell Eldridge

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

By: \_\_\_\_\_  
Name: Jessica Fields

Title: Regional Operations Director  
(if corporation or LLC, CFO,  
Treasurer, Secretary or Assistant  
Secretary)

Any Applicable Professional License:  
Number: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date of Issuance: \_\_\_\_\_

CONSULTANT:  
Toole Design Group  
Attention: Kristen Lohse, ASLA,  
Senior Urban Designer  
8484 Georgia Ave Suite 800  
Silver Spring, MD 20910  
Phone: (206) 297-1601  
FAX: n/a

## **Exhibit A**

### **SCOPE OF SERVICES** **Consultant Service Agreement between City of Fresno (“City”)** **and Toole Design Group (“Consultant”)** Fancher Creek Trail Plan PROJECT TITLE

The City of Fresno Public Works Department is leading this capital improvement project. Funding for this project is through Sustainable Communities Grant, administered by Caltrans with funding from Senate Bill 1, the Road Repair and Accountability Act of 2017.

The Fancher Creek Trail Plan will produce a conceptual study for trail feasibility and enhancement along Fancher Creek from Jensen to Temperance (approximately 5.3 miles). The project will recommend conceptual trail layouts, evaluate right of way, prepare estimates, identify public access points/gateways, landscaping, wayfinding signs and locations, and recommended treatments for crossings. It will also engage a broad spectrum of community members through pop-up outreach events and a tactical urbanism temporary installation. The completed plan will include potential funding sources for the facility and an implementation plan to move rapidly to secure grant funding for engineering, acquisition and construction. The planning process will bring together partnering agencies and the community to present a unified vision for trail facilities. This will strengthen existing inter-jurisdictional and community relationships and create new ones that will be vital to the long term maintenance of the facility. The concept plan will make the City more competitive for grant funding from programs such as the Active Transportation Program and Congestion Mitigation and Air Quality Improvement program.

The primary tasks for developing this plan are:

- Task 1. Project Initiation and Coordination
- Task 2. Existing Conditions and Data Collection
- Task 3. Public Outreach and Community Engagement
- Task 4. Draft Fancher Creek Trail Plan
- Task 5. Final Plan
- Task 6. City Council Adoption
- Task 7. Reporting

#### **TASK 1. PROJECT INITIATION AND COORDINATION**

Items in Task set 1 initiate the Fancher Creek Trail Plan and ensure that the project team has regular communication.

##### **Task 1.4: Consultant Kick-Off Meeting**

The Kick-Off meeting will include a discussion of the scope of work, schedule, stakeholders to engage and data needed (maps, files, relevant planning documents, etc.) to successfully begin the planning process. This information will be generated in Task 1.2 – Project Team Kickoff. Meeting Summary will be documented.

**Task 1.5: Steering Committee and Friends of Fancher Creek Meetings (1 each)**

There will be two steering community meetings and two meetings with the Friends of Fancher Creek group. Steering committee meetings should be held prior to Friends of Fancher Creek meetings. Consultant will prepare materials and facilitate the meetings.

- Meeting #1 (Task 1.5) will be used to review the purpose of the plan, collect feedback on community engagement strategies and discuss the tactical urbanism event, and is reflected in task 1.5.
- Meeting #2 (Task 5.1) with each group will review content of the draft plan

**TASK 1 DELIVERABLES      RESPONSIBLE PARTY**

1.4	Meeting notes	Consultant
1.5	Meeting notes, photos, sign-in sheets	Consultant

**TASK 2. EXISTING CONDITIONS & DATA COLLECTION**

Tasks in this series include data collection, existing condition analysis and review of related plans to ensure that the recommended concepts for Fancher Creek Trail are connected to transit, transit oriented development, context sensitive and consistent with the vision for southeast Fresno.

**Task 2.1: Review Existing Plans & Documents**

In order to become familiar with prior plans for Fancher Creek, ascertain historical community priorities and gather context for the Fancher Creek Trail concept, Consultant will review relevant documents and summarize findings. Documents to be reviewed include but are not limited to:

- City of Fresno Active Transportation Plan (2017)
- City of Fresno Trail Design Guidelines (in process)
- Travel by Trail, Fresno! Trail Network Wayfinding, Promotion and Connectivity Plan (in process)
- City of Fresno Parks Master Plan (2017)
- Caltrans Smart Mobility Framework – Smart Mobility Principles
- Fresno County Regional Active Transportation Plan (2012)
- Fancher Creek Draft Concept Plan (2001)
- The California River Parkways Grant Program Application for Fancher Creek (2011)
- Fancher Creek Parkway Act (2018)
- Fresno County Regional Active Transportation Plan (2018)
- Master Trails Agreement with Fresno Irrigation District (2018)
- Fancher Creek Parkway Restoration Plan (if project is funded, grant notification TBD by end of 2019)
- City and County zoning maps
- General Plan (2014)
- Central Southeast Specific Plan (in progress)
- South Industrial Priority Area (SIPA) a Plan (in progress)
- FAX Long Range Transit Plan (in progress)

**Task 2.2: Review Existing Conditions & Prepare Needs Analysis**

The Consultant will gather and review existing conditions of the built environment along proposed Fancher Creek trail alignment through site visits, review of GIS layers, Assessor's maps, existing

and planned regional commercial development, land use, zoning and existing utilities to provide conceptual level detail to inform the Fancher Creek trail feasibility analysis.

Consultant will work with City of Fresno, County of Fresno, Fresno Irrigation District and Fresno Metropolitan Flood Control District to obtain maps, data, GIS layers, etc.

A comprehensive photo diary depicting findings shall be prepared by Consultant, based on site visits. Gathered information will be added to the project's aerial base maps and incorporated in the feasibility study. Images to be clearly labeled with adjacent streets as well latitude and longitude coordinates.

At a minimum, as part of the existing conditions review, Consultant will document:

- Bankside width and any structural failures that would impact trail feasibility.
- Trail oriented development, existing/potential access gates.
- Existing bridges, culverts
- Existing trail facilities and conditions
- Existing utilities
- Existing lighting conditions: spacing, luminosity, etc.
- Pedestrian/bicycle access points/linear greenways
- All encroachments: driveways, fences, etc.
- Existing pedestrian and bicycle path locations and widths
- ADA compliance
- Obstructions requiring layout consideration
- Conditions of future development
- Trail segments along Fancher that are fully funded and/or under construction
- Mid-block crossings
- Traffic volumes
- Recommended crossing treatments, particularly at Peach Avenue, Fowler Avenue and Temperance Avenue.
- Visibility issues
- Gather bicycle and pedestrian counts at ½ mile increments along the ~5.3 mile length of Fancher Creek.
- Existing plant material – species and condition
- Recommendations related to rezoning the parkway, analyzing the benefits and challenges of each potential zoning type in relation to the vision for the parkway.
- Water conveyance and canal maintenance requirements.

Consultant to update GIS layer(s) to reflect information gathered and provide digital files to City of Fresno.

#### Task 2.3: Recommend Alignments

The Consultant will develop a conceptual Class I shared use path alignment using the City's standard trail cross sections for the entire project's limits.

Existing conflicts and obstructions hindering construction of a class I bike path will be identified and documented on conceptual plans for review and discussion. Recommendations should be context sensitive/minimize alterations to the riparian landscape/creek bed so as not to damage habitats and be sensitive to water conveyance and maintenance needs expressed by the Fresno Irrigation District.

One alternate route may be suggested by the consultant if selected trail corridors are determined to be technically infeasible.

**Task 2.4: Identify Gateway Access Points/Rest Areas for Active Travel**

On the concept plans, Consultant will identify general types of wayfinding and interpretative signage needed and potential locations for placement. This will include identification of any existing Fancher Creek signage/urban signature that presently define routes along the creek and surrounding access points.

Consultant will provide average daily traffic data for up to six (6) major corridors around Fancher Creek, identify potential locations for gateway signage and landscape treatments which create a sense of place that reflects the creek’s natural features and promotes community awareness of and use of the trail. Consultant will identify rest areas along the trail route to increase travel comfort. These can include greenways, shade and recommended amenities that make this route viable for pedestrian and cyclist commuter traffic.

Signage types to be consistent with the City of Fresno Trail Design and Travel by Trail Guidelines, and include:

- Confirmation signs with transit and trailhead information
- Decision, and Turn Signs
- Safety advisories ex. Do not cross, use pedestrian bridge
- Concepts for interpretive signage (draft content and placement)
- Mile markers
- Information panels

**Task 2.5: Identify First-Mile and Last-Mile Connections to Public Transit**

Consultant will review Bus Rapid Transit and other FAX routes through the City of Fresno within 1 mile of Fancher Creek and identify first-mile and last-mile navigation challenges, multimodal facilities and other recommended treatments (shade, lighting, striping, etc.) to maximize connections between the Fancher Creek Trail and transit routes. Recommended treatments will be included in conceptual layouts and cost estimates.

TASK 2 DELIVERABLES	RESPONSIBLE PARTY
2.1 Plan and Policy Review Summary of Findings memo	Consultant
2.2 Existing Conditions and Needs Analysis Summary of findings, map(s), images	Consultant
2.3 Draft Trail Alignment, plan view	Consultant
2.4 Gateways and Access Points memo, map(s), images	Consultant
2.5 First- and Last-Mile Connections memo, map(s), images	Consultant

**TASK 3. PUBLIC OUTREACH AND COMMUNITY ENGAGEMENT**

Tasks in this series include public engagement activities, specifically pop-up meetings, a tactical urbanism event and school survey distribution.

**Task 3.1 Community Engagement Plan**

Consultant will develop an Engagement Plan that will identify key stakeholders and organizations the City will partner with to reach a broad and representative group of residents. Special attention will be given to ensure minority and low-income environmental justice communities in

disadvantaged areas are included. An initial list of stakeholder partners will be generated in Task 1.2 – Project Team Kickoff Meeting.

Engagement events will include:

- Participatory Planning Meetings to be brought to the public through “pop-up” attendance at four (4) existing community events, locations and meetings
  - Stakeholder Engagement: Given the development opportunities adjacent to the trail, plans to engage developers should be discussed in the plan. It will be important to include the development community in the planning process and receive feedback and input from developers on the proposed trail facilities.
  - Tactical Urbanism Event: Plan will include details for, including a name and location, for one tactical urbanism event.
  - National Center for Safe Routes to School Surveys should be distributed to Sunnyside High School, Ayer and Fancher Creek Elementary.
- Public engagement activities should include a participatory budgeting opportunity for participants. All trail concepts presented should include planning level cost implications/magnitude when asking for prioritization/feedback.

Opportunities to weigh in on the plan will be promoted through partnership with stakeholders, CBOs and public notice. Public notices to include information in English, Spanish and other languages as requested.

Plans to provide English/Spanish translation services and materials at meetings should be included in the CEP.

#### Task 3.2: Steering Committee, Friends of Fancher Creek and Caltrans Review

Consultant will provide the draft Community Engagement Plan to Project team, Steering Committee, Friends of Fancher Creek and Caltrans for their review. Consultant will address written comments provided on the plan and provide a revised versions.

#### Task 3.3: Community Engagement Promotion

Consultant will work with the project team to contact engaged residents and community based organizations to invite them to the community events. A list of engaged citizens that have participated in prior Southeast Fresno planning efforts will be provided to consultant to support promotional efforts. This list will be gathered from the Long Range Planning Department and Department of Public Works.

For Pop-up Participatory Planning Meetings, Consultant will help the city promote meeting attendance by developing multi-lingual flyers (Spanish and one other language), along with and social media verbiage.

For the tactical urbanism meeting, Consultant will help the city promote meeting attendance by developing multi-lingual flyers (Spanish and one other language if needed), along with social media verbiage. Consultant will also develop a radio ad to promote attendance at the event.

Promotional efforts should be coordinated with the City of Fresno Public Information Officer, steering committee, Friends of Fancher Creek, City Council District 5, and local community based organizations.



#### Task 3.4: Pop-up Participatory Planning Meetings (4)

Consultant will develop meeting in a box materials for pop-ups and conduct all events.

Pop-up Participatory Planning Meetings will be held at well-established events throughout the City and/or other popular locations such as grocery stores, community centers, etc. Pop ups to occur in southeast Fresno at places like Parent Coffee Hours at schools near the trail, in front of nearby grocery stores, other large events held at community parks, and a feedback station set up at the Clovis Avenue BRT station stop.

Locations will be accessible by public transit. Events/locations will be selected to ensure representative and diverse perspectives are captured with an emphasis on reaching historically underrepresented communities. Land owners and developers in the area will also be engaged/invited to attend.

Consultant will arrange for simultaneous interpretation services to be provided for all meetings. Expected participants include stakeholders identified in Task 1.2 – Project Team Meeting, and community residents.

Information will be provided to attendees explaining the purpose of the planning process, trail concept, alternatives to consider, construction phasing and estimated costs associated with various conceptual design elements (this will utilize a participatory budgeting approach).

Consultant will collect input on desired trail attributes, access points, rest area amenities, etc. with the goal of informing conceptual design. Feedback collected should be used to ensure the trail reflects the community and provides the amenities and connectivity elements needed to increase mode shift.

At the end of each community engagement interaction/effort, short surveys will be completed to gauge the effectiveness of the methods used during the effort and identify areas for improvement.

Consultant will collect email or mailing address for participants if they want to opt in to receive an email or copy of the draft plan for review or comment.

#### Task 3.5: Tactical Urbanism Event

Consultant will plan a tactical urbanism event on or near the proposed trail route that will include a temporary installation of signage and other built-environment amenities (exact location to be determined during task 3.1 for attendees to provide feedback on).

This should be a visioning experience and provide opportunities for participatory budgeting. Attendees will have the opportunity to experience temporary trail elements, treatments and signage, while being provided complete information on estimated costs for those trail elements to better prioritize them.

Consultant will develop concept plans for event and temporary installation for approval by the City of Fresno Traffic Operations and Planning Division. Consultant will also prepare a list of materials and procure them, seeking assistance from the City only as necessary. Well in advance of the event, the Consultant will support the City and Fresno Irrigation District (FID) to obtain landowner permission, permits as required, and City insurance coverage.

Consultant will lead set up, facilitation, and take-down of the event, and may seek volunteer assistance.

### Task 3.6: School Surveys

Consultant will distribute The National Center for Safe Routes to school parent and student surveys at Sunnyside High School, Ayer Elementary and Fancher Creek Elementary to determine travel patterns, route concerns and number of students who walk or bike to school. Surveys are available in many languages and may be distributed either electronically or printed. Preferred method to be determined in consultation with school district/Principals.

Consultant will compile and summarize the input in a memorandum.

TASK 3 DELIVERABLES		RESPONSIBLE PARTY
3.1	Draft and Final Engagement Plan	Consultant
3.2	Review and response to Draft Engagement Plan (written comments, approval)	Caltrans, Friends of Fancher Creek, Steering Committee
3.3	Event flyers and promotional materials	Consultant
3.4	Pop-up meeting event logistics, materials, and facilitation (up to 4 events); post-meeting materials including photos, sign-in sheets and meeting summary	Consultant
3.5	Tactical urbanism event logistics, materials, installation, and facilitation, post meeting materials including photos, sign-in sheets and meeting summary	Consultant
3.6	Distribution and summary of Safe Routes to School Data Collection System surveys	Consultant

### TASK 4. DRAFT FANCHER CREEK TRAIL PLAN

The primary task in this series is preparing the plan.

#### Task 4.1: Produce Draft Fancher Creek Trail Plan

Consultant will develop a draft plan. The plan will, at a minimum, cover the sections identified and detailed below:

Introduction section will include:

- Overview, background and history of the project.
- Demographics and interests in the area.
- A discussion of trail facilities in relation to the SCAG social determinants of health model.
- Fancher Creek form and function in water conveyance, habitat and multimodal transportation.

Community Input section will include:

- To be based on findings in Task 2 and community input in Task 3.
- Community recommendations will be "ground checked" to ensure they are functional & appropriate for various types of users.
- A detailed summary of public outreach, comments and tactical urbanism results with high-resolution, print quality images.
- Student and parent survey results – qualitative and quantitative.
- Appendices with all meeting minutes and sign in sheets.

Wayfinding/Placemaking & Transit Connectivity section will include:

- Discussion of wayfinding, place making and the role of high quality Class I facilities play in supporting mode-shift.
- Discussion of Bus Rapid Transit, ridership in the area and existing shelters/stations within one mile of the Fancher Creek project area.
- Identification of existing facilities that provide connectivity between the proposed trail and transit routes.
- Recommendations for wayfinding to address first-mile and last-mile barriers to public transportation with an emphasis on connections to BRT.
- Conceptual guidelines for wayfinding and interpretative signage along existing and future trail segments, consistent with City of Fresno Travel by Trail plan.
- Recommended sign locations on existing trail segments, future trail facilities and at rest areas.

Fancher Creek Trail Concept section will include:

- Conceptual drawings produced using AutoCAD or an equivalent.
- Identification of non-standard trail features where utility and right-of-way costs may make exceptions necessary.
- Documentation of potential right-of-way impacts for up to 22 parcels, including identification of parcel numbers, square footage, and cost for both temporary construction easements and/or permanent easements or acquisition needs for the proposed trail including exhibits/map.
- Documentation of utility impacts to identify locations of possible utility relocations.
- 40-Scale concept layouts and discussions showing the alternatives considered and the ultimate alignment used in the development of the study. Plans will include cross sections, dimensions, obstructions, constraints, photos, and narrative of implementation considerations.
- 20-Scale focused concept layouts where a greater detail is necessary to ensure estimated construction and right-of-way costs can be captured accurately in the cost estimate.
- Feasibility study level construction cost estimates for each segment of trail and for the various elements of work. Cost estimates shall include construction costs, acquisition costs based City provided area unit cost, and soft costs.
- Identification of rest areas, greenways and access points along the trail and recommended amenities to support travel mode shift.
- Identification of preferred alternatives that are responsive to constraints related to operations & maintenance of trail and water conveyance facilities.

Implementation Plan section will include:

- A plan to phase and prioritize trail implementation (utilizing the City of Fresno Active Transportation Project Prioritization Tool – see results of Trail Network Expansion study and public input) and discuss estimated timelines and next steps.
- Sequencing of implementation will consider existing right-of-way, utilities, and funding opportunities in recommended phasing.
- Estimated costs, funding sources and discuss maintenance plans/funding: ex: facilities districts, adopt-a-trail, etc.
- Potential funding sources at the local, State and Federal level to design, purchase right of way and construct the remaining sections of trail.
- Project summary pages for each proposed phase of the trail which highlight location, transit connectivity, estimated costs, feasibility considerations and results from prioritization

inputs. A representative image of the area and a segment vicinity map will be included in the project summary. These summary pages will be used in grant applications.

**Other Plan Specifications**

- Plan to be produced as an ADA compliant document/screen reader accessible, as directed by the City of Fresno ADA Coordinator.
- GIS layers produced or edited by consultant to be shared with the City.

Consultant will develop an Administrative Draft Plan for review by Project Team and will incorporate one round of revisions.

TASK 4 DELIVERABLES	RESPONSIBLE PARTY
4.1 Administrative Draft Plan, Revised Draft	Consultant

**TASK 5. FINAL PLAN**

Tasks in this series include review of the draft plan and plan finalization.

**Task 5.1: Administrative Draft Review Meetings (2)**

Consultant will meet with the Steering Committee and Friends of Fancher Creek group for the purposes of holding a review meeting (see task 1.5) and discussing key recommendations during the meetings. Consultant team will provide draft plan 2 weeks prior to review meetings. Feedback will be collected and summarized. Consultant will update the plan based on feedback from the Steering Committee and FoFC group.

**Task 5.2: Public Review Draft**

Consultant will provide plan to City of Fresno to post for public comment for 30 days. Consultant will develop email promotional and social media text for to promote public comment. Emails will be sent community based organizations and stakeholder partners, landowners, developers with interests in the area for review, and contacts generated during pop-up meetings and the tactical urbanism event.

**Task 5.3: Revised Draft Plan**

Consultant will make edits to the final draft of the plan incorporating public comments. Final plan will be produced as an ADA compliant document.

**Task 5.5: Final Draft to Caltrans**

City of Fresno will provide final draft to Caltrans for review and approval.

**Task 5.6: Final Plan**

Consultant will address an incorporate any Caltrans comments and create final plan to be presented to Council for adoption.

TASK 5 DELIVERABLES	RESPONSIBLE PARTY
5.1 Administrative Draft Plan, logistics, materials, and facilitation, post-meeting materials including meeting summary for two review meetings	Consultant
5.2 Public Review Draft Summary of Public Comments	Consultant (draft plan) City of Fresno (compilation of comments)

5.3	Final Draft Plan	Consultant (draft plan)
5.4	Caltrans written comments & approval	Caltrans
5.5	Final Plan Document	Consultant

## TASK 6. COUNCIL AND BOARD ADOPTION

The primary task in this series is formal Fresno City Council and Fresno County Board of Supervisors adoption of the plan.

**Task 6.1 Present Plan to City Council and Fresno County Board of Supervisors**  
Working with the consultant to prepare a PowerPoint presentation, the City will present the Fancher Creek Trail Plan to Council and the County will present the plan to the Board of Supervisors.

TASK 6 DELIVERABLES	RESPONSIBLE PARTY
6.1 PowerPoint, meeting minutes	Consultant (Slide deck)

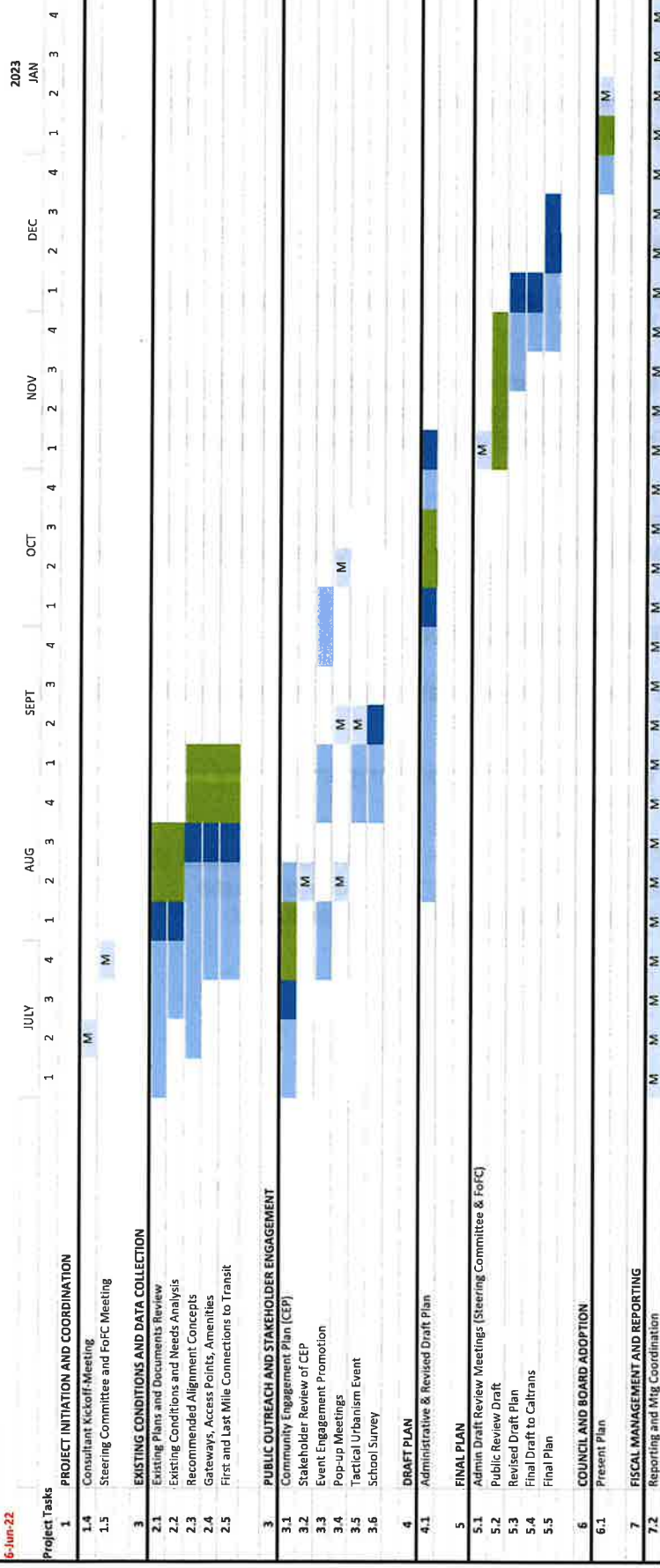
## 7. FISCAL MANAGEMENT AND REPORTING

Tasks in this series are related to project management, invoicing and reporting requirements.

**Task 7.2 Reporting**  
Consultant will conduct bi-weekly meetings and prepare monthly progress reports and invoice to the City of Fresno.

TASK 7 DELIVERABLES	RESPONSIBLE PARTY
7.1 Invoice packages	City of Fresno
7.2 Bi-weekly meeting agenda and action items	Consultant

**ATTACHMENT C - SCHEDULE**  
**Fancher Creek Trail Plan**  
**6-Jun-22**



■ Meeting/event  
■ Working period  
■ Deliverable  
■ Review period

## **Exhibit B**

### **INSURANCE REQUIREMENTS** **Consultant Service Agreement between City of Fresno ("CITY")** **and Toole Design ("CONSULTANT")** Fancher Creek Trail Plan 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).
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.

#### **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.
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 to on the Certificate of Insurance, and approved by, the CITY's Risk Manager or designee. At the option of the CITY's Risk Manager or 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 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 under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.



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 relating 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 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.

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

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 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.

**SUBCONTRACTORS** - If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONSULTANT will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

#### **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**

Fancher Creek Trail Plan  
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input 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 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 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 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 type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

(name) \_\_\_\_\_

(company) \_\_\_\_\_

(address) \_\_\_\_\_

Additional page(s) attached.

(city state zip) \_\_\_\_\_

# PW00888 ConsultantAgreement 6-8-2022

Final Audit Report

2022-06-09

Created:	2022-06-09
By:	RJ Eldridge (reldridge@tooledesign.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAy691m8g8IQK3hL5G7FDTjIYNlcfj1yFq

## "PW00888 ConsultantAgreement 6-8-2022" History

-  Document created by RJ Eldridge (reldridge@tooledesign.com)  
2022-06-09 - 8:31:37 PM GMT
-  Document emailed to Jessica Fields (jfields@tooledesign.com) for signature  
2022-06-09 - 8:32:45 PM GMT
-  Email viewed by Jessica Fields (jfields@tooledesign.com)  
2022-06-09 - 11:02:17 PM GMT
-  Document e-signed by Jessica Fields (jfields@tooledesign.com)  
Signature Date: 2022-06-09 - 11:03:21 PM GMT - Time Source: server
-  Agreement completed.  
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