

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

THIS AGREEMENT is made and entered into effective AUGUST 19, 2021, by and between the CITY OF FRESNO, a California municipal corporation (City), and Blair, Church & Flynn Consulting Engineers, a California Corporation (Consultant).

**RECITALS**

WHEREAS, the City desires to obtain professional engineering services for the design of plans and general construction contract documents for the Van Ness Avenue Water Transmission Grid Main Project (Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a Professional Civil 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, the Consultant acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for the City by its Director of Public Utilities (Director) or the Director's 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 and Completion Schedule. The Consultant shall perform the services described herein and in **Exhibit A** to complete the Project more fully described in **Exhibit A**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**. The services of the Consultant shall consist of five parts as described below. A separate "Notice to Proceed" will be issued for each of the aforementioned parts. By entry into this Agreement and upon the City's issuance of a written "Notice to Proceed," the City contracts for the services in Part One. The Consultant shall not perform any other part of the Agreement, and this Agreement shall not be a contract for any other part, until further performance is authorized by the City's issuance of a written "Notice to Proceed." It shall, however, remain the Consultant's offer to perform all remaining parts described herein. In the event the Consultant performs services without the City's prior written authorization, the Consultant will not be entitled to compensation for such services.

(a) Part One. Schematic Design Phase.

(1) The Consultant shall review the description of the Project set forth in **Exhibit A** and consult with designated representatives of the City to ascertain the requirements of the Project.

(2) The Consultant shall complete a Schematic Design Report in accordance with the detailed minimum requirements set forth in **Exhibit A**. The

Schematic Design Report shall include sufficient detail for the design of the Project, to establish the size and alignment of the water transmission grid main, and as necessary to obtain the acceptance of the City. The Consultant shall provide the City with an electronic file of the Schematic Design Report in the following format: MSWord and AdobePDF.

(3) The Consultant shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible City department/division that is available in the City's records and is required by the Consultant in connection with the consulting services including, but not limited to, maps, reports, information, restrictions and easements.

(4) The Consultant shall provide a preliminary evaluation of the Project taking into consideration the City's estimate of the cost of construction (Construction Budget) of \$1,920,000.00, including alternative approaches to design and construction of the Project.

(5) Based upon the mutually agreed upon Project requirements and any adjustments authorized by the City in the Construction Budget, the Consultant shall design and prepare schematic design drawings and other documents for review, modification, if required, and acceptance by City staff sufficient to show the concept and scope of the proposed Project and the scale and relationship of Project components.

(6) The Consultant shall submit a preliminary estimate of construction cost for review and acceptance by the City. "Construction cost" means the cost of construction under the general construction contract and does not include the Consultant's compensation. Such estimate shall include, and shall separately state, the cost of any add or deduct alternatives, the cost of any work which may be let on a segregated bid basis and any equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget.

(7) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

(8) The Consultant may not rely upon any as-builts provided by the City, but shall investigate the existing conditions and ascertain the adequacy of such as-builts for the Consultant's design. The Consultant shall bring to the City's attention any discrepancies in the as-builts that are discovered by the Consultant. The City makes no representations regarding any as-builts.

(9) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within Phase 1: 45 calendar days and Phase 2: 45 calendar days from

the issuance of a Notice to Proceed for this part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within 14 calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(b) Part Two. Design Development Phase. After review and acceptance of the schematic design phase and issuance of a written Notice to Proceed with this Part Two:

(1) Based upon the accepted schematic design documents and the Construction Budget, including authorized revisions thereto, the Consultant shall prepare for review and acceptance by the City the design development documents consisting of drawings and other documents to fix and describe the size and character of the Project as necessary to show treatment of significant details. In addition, the Consultant shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents and specifications shall be subject to review and acceptance by the City.

(2) The Consultant shall submit a revised estimate of construction cost for review and acceptance by the City. The revised estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated bid basis, and any furnishings, equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget, including authorized revisions thereto.

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part One as that which may be excluded from the general construction contract, the City shall have the option of accepting or rejecting the revised estimate and the Consultant shall, at no additional cost to the City, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by the City. The City shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in the Consultant's compensation.

(4) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval, permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within Phase 1: 30 calendar days and Phase 2: 30 calendar days from the issuance of a Notice to Proceed for this part unless an extension of time is

approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within 14 calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(c) Part Three. Construction Document Phase. After review and acceptance of the design development phase and issuance of a written Notice to Proceed with this Part Three:

(1) The Consultant shall prepare from the accepted design development documents, detailed plans and specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. The Consultant shall also prepare necessary bidding information, general and special conditions of the general construction contract, technical specifications of the general construction contract, and the bid proposal and general construction contract forms. Such documents shall be subject to the review and acceptance by the City. The Consultant shall cooperate with, assist, and be responsive to, the City's Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. The City's Standard Specifications must be used by the Consultant where possible. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by the City shall be used by the Consultant unless the Director determines they would be impractical for this Project. The Consultant shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by the Consultant are consistent with any documents regularly used by the City that are used for this Project.

(2) Upon request of the City, the Consultant shall provide the calculations used to determine the general construction contract quantities; and structural calculations for the purpose of obtaining any building permits.

(3) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval, permit, report, statement, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

4) The Consultant shall provide the City with 5 sets of completed plans and 5 sets of completed specifications for review and final acceptance by the City. Should the plans and specifications as submitted by the Consultant not be accepted by the City, the Consultant shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to the City.

(5) After acceptance of final corrections, if any, the Consultant shall provide the City with one set of accepted reproducible tracings and bid documents for the Project. In addition, the Consultant shall provide the City with

one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: AutoCAD, MSWord, and AdobePDF.

(6) The Consultant shall submit a final estimate of construction cost for review and acceptance by the City. Such estimate shall be calculated as of the date all general construction contract documents are delivered to the City in final form ready for reproduction and advertising. Such estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated basis, and any equipment, or fixtures which may be incorporated in or excluded from the general construction contract.

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part Two as that which may be excluded from the general construction contract, the City shall have the option of accepting or rejecting the final estimate. If the City elects to reject the final estimate, the Consultant shall at no additional cost to the City, make such design changes as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by the City.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within Phase 1: 30 calendar days and Phase 2: 30 calendar days from the issuance of a Notice to Proceed for this part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within 14 calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(d) Part Four. Bidding Phase. After review and acceptance of the construction document phase, the City's decision to proceed to bid shall constitute a written Notice to Proceed with this Part Four:

(1) The Consultant shall assist the City in obtaining bids. The Consultant shall not communicate with potential bidders regarding this Project without the express prior written authorization of the City's Purchasing Manager.

(2) Upon request of the City, the Consultant shall expeditiously draft addenda as determined by the City to be reasonable or necessary for the bidding process.

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by the City, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, the Consultant shall, within fourteen days of any request by the City, revise the plans and specifications as may be necessary to stay within 10% of such final estimate

of construction cost, at no additional cost to the City provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. The Consultant shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to the City for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to the Consultant from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%.

(e) Part Five. Construction Phase and General Construction Contract Administration. The construction phase will begin with the award of the general construction contract, which shall constitute a written Notice to Proceed with this Part Five, and will terminate when a Notice of Completion is filed. Upon award of a general construction contract for the Project and under the direction of the Director through the City's designated Construction Manager for the Project:

(1) The Consultant shall attend the pre-construction conference and, if called upon by the City, act on the City's behalf in discussing the various aspects of the construction phase.

(2) The Consultant shall review and recommend in writing to the City acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. The period for the Consultant review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by the City, the Consultant and the general construction contractor.

(3) The Consultant shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents, and keep the City informed of the progress of the work. In the event that the Consultant's visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, the Consultant shall immediately advise the City and document, in writing, the work the Consultant deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. Based on the Consultant's best knowledge, information and belief, the Consultant shall provide the City a general written assurance that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, the Consultant shall provide a written judgment of the acceptability of the work for payment applications and final acceptance, subject to the City's right to overrule the Consultant.

(4) Upon written request by the City, the Consultant shall render interpretations of the general construction contract documents necessary for the proper execution or progress of the work.

(5) Upon written request by the City, the Consultant shall render written recommendations on change orders, claims, disputes or other questions arising out of the general construction contract, in a timely manner. Recommendations by the Consultant in favor of a change order that is consequently accepted by the City shall constitute approval by the Consultant who shall then approve the change order in writing. The Consultant shall not unreasonably withhold written approval in the event the City accepts a change order that the Consultant recommended to be rejected. In the event of any technical disputes, the Consultant shall provide the City with the Consultant's written interpretation of the contract documents. The period for the Consultant review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by the City, the Consultant and the general construction contractor. If the City, the Consultant and the respective general construction contractor are unable to mutually agree on such period for the Consultant review, then the City will make the determination and that determination will be final.

(6) Upon written request by the City, the Consultant shall provide such design and specification services as may be requested by the City to implement change orders necessary for clarification or interpretation of the general construction contract documents or which may have resulted from errors or omissions by the Consultant.

(7) Where change orders arise as a result of an increase in the scope of work or are due to unforeseeable conditions, the parties may modify this Agreement, which modification shall include an agreed upon increase in the Consultant's compensation.

(8) Upon written request of the City, the Consultant shall assist the City in the preparation of Progress Payment Estimates and other related construction reports.

(9) The Consultant shall provide the City with two sets of original as-grade plans wet-stamped and signed by the Consultant's Engineer of Record for the Project submitted for final approval by the City's Building and Safety Services Division of the Development and Resource Management Department.

(10) The Consultant shall prepare Record Drawings by updating the accepted general construction documents in Part Three to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the City, (iii) the Consultant provided Request for Information responses, and (iv) any the Consultant bulletins, amendments or clarifications. The Consultant shall provide the City with one set of vellum Record Drawings for the Project within 14 calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within 14 calendar days from receipt of the City comments unless an

extension of time is approved in writing by the Director. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of Record Drawings in the following format: AutoCAD and AdobePDF.

2. The City's responsibilities. The City will:

(a) Provide, upon request and cooperation of the Consultant, access to, and make all provisions necessary to, enter upon public or private lands as required for the Consultant to perform such services and inspections as are required in development of the Project; provided, however, if the City is unable to obtain access to enter upon public or private lands, the Consultant shall not be relieved from performing its services as to those public and private lands that are accessible.

(b) Manage and be responsible for all negotiations with owners in connection with land or easement acquisition and provide all required title reports and appraisals.

(c) With the exception of preparing correspondence required for design, hold all required special meetings, serve all public and private notices, receive and act upon all protests, and perform all services customarily performed by owners as are necessary for the orderly progress of the work and the successful completion of the Project, and pay all costs incidental thereto.

(d) Select the testing laboratory and pay the cost of borings, samplings, and other work involved in soils testing during construction.

(e) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release the Consultant from its responsibility to make periodic site visits under Section 1(e) for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to the City.

(f) Prepare all change orders during construction in cooperation with the Consultant.

(g) Prepare all Progress Payment Estimates in cooperation with the Consultant following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon the Consultant's best knowledge, information and belief.

(h) Pay, or cause to be paid, plan check fees, conditional use permit fees and site plan review fees.

(i) Arrange for and pay, or cause to be paid, any fees associated with Environmental Impact Reports or Statements.

(j) Give reasonably prompt consideration to all matters submitted by the Consultant for acceptance to the end that there will be no substantial delays in the Consultant's program of work. For an acceptance, approval, authorization, a request or any direction to the Consultant to be binding upon the City under the terms of this

Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by the City and signed on behalf of the City by the Director.

3. Compensation.

(a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$257,700.00, paid on a time and materials basis in accordance with the schedule of fees contained in Exhibit A, and a contingency amount not to exceed \$30,000.00 for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of City business. Such statements shall be for an amount no greater than that attributable to the part upon which the Consultant is then engaged as provided in Section 3(c) below. The City shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) For purposes of determining the division of the total compensation to the Consultant as provided in Section 3(a) above, or should performance of any succeeding part not be authorized by the City as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five parts of the Consultant's performance as follows: Part One – Phase 1: 40% and Phase 2: 10%, Part Two – Phase 1: 7.5% and Phase 2: 7.5%, Part Three – Phase 1: 7.5% and Phase 2: 7.5%, Part Four – Phase 1: 5% and Phase 2: 5% and Part Five – Phase 1: 5% and Phase 2: 5%. Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved parts as provided above shall be utilized for purposes of determining the fee due to the Consultant.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to the Consultant's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. The Consultant shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

4. Termination, Remedies, Force Majeure, and Consolidation of Disputes.

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

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

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

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

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

(f) The Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Consultant shall notify the Director, or designee, 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 the Director, or designee, of the cessation of such occurrence.

(g) The Consultant agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at the City's option, be joined and consolidated with any other dispute or disputes arising from or relating to the Project so that all disputes arising from or relating to the Project may be resolved in a single proceeding. The Consultant hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

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

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

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

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

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

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

7. Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782.8, the Consultant shall indemnify, hold harmless and defend the 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 the Consultant, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor to indemnify, hold harmless, and defend the 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, the Consultant shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by the City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in **Exhibit B** shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance 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 the Consultant shall be withheld until notice is received by the 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 the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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 the Consultant and the City prior to the commencement of any services by the subcontractor. The Consultant and any subcontractor/sub-consultant shall establish additional insured status for the 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 the City's execution of this Agreement, the Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in Exhibit C. During the term of this Agreement, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.

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

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

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

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

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

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

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

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

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

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

11. General Terms.

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

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

requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

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

(d) The Consultant's services pursuant to this Agreement shall be provided under the supervision of Luis Gonzalez, PE, and shall not assign another to supervise the Consultant's performance of this Agreement without the prior written approval of the Director.

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

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

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

(c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race,

religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

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

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

13. Independent Contractor.

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

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

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

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of

receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

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

16. Assignment.

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

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

17. Compliance With Law. In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, including but not limited to, the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), the State of California and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

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

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

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

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

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

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

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

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

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

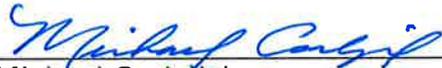
27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights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

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

**[Signatures follow on next page.]**

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

CITY OF FRESNO,  
A California municipal corporation

By:   
Michael Carbajal,  
Director  
Department of Public Utilities

ATTEST:  
BRIANA PARRA, CMC  
Interim City Clerk

By:  8/20/21  
Bernard Gomez  
Deputy

No signature of City Attorney required.  
Standard Document #DPU-S 9.3/07-2021  
has been used without modification, as  
certified by the undersigned.

By:   
Elizabeth Field, PE  
Professional Engineer

Addresses:  
CITY:  
City of Fresno  
Attention: Beth Field, PE,  
Professional Engineer  
2101 G Street, Building A  
Fresno, CA 93706  
Phone: (559) 621-1607  
Facsimile: (559) 498-4126  
E-mail: Beth.Field@Fresno.gov

Blair, Church & Flynn Consulting  
Engineers,  
A California Corporation

By:   
Name: DAVID MOURRY

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

By:   
Name: ADAM K. HOLT

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

Any Applicable Professional License:  
Number: C 63506  
Name: LUIS M. GONZALEZ  
Date of Issuance: 6-14-2002

CONSULTANT:  
Blair, Church & Flynn Consulting  
Engineers  
Attention: Luis Gonzalez, PE,  
Project Manager  
451 Clovis Ave  
Clovis, CA 93612  
Phone: (559) 326-1400  
Facsimile: (559) 326-1500  
E-mail: lgonzalez@bcf-engr.com

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **Consultant Service Agreement between City of Fresno (the City) and Blair, Church & Flynn Consulting Engineers (the Consultant)**

##### Van Ness Avenue Water Transmission Grid Main Project

## **Project Approach**

### **Approach to the Work**

BCF shall accomplish project design through the Schematic Design, Design Development, Construction Document, Bidding, and Construction and General Contract Administration phases customarily employed for City of Fresno projects, as well as an Environmental Analysis phase. Each phase will be completed as part of two (2) bid sets for Phases I and II of the project.

Consultant services related to the design and construction of the proposed TGM (Project) will be split into two (2) phases, resulting in two (2) bid packages. Upon issuance of the Notice to Proceed (NTP), Bid Package 1 efforts (Phase I) will include the design and construction of the new TGM within Van Ness Avenue between Amador and Calaveras Streets, and the 12-inch main within Amador Street from the alley to Van Ness Avenue. Phase I design and construction needs to be completed by July 1, 2022.

Separate NTP's will be issued for Bid Package 2 tasks at a later time. PHASE 2 design services will immediately follow the completion of the Phase I design services and include Van Ness Avenue between Divisadero Street and Amador Street and between Calavera Street and Merced Street. Attachment 2 is a Vicinity Map of the Project and shows the Phase 1 and Phase 2 work.

While it is understood that this Project will be completed in two Phases, initial Phase 1 (Bid Package 1) efforts will include preparation and completion of California Environmental Quality Act (CEQA) documentation, hydraulic modeling, rights of way, easement, and other utility and master plan investigations as necessary including topographic and boundary surveys and geotechnical investigations to determine appropriate pipeline sizing and alignment considerations for the Project, and development of construction estimates for both Phases of the Project...

Separate Notice to Proceed authorizations will be issued for each part of the work for each Phase as further described below:

#### **PART 1 SCHEMATIC DESIGN PHASE**

The Schematic Design phase shall include hydraulic modeling to determine the recommended sizing of the transmission grid main. All hydraulic modeling will be completed by Akel Engineering (Akel), a subconsultant to be retained by BCF. Akel will complete the necessary modeling tasks to determine the best recommended sizes. Akel will require information and data from the existing water distribution system, specifically for the project area.

Field and office investigations of existing utilities shall be done to determine the locations of existing utility facilities. Record drawing information for street, water, sanitary sewer, storm drain, and irrigation pipeline facilities shall be gathered and analyzed. Master plan documents shall also be studied, and appropriate agencies shall be contacted to determine if other planned facilities are expected to be constructed in the project streets in the future. BCF will complete control and topographic surveys to collect information on existing utilities, rights-of-way, easements, property lines, and other topographical/boundary information. Additionally, right-of-way and property records shall be studied to determine the limits of street rights-of-way and easements, and the locations of adjacent property boundaries. The results of topographic and control surveys shall be incorporated into the project information database.

Survey results, record drawing information, utility investigation findings, right-of-way and property records, and information related to planned facilities shall be used to develop base mapping that will form the basis for the preparation of plan and profile drawings. The base mapping shall also serve as the foundation for the alignment for the proposed water mains and to determine preferred locations for the mains. In general, proposed water mains shall be positioned in the project streets in the standard locations prescribed by Standard Drawings. However, deviations from standard locations will sometimes be necessary to avoid conflicts with other existing and planned facilities, and to ensure compliance with California Department of Public Health (CDPH) separation requirements.

A geotechnical investigation will be completed for the Project area by BSK Associates (BSK) as a subconsultant for BCF, and it will consist of field exploration, laboratory testing, engineering analysis, and report preparation to assess the soil conditions at the project site. Field explorations will consist of 3 test borings drilled to 10 feet below ground surface with sampling and standard penetration tests being performed every 5 feet. All soil conditions will be well documented, and samples will be taken for laboratory testing; testing will include those intended to evaluate the in-situ moisture and dry density, R-value, moisture-density relationship, gradation, and corrosion potential (pH, sulfate, and chloride content). All findings from field explorations and laboratory testing will be summarized in a report and submitted to the City in conjunction with the Schematic Design Report.

A Schematic Design Report shall be prepared to document Schematic Design Phase efforts and present findings and recommendations based on the results of the hydraulic modeling to be completed by Akel. A chief objective of the report shall be to present water main sizing recommendations for review and approval by the City.

The Schematic Design Report shall incorporate the hydraulic modeling and shall include schematic plans, at a completion level of approximately 30%, with an itemized estimate of construction quantities and costs. The Schematic Design Report shall include limited recommendations for design features to be implemented in subsequent Design Development and Construction Document phases. BCF shall submit eight (8) hard copies and one (1) electronic copy of the Schematic Design Report to the City for review. BCF will schedule a workshop meeting with the City to discuss the Schematic Design Report and plans, and to review the City's comments.

#### ENVIRONMENTAL ANALYSIS

BCF will complete an environmental analysis according to California Environmental Quality Act (CEQA) guidelines, with the City of Fresno (City) serving as lead agency. The original project description may have qualified for a statutory exemption under section 15282.(k) of the CEQA Guidelines (Guidelines), or a categorical exemption under section 15301 of the Guidelines. However, given the extent of work other than simply replacing the pipeline (moving pipeline, moving/replacing connections, replacing hydrants, additional branches for connections), it is less likely than an exemption would apply to the full Project. Therefore, in agreement with the expectation stated by the City of Fresno (City) in the RFQ, this scope of work assumes an Initial Study/Mitigated Negative Declaration (IS/MND) will satisfy CEQA. Exemptions will still be evaluated as part of the Initial Study but are assumed to not apply. Optional scope and fees have been included to complete an Environmental Impact Report (EIR) if deemed necessary. Specific tasks are detailed in the **Environmental Analysis** Phase below

#### PART 2 DESIGN DEVELOPMENT PHASE

Continued design efforts, through the Design Development phase shall implement adopted Schematic Design Phase recommendations and comments received from the City of Fresno, and shall provide for the submittal of plans, specifications, and estimates (PS&E) at the Development (60% complete) level of design. Each project submittal shall include the careful incorporation of review comments resulting from the City's review of the previous project submittal. BCF shall submit eight (8) hard copy sets and one (1) digital set of Development (60%)

### **PART 3 CONSTRUCTION DOCUMENT PHASE**

Continued design efforts, through the Construction Document phase shall incorporate comments resulting from the City's review of the previous project submittal. BC&F shall submit the Draft Final (90% complete, for review) and Final (100%, for approval) levels of design completion. Each project submittal shall include the careful incorporation of review comments resulting from the City's review of the previous project submittal. BCF shall submit eight (8) hardcopy sets and one (1) digital set of Draft Final (90%) PS&E for review. Draft Final plans shall also be reviewed by the City's Public Works Construction Management Division. BCF shall submit one (1) hardcopy and digital set of Final (100%) PS&E for City approval and signatures, after all City review comments have been satisfactorily addressed. Electronic copies of the Final AutoCAD plans, MSWord and PDF versions of the Final Specifications, and Excel and PDF versions of the Final Construction Cost Estimate shall be submitted. Design efforts through the Construction Document phase for Phase 2 (Bid Package 2) work shall follow with similar submittal requirements upon issuance of NTP for this Part.

### **PHASE 1 - PARTS 4 AND 5 BIDDING AND CONSTRUCTION**

Bidding Phase and Construction Phase support services shall be provided as shown in the task outline below. Bidding Phase and Construction Phase support services shall include support for the City's Purchasing Department during bidding, including addenda preparation as required, and support for the City's Construction Management Division during construction

### **ENGINEERING SERVICES TASK OUTLINE PER BID PACKAGE**

#### **PART 1 SCHEMATIC DESIGN PHASE**

##### **A. PROJECT MANAGEMENT AND ADMINISTRATION**

1. Prepare and Maintain Design and Construction Schedule
2. Prepare Monthly Schedule and Budget Updates
3. Prepare Meeting Agendas and Meeting Minutes
4. Coordinate with Affected Agencies, Districts and Stakeholders
5. Develop List of Information to be Provided by the City
6. Prepare Project Management Plan
7. Schedule and Conduct Project Kick-off Meeting (2 Total; 1 per Bid Package)

##### **B. UTILITY COORDINATION**

1. Conduct Office and Field Investigations
2. Determine Permitting Requirements
3. Submit Schematic Design Plans to Affected Companies and Agencies & Districts
4. Submit Preliminary Plans to Affected Companies, Agencies & Districts
5. Submit Draft Final Plans to Affected Companies, Agencies & Districts as Necessary

##### **C. SURVEYS**

1. Conduct Control and Topographic Surveys
  - a. Survey Existing Property Lines and Easements
  - b. Survey Existing Utility Features Accessible from Ground Surface
  - c. Survey Existing Man-Made Features
  - d. Survey Existing Topographic Features

##### **D. ALIGNMENT ANALYSIS**

1. Conduct Site Investigations
2. Obtain and Incorporate Record Information
3. Incorporate Survey Data
4. Conduct Right-of-Way & Property Line Research
5. Prepare Base Mapping

6. Develop Water Main Alignment Alternatives

E. HYDRAULIC MODELING

1. Complete Hydraulic Modeling (Akel Engineering)

F. GEOTECHNICAL INVESTIGATION

1. Complete Geotechnical Investigation (BSK Associates)

G. SCHEMATIC DESIGN REPORT

1. Review/Incorporate Hydraulic Modeling
2. Develop Water Main Size Alternatives
3. Verify and Incorporate Applicable Regulatory Agency Requirements
4. Prepare Schematic (30%) Plans
5. Prepare Outline Specifications
6. Prepare Itemized Estimates of Quantities and Costs
7. Prepare Schematic Design Report
8. Submit Schematic Design Report
  - a. Submit Eight (8) Hardcopies and One (1) Digital Copy
  - b. Schedule and Conduct Workshop Review Meeting
  - c. Re-Submit as Necessary to Obtain City Acceptance Within 7 Calendar Days of Receipt of City's Comments

PART 2 DESIGN DEVELOPMENT PHASE

A. DEVELOPMENT (60%) PLANS, SPECIFICATIONS AND ESTIMATE

1. Prepare Development (60%) Cover and Index Sheets
2. Prepare Development (60%) Plan and Profile Drawings
3. Prepare Development (60%) Construction Detail Drawings
4. Prepare Development (60%) Technical Specifications
5. Incorporate Schematic Design Report Review Comments
6. Prepare Itemized Estimate of Quantities and Cost
7. Coordinate with the City for Incorporation of "Boilerplate" Documents by the City
8. Submit Development (60%) Plans, Specifications and Estimate
  - a. Submit Eight (8) Hardcopies and One (1) Digital Copy
  - b. Schedule and Conduct Workshop Review Meeting
  - c. Re-Submit as Necessary to Obtain City Acceptance Within 7 Calendar Days of Receipt of City's Comments

PART 3 CONSTRUCTION DOCUMENT PHASE

A. FINAL (90% and 100%) PLANS, SPECIFICATIONS AND ESTIMATE

1. Address Development (60%) PS&E Review Comments
2. Prepare Draft Final (90%) Cover and Index Sheets
3. Prepare Draft Final (90%) Plan and Profile Drawings
4. Prepare Draft Final (90%) Construction Detail Drawings
5. Prepare Draft Final (90%) Technical Specifications
6. Prepare Itemized Estimate of Quantities and Cost
7. Submit Draft Final (90%) Plans, Specifications and Estimate
  - a. Submit Eight (8) Hardcopies and One (1) Digital Copy
  - b. Schedule and Conduct Final Design Review Meeting
  - c. Revise and Re-Submit as Necessary to Obtain City Acceptance Within 7 Calendar Days of Receipt of City's Comments
8. Submit One Original Set of Final (100%) Plans (AutoCAD and PDF), Specifications (MSWord and

PDF) and Estimate (Excel and PDF) for Approval Signatures

#### PART 4 BIDDING PHASE

##### A. BID SERVICES

1. Attend Pre-Bid Conference (2 Total; 1 per Bid Package)
2. Prepare Addenda and Responses to RFIs
3. Assist the City in the Evaluation of Bid Proposals

#### PART 5 CONSTRUCTION PHASE AND GENERAL CONSTRUCTION CONTRACT ADMINISTRATION

##### A. SERVICES DURING CONSTRUCTION

1. Attend Pre-Construction Conference (2 Total: 1 per Bid Package)
2. Review Shop Drawings and other Contractor Submittals
3. Provide General Consultation and Advice
  - a. Respond to Requests for Information (RFIs)
4. Provide Periodic Worksite Observation as Necessary
5. Review Progress Payments as Requested
6. Prepare and Submit Record Drawings

#### ENVIRONMENTAL ANALYSIS

##### B. ENVIRONMENTAL ANALYSIS

1. Schedule and Conduct Kick-Off Meeting to develop a project description
2. Conduct a cultural resources investigation including a California Historical Resources Information System (CHRIS) and Southern San Joaquin Valley Information Center (SSJVIC) records search; California Native American Heritage Commission (NAHC) contact for Sacred Lands File review; cultural resources survey of the Project alignment; preparation of a cultural resources letter report; and assistance with the City's AB 52 consultation by providing letter templates, checklists, and detailed instructions, along with requesting an AB 52 consultation list from the NAHC if requested by the City
3. Complete a Hazards technical study including a site reconnaissance, a review of historical fire insurance maps, historical city directories, and a review of regulatory records available from Department of Toxic Substances Control and Regional Water Quality Control Board online databases. Specific information will include Cortese sites, landfills, hazardous material pipelines, per- and polyfluoroalkyl substances (PFAS), California Geologic Energy Management Division (CalGEM) oil well records, and nearby educational facilities and airports.
4. Prepare Administrative Draft, Screencheck Draft, and Public Draft IS/MND
  - a. Submit Six (6) hardcopies and two (2) electronic files (PDF and MSWord) of the Administrative Draft Initial Study (IS) Report to the City and incorporate City comments.
  - b. Submit Fifteen (15) hardcopies and two (2) electronic files (PDF and MSWord) of the Public Review Draft IS/MND.
  - c. Incorporate City comments.
  - d. Advertise and circulate drafts for public review and comment. The City will publish documents to its website.
5. Prepare responses to public and agency comments.
6. Prepare Administrative Final IS/MND and Mitigation Monitoring and Reporting Program (MMRP).
7. Incorporate City comments and prepare Final IS/MND and MMRP.
8. Prepare materials for and attend and support City Staff at up to one (1) Public Hearing.
9. Prepare and perform required CEQA postings and noticing including Notice of Intent (NOI), Notice of Completion (NOC), and Notice of Determination (NOD). Includes submitting six (6) hardcopies and two (2) electronic files (PDF and MSWord) of each document. Documents will be sent to the Fresno County Clerk and State Clearinghouse, as applicable, then routed to

- appropriate agencies.
- 10. Respond to comments from agencies.
- 11. Provide monthly schedule and budget updates to the City, via email teleconference as appropriate, as well as up to one (1) meeting to present Administrative Draft documents.
- 12. Submit all public review documents in an electronic format compliant with the Americans with Disabilities Act (ADA) and according to City Administrative Order 8-16.

#### OPTIONAL TASKS

##### A. PREPARATION OF ENVIRONMENTAL IMPACT REPORT (EIR)

- 1. Augment technical studies specified above and incorporate into the EIR.
- 2. Prepare and distribute a Notice of Preparation (NOP) to the State Clearinghouse, which will route documents to appropriate agencies. This includes submitting six (6) hardcopies and two (2) electronic files (PDF and MSWord) of the NOP.
- 3. Prepare and publish a Draft EIR, including filing a NOC with the State Clearinghouse and publishing/distributing a Notice of Availability for the Draft EIR. The City will publish documents on its website. This includes submitting fifteen (15) hardcopies and two (2) electronic files (PDF and MSWord) of the draft EIR.
- 4. Respond to comments from agencies and the public.
- 5. Prepare and publish a Final EIR.
- 6. Respond to City comments.
- 7. Prepare materials for and attend and support City Staff at up to one (1) additional public meeting.
- 8. Prepare and submit Notice of Determination to the Fresno County Clerk. This includes submitting up to six (6) hardcopies and two (2) electronic files (PDF and MSWord).
- 9. File a copy of the Final EIR with the County of Fresno and provide copies to each responsible agency.

#### SPECIFIC EXCLUSIONS

- A. Those items listed under the City's Responsibilities in agreement
- B. Determination of underground utility locations by "pothole" excavation methods
- C. Construction inspection or testing services
- D. Preparation of traffic control plans
- E. Preparation of a Stormwater Pollution Prevention Plan (SWPPP), Indirect Source Review (ISR), or Dust Control Plan (DCP), which will be required of the Contractor by the project specifications.
- F. Acquisition of building permits
- G. Attendance at public meetings, public outreach, or any other coordination beyond those described above, including but not limited to meetings with any agencies or tribal organizations; AB 52 consultation meetings, outreach, or mailing letters to Tribal governments.
- H. Design services related to the relocation of franchise utilities
- I. Construction staking
- J. Payment of fees
- K. Acquisition of title information
- L. Daily construction inspection and testing services
- M. Field utility location services via Ground Penetrating Radar (GPR) and pothole methods
- N. Biological technical study – no biological resource impacts are expected, and the analysis can be adequately addressed within the Initial Study.
- O. Noise technical study – no operational noise impacts are expected, and construction impacts can be adequately addressed within the Initial Study.
- P. Traffic study – no operational traffic impacts are expected, and construction impacts can be assessed qualitatively and will be mitigated with a traffic control plan, to be obtained and implemented by the Contractor or City before start of construction.
- Q. Any studies, data collection, sampling, laboratory analysis, or reports, other than those described in

the above scope of services.

- R. It is assumed that all CEQA topics, except those specifically identified above for technical studies, can be adequately analyzed with "desktop" analyses, and will not require technical studies outside of the Initial Study Appendix G Checklist question responses.
- S. Services related to National Environmental Policy Act (NEPA) – it is assumed that no federal funding, property, or permitting will be involved with the project and NEPA analysis is therefore not required.
- T. Services related to permitting, coordination, review, or otherwise with Caltrans – it is assumed that no work will occur within Caltrans Right-of-Way and Caltrans involvement will not be required.
- U. Coordination, implementation, execution, or oversight of environmental mitigation measures.
- V. Payment of any fees other than as described in the above scope of services.
- W. It is assumed that SSJVIC direct expenses will not exceed \$800, no cultural resources will be identified during the cultural resources study, the National Historic Preservation Act will not apply to the Project, the cultural resources survey can be completed by one person in a single 8-hour day, and a cultural resources letter report will be sufficient instead of a complete technical report.
- X. No substantial changes will be made to the overall proposed alignment that was presented in the RFQ and Addendum 1.
- Y. It is assumed that comments on environmental studies and documents, from the City, public, and other agencies, will be minor and will not require more than one round of revisions/responses.

## SCHEDULE OF FEES

January 1, 2021

Blair, Church and Flynn Consulting

GENERAL CONSULTING FEE SCHEDULE

PREVAILING WAGE PROJECTS

CLASSIFICATION RATE

Principal .....	\$170.00/Hour
Program Manager .....	\$165.00/Hour
Professional Engineer 3 .....	\$160.00/Hour
Professional Engineer 2 .....	\$150.00/Hour
Professional Engineer 1 .....	\$140.00/Hour
Assistant Engineer 3 .....	\$120.00/Hour
Assistant Engineer 2 .....	\$110.00/Hour
Assistant Engineer 1 .....	\$105.00/Hour
Professional Land Surveyor 2 .....	\$150.00/Hour
Professional Land Surveyor 1 .....	\$140.00/Hour
Assistant Surveyor .....	\$105.00/Hour
Land Services Technician .....	\$95.00/Hour
Professional Landscape Architect.....	\$125.00/Hour
Landscape Designer .....	\$100.00/Hour
Design Technician .....	\$110.00/Hour
CAD Technician 3 .....	\$98.00/Hour
CAD Technician 2 .....	\$88.00/Hour
CAD Technician 1 .....	\$75.00/Hour
Environmental Consultant .....	\$120.00/Hour
Construction Manager .....	\$120.00/Hour
Construction Inspector** .....	\$100.00/Hour
Construction Administrator .....	\$85.00/Hour
Staff Analyst.....	\$90.00/Hour
Administrative Assistant .....	\$65.00/Hour
Engineering Aide .....	\$55.00/Hour
Survey Party Mobilization .....	\$80.00/Hour
1-Man Survey Party** .....	\$180.00/Hour
2-Man Survey Party** .....	\$350.00/Hour
LiDAR Scanner .....	\$200.00/Hour
Equipment Rental and Associated Expense .....	Cost x 1.10
Materials, Printing, Subconsultant Procurement .....	Cost x 1.10
Mileage .....	@ Current IRS Rate

\*\* May be subject to change based upon revisions to the State of California Prevailing Wage Determinations

## EXHIBIT B

### INSURANCE REQUIREMENTS

#### Consultant Service Agreement between City of Fresno (the City) and Blair, Church & Flynn Consulting Engineers (the Consultant)

#### Van Ness Avenue Water Transmission Grid Main Project

#### MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

#### MINIMUM LIMITS OF INSURANCE

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

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

- (iii) \$2,000,000 aggregate for products and completed operations; and
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

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

OR\*

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

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

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

4. **EMPLOYER'S LIABILITY:**

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

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

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

**UMBRELLA OR EXCESS INSURANCE**

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

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

The Consultant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the Consultant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared 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 the City, its officers, officials, employees, agents, and volunteers; or
- (ii) The Consultant shall provide a financial guarantee, satisfactory to the City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense

expenses. At no time shall the 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. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. The Consultant shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this Agreement, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The Consultant shall establish primary and non-contributory status 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: The Consultant and its insurer shall waive any right of subrogation against the 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 the Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least five 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 year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by the Consultant, the Consultant must purchase "extended reporting" coverage for a minimum of

five years after completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to the 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 calendar days written notice by certified mail, return receipt requested, has been given to the City. The Consultant is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the Consultant shall furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the City, the Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

#### **VERIFICATION OF COVERAGE**

The Consultant shall furnish the City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or designee prior to the City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the City, the Consultant shall immediately furnish City with 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**  
Van Ness Avenue Water Transmission Grid Main Project

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

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

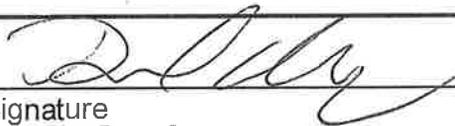
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Additional page(s) attached.



Signature \_\_\_\_\_

8-3-2021

Date \_\_\_\_\_

DAVID MOWRY

(Name) \_\_\_\_\_

BLAIR, CHURCH & FLYNN

(Company) \_\_\_\_\_

451 CLOVIS AVE, SUITE 200

(Address) \_\_\_\_\_

CLOVIS CA 93612

(City, State Zip) \_\_\_\_\_