

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

THIS AGREEMENT is made and entered into effective the 17th day of November, 2016, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Blackburn Consulting, a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional Acceptance Testing and Inspection services for projects within the City of Fresno right of way, hereinafter referred to as the "Project;" and

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

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

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

AGREEMENT

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

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

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or November 17, 2019, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within 1,095 consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$470,000, paid on a time and materials basis in accordance with the schedule of fees contained in **Exhibit A**. The Schedule of Fees may become revised from year to year on or about June 30th to account for prevailing wage rate increases as determined by the Department of Industrial Relations.

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

4. Termination, Remedies and Force Majeure.

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

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

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

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

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

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

(g) Any notice of termination sent to Consultant shall include the reason(s) for such termination or state that it is without cause.

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

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

- i. Permission granted to CONSULTANT to disclose information on one occasion shall not authorize CONSULTANT to further disclose such information or any other information or disseminate the same on any other occasion.
- ii. CONSULTANT shall not comment publicly to the press or any other media regarding the Agreement or CITY'S actions on the same, except to CITY'S personnel or CONSULTANT'S personnel involved in the performance of this Agreement at public hearings or in response to questions from a Legislative committee.
- iii. CONSULTANT shall not issue any news releases or any public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by CITY and receipt of CITY'S written permission.

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

risk and without liability or legal exposure to CONSULTANT. CONSULTANT may keep a copy of all drawings and specifications for its sole and exclusive use.

- i. In the event of the copyright of any reports or other products prepared under this Agreement by CONSULTANT or any subcontractor, the Federal Highway Administration ("FHWA") shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

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

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

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

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

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

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

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

(d) Upon request of CITY, CONSULTANT shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

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

9. Conflict of Interest and Non-Solicitation.

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

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of

impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, 23 U.S.C. § 112, FHWA regulations applicable to design and engineering consulting contracts found at 23 C.F.R. 172.1 *et seq.*, California Government Code Section 1090 *et. seq.*, the California Political Reform Act (California Government Code Section 87100 *et. seq.*), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 *et. seq.*) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, lawful or unlawful, contingent or otherwise, direct or indirect, to any party to solicit or procure this Agreement or any rights/benefits hereunder. CITY shall have the right, in its discretion, to deduct from any payment to CONSULTANT under this Agreement, or otherwise recover the full amount of, any rebate, kickback or other consideration paid by CONSULTANT in violation of any representation or warranty under this section.

(e) Neither CONSULTANT, nor any firm affiliated with CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project with the exception of any subcontractor whose services are limited to providing surveying or materials testing information. 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. An affiliated firm is one which is subject to the control of the same person(s) through joint-ownership or otherwise.

(f) CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this Agreement or any ensuing CITY construction project. CONSULTANT shall also disclose any current clients who may have a financial interest in the outcome of this Agreement or any ensuing CITY construction project, which will follow.

(g) CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(h) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the

provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

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

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

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

11. General Terms, Federal and State Assurances and Requirements.

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

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis. CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. CONSULTANT and its subcontractors shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for 3 years, or longer if required by law, from the date of final payment under the Agreement. CITY, the State, the State Auditor, FHWA or any duly authorized representative of the federal government shall have access to any books, records, papers, accounting records and other documents of CONSULTANT and its subcontractors that are pertinent to the Agreement for audit, examinations, excerpts, and transcriptions. Copies thereof shall be furnished by CONSULTANT, if requested. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of the 3-year time period, all records shall be retained and made available until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this section and in the event a subcontract is entered into for an amount in excess of \$25,000 the subcontract shall include this paragraph in its entirety. This Section 11(b) shall survive expiration or termination of this Agreement.

- (i) SPECIAL PROVISIONS

Certified Payroll Reports shall be submitted to the City of Fresno Construction Management Division on a weekly basis for all on-site work including all Field Tests, Overtime and Sample Pick-Up duties. Certified Payroll shall comply with Section 7-1.02k(3) of the California Standard Specifications and Section 1776 of the Labor Code. Each weekly Certified Payroll Report shall differentiate the labor performed on each project for the City of Fresno.

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

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

(d) CONSULTANT'S services pursuant to this Agreement shall be provided under the supervision of David Carruba, PE, and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

(e) CITY will carry out applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, CONSULTANT agrees to comply with all applicable federal and state assurances and requirements identified in **Exhibit D along with its Appendix A** and require that each subcontract include the same assurances by each of its subcontractors.

(f) Consultants shall comply with the current prevailing wage rate requirements throughout the length of this contract. Increased rates due to shift and holiday provisions shall only be applied to the base prevailing wage rate and shall be noted on project invoices and Certified Payroll Reports.

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

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

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability,

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

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

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

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

13. Independent Contractor.

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

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

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without

limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

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

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

16. Assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. RFQ Document. Any Request for Qualifications and documents issued therewith (collectively referred to herein as "RFQ") by CITY that resulted in selection of CONSULTANT for entry into this Agreement are hereby incorporated into and made a part of this Agreement. In the event of a conflict between the RFQ and this Agreement (including any Exhibit hereto), this Agreement (including any Exhibit hereto) shall take precedence.

///

///

///

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

CITY OF FRESNO,
a California municipal corporation

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

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: BC 10/28/16
Brandon Collet Date
Deputy City Attorney

REVIEWED BY:

JA
Jesus A. Gonzalez, PE, Professional
Engineer
Public Works Department

Addresses:

CITY:
City of Fresno
Attention: Jesus A. Gonzalez,
Professional Engineer
1721 Van Ness Avenue
Fresno, CA 93737
Phone: (559) 621-5641
FAX: (559) 457-1241

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form
4. Exhibit D - Federal and State Assurances
5. Appendix A to Exhibit D

Blackburn Consulting,
a California Corporation

By: Tom Blackburn

Name: Tom Blackburn, GE2311

Title: President

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

By: Grace Blackburn

Name: Grace Blackburn

Title: Secretary

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

Any Applicable Professional License:

Number: GE2311

Name: Tom Blackburn

Date of Issuance: February 1996

CONSULTANT:

Blackburn Consulting
Attention: Jason Paul,
Fresno Branch Manager
4186 W. Swift Ave., Ste. 107
Fresno, CA 93722
Phone: (559) 438-8411
FAX:

Exhibit A

SCOPE OF SERVICES

Consultant Service Agreement between City of Fresno ("City") and Blackburn Consulting ("Consultant")

2016 Quality Assurance Program - Acceptance Testing and Inspection Services for Projects
within the City of Fresno Right of Way

PROJECT TITLE

PROJECT OBJECTIVE:

Acceptance Testing Consultant (ATC) will provide materials acceptance testing and inspection services for assurances that materials incorporated into construction projects within the City of Fresno right of ways are in conformance with contract specifications. The materials laboratory shall be under the responsible management of a California registered Engineer with experience in sampling, inspection and testing of construction materials. The Engineer shall certify the results of all tests performed by laboratory personnel under the Engineers supervision.

SPECIAL PROVISIONS:

Certified Payroll Reports shall be submitted to the City of Fresno Construction Management Division on a weekly basis for all on-site work, including all Field Tests, Overtime and Sample Pick-Up duties. Certified Payroll shall comply with Section 7-1.02k(3) of the California Standard Specifications and Section 1776 of the Labor Code. Each weekly Certified Payroll Report shall differentiate the labor performed on each project for the City of Fresno.

Consultants shall comply with the current prevailing wage rate requirements throughout the length of this contract. Increased rates due to shift and holiday provisions shall only be applied to the base prevailing wage rate and shall be noted on project invoices and Certified Payroll Reports.

ACCEPTANCE TESTING SERVICES:

The scope of services and reimbursement, as detailed and outlined in the following paragraphs, shall be in conformance with the 2010 City of Fresno Quality Assurance Program Manual (2010 QAP) or as amended from time to time.

Tests and inspections shall be performed as listed below and outlined in the *Acceptance Sampling and Testing Frequency Log* in the 2010 QAP; or as requested by City of Fresno staff and/or required by project specifications.

The services required by each item are described below:

1. Perform Field Tests - This item provides reimbursement at prevailing wage rates (Group 3 Classification- Building/Construction Inspector and Field Soils and Material Tester Craft) for a field technician to perform tests in accordance with applicable standard procedures and perform requested inspections. The rate includes all on-site testing for a single technician only, rounded to the nearest ½ hour, beyond the minimum 1 hour unit. The reimbursement is for all basic reporting, equipment charges, insurance, training, billing, safety programs, invoicing, QA/QC, administrative services, or other expenses required to provide competent on-site testing

services. The rate also includes professional and non-professional supervision, routine report generation, and routine report review.

As a part of providing this service under this rate, it is the responsibility of the firms providing the work to confirm the actual time on-site with the assigned Construction Management Project Inspector on a daily basis. Failure to do this may result in time being reduced from invoices submitted at Construction Management's discretion.

If any laboratory test can be conducted on site (such as a single check point on an optimum moisture/Maximum Density curve), it shall be considered part of this cost and not also be charged as a laboratory test.

This reimbursement may not be used for any additional technician on a job site. Prevailing wage rates allow for alternate wage classifications for multiple technicians. When these situations arise which require more than one technician on a project at one time, contact Construction Management to negotiate an appropriate fee.

This reimbursement does not include travel time. A separate travel fee can be charged for travel costs (see item No. 1a. below).

This reimbursement does not include costs for non-routine report preparation such as submittal review, RFI response, providing recommendations or conclusions beyond passing of failing tests or specifications. Item number 1 includes reimbursement for all reporting requirements required by the applicable test method. Time to prepare non-routine report preparation can be charged using the Registered Engineer, Project Manager, and/or Administrative Staff fees on the enclosed schedule as approved by Construction Management.

1a. Trip Charge - This item is a lump sum fee that will provide reimbursement for staff travel time, mileage, fuel costs, maintenance, insurance, training, safety programs, or other expenses required to transport equipment and personnel to the job site.

This reimbursement is on a once per day, once per technician basis. If the technician travels away and back to the job site for sample delivery, lunch or break period, or multiple appointments in one day on a specific project, the reimbursement will only be paid once per day. Multiple Trip Charges can be charged if Construction Management requires either: 1) two technicians at one time performing different functions and operating different equipment; 2) a second shift requiring a second technician; 3) if the technician is required to leave the site to return samples to the laboratory, and then return to the site (cannot charge as Sample Pick-Up), or 4) off-site inspection on the same day that onsite inspection is required. If travel beyond the limits of the City of Fresno is required, contact Construction Management to negotiate an appropriate fee.

1b. Overtime - This item includes all of the reimbursements described in Item 1, but also covers the 1.5 times the prevailing wage rates (Group 3 Classification- Building/Construction Inspector and Field Soils and Material Tester Craft) for a field technician to perform tests in accordance with applicable standard procedures and perform requested inspections beyond 8 hours per day but no more than 12 hours per day. Also, the overtime rate covers any onsite work required to be completed on Saturday.

This reimbursement may not be used for overtime on any additional technician on a job site. Also, this reimbursement should not be used past 12 hours in one day (including travel time). This reimbursement does not cover overtime on second shift, holiday, or other rates applicable for anything beyond first shift, straight time, up to 12 hours per day.

2. Sample Pick-Up - This item provides reimbursement at prevailing wage rates (Group 3 Classification- Building/Construction Inspector and Field Soils and Material Tester Craft) for a field technician to travel from individual offices or job-sites to the requested job site or off-site location within the City of Fresno (including Wastewater Treatment Plant), and obtain soil, aggregate, concrete, etc. The fee is a lump sum that will also provide reimbursement for travel time, sampling time, mileage, fuel costs, maintenance, insurance, training, safety programs, or other expenses required to transport samples from the job site to the individual firms laboratory where the test will be conducted (not necessarily in Fresno Metropolitan area). Sample Pick-up includes all premium prevailing wage time for after hours, Saturdays and/or Sunday pick-ups.

This reimbursement is on a once per trip, once per technician basis for use on days when no testing or inspection is scheduled, and test methods or project schedules require that samples be picked up. Also, the sample pick-up rate will be used for off-site sampling of materials. If a technician is charged for at least the on-site field testing minimum, this rate does not apply. Multiple Sample Pick-Up charges can be charged if Construction Management requires either: 1) a sample must be picked up because the technician cannot leave the site; or 2) off-site inspection on the same day that onsite sample pick-up is required. If sample pick-up requires travel beyond the Fresno/Clovis Metropolitan Area, contact Construction Management to negotiate an appropriate fee.

3. Maximum Density and Optimum Moisture (ASTM D1557, CTM 216) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results to Construction Management Project Inspector within 24 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal costs, or any other cost required to provide this test not covered under another item in this Exhibit "A".

3a. Single Check Point (Maximum Density and Optimum Moisture) (ASTM D1557, CTM 216) - Provide a single check of the minimum three required for modified proctor results. Also, provide the maximum point for the CTM 216 wet method complete. Provide preliminary verbal report results to Construction Management Project Inspector within 24 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

4. Laboratory Moisture Content (ASTM D4643, ASTM D4959) - perform this test in strict accordance with the required procedure and provide preliminary verbal report results to Construction Management Project Inspector within 24 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope of this item includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this Exhibit "A".

5. Concrete Compressive Strength (ASTM C172, ASTM C143, ASTM C138, ASTM C39 and ACI standards) - This reimbursement will be for performance of laboratory tests on all types of concrete cylinders, grout and/or mortar cubes, etc. The scope of the item includes a set of 4 cylinders/samples, the required curing facilities, the physical compression strength testing in a calibrated apparatus, plus the preliminary verbal results for each break and the final formal report required by the testing method. The scope includes holding a single cylinder for up to six months. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope of this item includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this letter. Note: this item is for laboratory tests only, and does not include any field sampling, transportation, or inspection, which is covered under other items.

5a. Additional Cylinders/Samples - This item is reimbursable under the same scope as Item 5, but for each additional cylinder/sample beyond the 4 required in Item 5. This will only be used if additional samples are requested by the Project Inspector in order to verify project requirements.

Additional cylinders taken by the technician for contractors or the consultants QA/QC program that are not approved by City of Fresno Staff will not be reimbursed.

5b. Hold Cylinder (Six Months) (As Requested Only) - This item includes retaining a single sample in an appropriate curing environment for an additional six month period beyond the maximum six months stipulated by Item 5, Concrete Compressive Strength. The consultant shall verify with the Project Inspector at 6 month intervals, whether to perform the compression test or hold longer.

6. Flexural Strength of Concrete (ASTM C78, ASTM C293) (As Needed Only) - This item provides reimbursement to sample the material (each beam), prepare the specimen, cure the specimen, and perform this test in strict accordance with the required procedure and provide verbal or FAX results of flexural strengths to Construction Management Project Inspector within 24 hours of testing, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this Exhibit "A".

7. Sieve Analysis of Fine and Coarse Aggregates (CTM 202, ASTM C117, ASTM C136, ASTM D421, ASTM D422, ASTM D1140) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report of results with respect to project specifications (pass/fail) to Construction Management Project Inspector within 24 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this Exhibit "A".

8. Sand Equivalent (CTM 217) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results with respect to project specifications (pass/fail) to Construction Management Project Inspector within 24 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this Exhibit "A".

9. R-Value (CTM 301, ASTM D2844) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results to Construction Management

Project Inspector within 48 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this Exhibit "A".

10. AC Compaction (CTM 375) (As Requested Only) - In-Place Density and Relative Compaction - Perform this test in strict accordance with the required procedure. When notified at least 5 working days in advance, maximum density results are required within 4 hours of sampling (same day) and provide preliminary verbal report results to Construction Management Project Inspector during paving, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope of on-site in-place density testing/sampling is to be covered under Item 1 Field Testing. This item is for the laboratory work to obtain the maximum density. The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, sample disposal costs, or any other cost required to provide this test not covered under another item in this Exhibit "A".

11. Asphalt Content (CTM 310, CTM 362, CTM 382) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results to Construction Management Project Inspector within 4 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample and test materials disposal costs, or any other cost required to provide this test not covered under another item in this Exhibit "A".

12. Sieve Analysis of Aggregates (CTM C202) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results with respect to project

specifications (pass/fail) to Construction Management Project Inspector within 24 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this Exhibit "A".

13. Stability and Resistance to Plastic Flow (CTM 304, CTM 366) - perform these tests in strict accordance with the required procedure and provide preliminary verbal report results to Construction Management Project Inspector within 96 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this Exhibit "A".

14. Bulk Specific Gravity, Density, and Thickness of AC Core (CTM 308) (As Requested Only) - Perform this test in strict accordance with the required procedure with the addition of measuring and reporting the average thickness. The scope includes only the laboratory procedure of determining the bulk specific gravity, density and thickness of cores which are either collected by the City or a Contractor. When ordered, provide preliminary verbal report results to Construction Management Project Inspector within 24 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this letter. If the testing firm is required to take the cores, the sampling will be compensated under Field Testing Item No. 1 with an agreed to equipment charge.

15. Durability Index (CTM 229) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results with respect to project specifications (pass/fail) to Construction Management Project Inspector within 24 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this exhibit "A".

16. Abrasion of Coarse Aggregate by Use of the Los Angeles Rattler Machine (CTM 211) (500 Revolutions Minimum) (As Requested Only) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results with respect to project specifications (pass/fail) to Construction Management Project Inspector within 48 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

The scope includes all laboratory work, sample tracking costs, consultation, reporting costs, equipment costs, calibration costs, proper sample disposal cost, or any other cost required to provide this test not covered under another item in this exhibit "A".

17. Clay Lumps and Friable Particles in Aggregates (ASTM C142) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results with respect to project specifications (pass/fail) to Construction Management Project Inspector within 48 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

18. Soundness of Aggregates by Use of Sulfate (ASTM C88) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results with respect to project specifications (pass/fail) to Construction Management Project Inspector within 48 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

19. Cleanness of Coarse Aggregates (CTM 227) - Perform this test in strict accordance with the required procedure and provide preliminary verbal report results with respect to project specifications (pass/fail) to Construction Management Project Inspector within 48 hours of sampling, or as agreed to. Final results shall meet all testing procedure requirements within a written formal report, or a separate report; before reimbursement is approved.

20. Registered Civil Engineer - Reimbursement to attend meetings and review/prepare required correspondence beyond required reports (requires City approval prior to work). This charge can be billed in ½ hour increments for professional engineering services required beyond reporting of results and conclusions regarding field observations made as a part of Item No. 1. If requested by City staff, this reimbursement is to provide professional engineering evaluation and/or review of construction related conditions and for recommendations or conclusions in support of Construction Management projects.

21. Project Manager - To perform management duties, attend meetings, and prepare required correspondence beyond required reports (requires City approval prior to work). This charge can be billed in ½ hour increments for non-professional services required beyond reporting of results collected as a part of Item No. 1. If requested by City staff, this reimbursement is to provide non-professional engineering evaluation and/or review of construction related conditions and for recommendations or conclusions (under the direction of a professional engineer) in support of Construction Management projects.

22. Administrative Staff - Reimbursement for mass document copying, drafting, file searches, etc. (requires City approval prior to work). Note: cannot include any costs for billing. This charge can be billed in ½ hour increments for administrative services required beyond reporting of results collected as a part of Item No. 1. If requested by City staff, this reimbursement is to provide administrative time to respond to Construction Management requests.

23. Perform Field Tests on Privately Funded Projects - This item provides reimbursement at non-prevailing wage rates for a field technician to perform tests in accordance with applicable standard procedures and perform requested inspections. The rate includes all on-site testing for a single technician only, rounded to the nearest ½ hour, beyond the minimum 1 hour unit. The reimbursement is for all basic reporting, equipment charges, insurance, training, billing,

safety programs, invoicing, QA/QC, administrative services, or other expenses required to provide competent on-site testing services. The rate also includes professional and non-professional supervision, routine report generation, and routine report review.

As a part of providing this service under this rate, it is the responsibility of the firms providing the work to confirm the actual time on-site with the assigned Construction Management Project Inspector on a daily basis. Failure to do this may result in time being reduced from invoices submitted at Construction Management's discretion.

If any laboratory test can be conducted on site (such as a single check point on an optimum moisture/Maximum Density curve), it shall be considered part of this cost and not also be charged as a laboratory test.

This reimbursement may not be used for any additional technician on a job site. When these situations arise which require more than one technician on a project at one time, contact Construction Management to negotiate an appropriate fee.

This reimbursement does not include travel time. A separate travel fee can be charged for travel costs (see item No. 1a).

This reimbursement does not include costs for non-routine report preparation such as submittal review, RFI response, providing recommendations or conclusions beyond passing of failing tests or specifications. Item number 20 includes reimbursement for all reporting requirements required by the applicable test method. Time to prepare non-routine report preparation can be charged using the Registered Engineer, Project Manager, and/or Administrative Staff fees on the enclosed schedule as approved by Construction Management.

23a. Overtime - This item includes all of the reimbursements described in Item 20, but also covers the 1.5 times the non-prevailing wage rates for a field technician to perform tests in accordance with applicable standard procedures and perform requested inspections beyond 8 hours per day but no more than 12 hours per day. Also, the overtime rate covers any onsite work required to be completed on Saturday.

This reimbursement may not be used for overtime on any additional technician on a job site. Also, this reimbursement should not be used past 12 hours in one day (including travel time). This reimbursement does not cover overtime on second shift, holiday, or other rates applicable for anything beyond first shift, straight time, up to 12 hours per day.

24. Sample Pick-Up - This item provides reimbursement at non-prevailing wage rates for a field technician to travel from individual offices or job-sites to the requested job site or off-site location within the City of Fresno (including Wastewater Treatment Plant), and obtain soil, aggregate, concrete, etc. The fee is a lump sum that will also provide reimbursement for travel time, sampling time, mileage, fuel costs, maintenance, insurance, training, safety programs, or other expenses required to transport samples from the job site to the individual firms laboratory where the test will be conducted (not necessarily in Fresno Metropolitan area). Sample Pick-up includes all premium wage time for after hours, Saturdays and/or Sunday pick-ups.

This reimbursement is on a once per trip, once per technician basis for use on days when no testing or inspection is scheduled, and test methods or project schedules require that samples be picked up. Also, the sample pick-up rate will be used for off-site sampling of

materials. If a technician is charged for at least the on-site field testing minimum, this rate does not apply. Multiple Sample Pick-Up charges can be charged if Construction Management requires either: 1) a sample must be picked up because the technician cannot leave the site; or 2) off-site inspection on the same day that onsite sample pick-up is required. If sample pick-up requires travel beyond the Fresno/Clovis Metropolitan Area, contact Construction Management to negotiate an appropriate fee.

**2016 CITY OF FRESNO QAP
SCHEDULE OF FEES**

	Description of Service/Test	Rate
1.	Perform Compaction Tests; and sample/test concrete (prevailing wage, 1½ hour minimum, ½ hour increments)	\$98.00 /ea.
1a.	Trip Charge (non-prevailing wage, includes all prep-work, mileage and vehicle costs)	\$46.50 /ea.
1b.	Overtime rate for item No. 1 (1.5 times prevailing wage plus markups)	\$125.00 /hr.
2.	Sample Pick up (Prevailing Wage) - Pick up soil for M/D curves or on-site AB. No testing, trip charge included	\$84.50 /ea.
3.	Maximum Density and Optimum Moisture ASTM D1557, CTM 216	\$210.00 /test
3a.	Single check point ASTM D1557, CTM 216	\$95.00 /test
4.	Laboratory Moisture Content - ASTM D4643, ASTM D4959	\$33.00 /test
5.	Concrete compressive strength; set of 4 cylinders, cure plus breaks	\$91.00 /test
5a.	Each additional cylinder cure plus breaks	\$27.50 / ea.
5b.	Hold Cylinder (6 months)	\$20.00 /ea.
6.	Flexural Strength of Concrete ASTM C78, ASTM C293 each beam	\$96.50 /test
7.	Sieve Analysis of Fine and Coarse Aggregates CTM 202 ASTM C117 ASTM C136, ASTM D421, ASTM D422, ASTM D1140 (not including hydrometer)	\$158.00 /test
8.	Sand Equivalent CTM 217	\$116.50 /test
9.	R-Value: CTM 301; ASTM D2844	\$250.00 /test
10.	AC Compaction: CTM 375 In-Place Density and Relative Compaction (requires 2 hour results for Hveem maximum)	\$285.00 /test
11.	Asphalt Content: CTM 310, CTM 362, CTM 382	\$192.50 /test
12.	Sieve Analysis of Aggregates CTM 202	\$145.00 /test
13.	Stability: CTM 304; CTM 366	\$189.50 /test
14.	Bulk Specific Gravity, Density, and Thickness of AC Core CTM 308	\$51.00 /test
15.	Durability index CTM 229	\$181.00 /test
16.	Abrasion of Coarse Aggregate by Use of the Los Angeles Rattler Machine CTM 211	\$200.00 /test
17.	Clay Lumps and Friable Particles in Aggregates ASTM C142	\$171.00 /test
18.	Soundness of Aggregates by Use of Sulfate ASTM C88	\$555.00 /test
19.	Cleanness of Coarse Aggregates CTM 227	\$110.00 /test
20.	Registered Civil Engineer - to attend meetings, review/prepare required correspondence and reports. Additional work beyond required services requires prior City approval.	\$158.50 /hr.
21.	Project Manager- to attend meetings, review/prepare required correspondence and reports. Additional work beyond required services requires prior City approval.	\$115.50 /hr.
22.	Administrative Staff - Mass document copying, drafting, file searches, etc. Note: cannot include any costs for billing	\$65.00 /hr.
23.	Perform Compaction Tests on Privately Funded Projects; and sample/test concrete (1½ hour minimum, ½ hour increments)	\$74.00 /ea.

23a.	Overtime rate for item No. 22 (1.5 times basic wage)	\$96.50 /hr.
24.	Sample Pick up (non-Prevailing Wage) - Pick up soil for M/D curves or on-site AB. No testing, trip charge included	\$79.00 /ea.

Exhibit B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno ("CITY") and Blackburn Consulting ("CONSULTANT")

2016 Quality Assurance Program - Acceptance Testing and Inspection Services for Projects
within the City of Fresno Right of Way
PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

MINIMUM LIMITS OF INSURANCE

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

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

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

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

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

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

4. **EMPLOYER'S LIABILITY:**

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

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

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

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents, and volunteers; or
- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. CITY, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional

insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONSULTANT's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of CONSULTANT's insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

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

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

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

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

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

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

SUBCONTRACTORS - If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no side agreement is required, CONSULTANT shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONSULTANT shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONSULTANT, and CITY, prior to commencement of any work by the subcontractor.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

2016 Quality Assurance Program - Acceptance Testing and Inspection Services for Projects
within the City of Fresno Right of Way

PROJECT TITLE

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

Explanation: _____

#3. BCI works with design firms and right-of-way firms who may do business with the City of Fresno.

#5. Scott Raney, Engineering Inspector employed by the City of Fresno is a brother to Ken Raney BCI's project manager.

Additional page(s) attached.



Signature

October 25, 2016

Date

Tom Blackburn

(name)

Blackburn Consulting

(company)

4186 W. Swift Avenue, Suite 107

(address)

Fresno, CA 93722

(city state zip)

(city state zip)

Exhibit D
FEDERAL AND STATE ASSURANCES
Consultant Service Agreement between City of Fresno ("CITY")
and Blackburn Consulting ("CONSULTANT")
2016 Quality Assurance Program - Acceptance Testing and Inspection Services for Projects
within the City of Fresno Right of Way

1. CONSULTANT shall comply with and require its Subcontractors to comply with the following:
 - a. 23 USC §112 regarding Highways and the letting of contracts to Architects and Engineers;
 - b. The provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900(a-f), set forth in Chapter of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Give a written notice of their obligations under this clause to any labor organizations with which they have a collective bargaining or any other agreements as appropriate. **INCLUDE THIS ENTIRE CLAUSE IN ANY AND ALL SUBCONTRACTS.**
 - c. **Appendix A** attached hereto and incorporated herein.

2. Cost Principles
 - a. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1 Part 31.000 et seq., shall be used to determine the allowability of cost for individual items.
 - b. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - c. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to CITY.

3. Subcontracting
 - a. CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the CITY'S Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
 - b. Any subcontract in excess of \$25,000 shall contain ALL the provisions stipulated in this Agreement to be applicable to subcontractors.
 - c. Any substitution of subconsultants/subcontractors must be approved in writing by the CITY'S Contract Manager.

4. Equipment Purchase

- a. Prior authorization in writing, by the CITY'S Contract Manager shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide a written request which includes an evaluation of the necessity or desirability of incurring such costs, three competitive quotations obtained in the manner prescribed in the CITY'S Municipal Code Section 4-101(d) or 4-102 as applicable or a sole source justification as provided in the CITY'S Administrative Order No. 3-3.
- b. Any equipment purchased as a result of this Agreement is subject to the following: CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, CONSULTANT may either keep the equipment and credit CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit CITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT'S expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by CITY. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000.00 is credited to the project.
- c. The above provisions shall be included in all subcontracts in excess of \$25,000.

5. PROHIBITION OF EXPENDING CITY STATE OR FEDERAL FUNDS FOR LOBBYING
This section only applies to contracts where federal funding will exceed \$100,000.

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or CITY appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

6. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

APPENDIX A TO EXHIBIT D
Consultant Service Agreement between City of Fresno ("CITY")
and Blackburn Consulting ("CONSULTANT")
2016 Quality Assurance Program - Acceptance Testing and Inspection Services for Projects
within the City of Fresno Right of Way

(1) CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this Agreement.

(2) CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the Agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) CONSULTANT shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to CONSULTANT'S books, records, accounts, other sources of information, and its facilities as may be determined by STATE or Federal Highway Administration ("FHWA") to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the State of California ("STATE") or the FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

(5) In the event of CONSULTANT'S noncompliance with the nondiscrimination provisions of this Agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to CITY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. CONSULTANT shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means

of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request STATE enter into such litigation to protect the interests of STATE, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

(7) CONSULTANT shall execute the following CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

I HEREBY CERTIFY that I am Tom Blackburn, and duly authorized representative of the firm of Blackburn Consulting whose address is 4186 W Swift Avenue, Suite 107, Fresno, CA 93722, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement; nor
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date) October 25, 2016 (Signature) 