

AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT (Agreement) is made and entered into, effective _____, by and between the CITY OF FRESNO, a California municipal corporation (City), and BKF Engineers, a California Corporation (Consultant).

RECITALS

WHEREAS, the City desires to obtain professional engineering services for the design of plans and general construction contract documents for Shaw Avenue Roadway Improvements from Fruit Avenue to Palm Avenue (Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a Professional Engineer and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

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

WHEREAS, this Agreement will be administered for the City by its Public Works Department Director (Director) or 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.

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

(a) Part One. Schematic Design Phase.

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

(2) The Consultant shall conduct studies and investigations as

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

(3) The Consultant shall provide a preliminary evaluation of the Project taking into consideration the City's estimate of the cost of construction (Construction Budget) of Two Million Two Hundred and Twenty-Six Thousand Nine Hundred and Thirty-Five Dollars (\$2,226,935.00), including alternative approaches to design and construction of the Project.

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

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

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

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

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered, and deliverables submitted within seventy-five (75) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within seven (7) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

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

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

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

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part 1 as that which may be excluded from the general construction contract, the City shall have the option of accepting or rejecting the revised estimate and the Consultant shall, at no additional cost to the City, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by the City. The City shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in the Consultant's compensation.

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

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered, and deliverables submitted within forty (40) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within seven (7) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

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

with this Part Three:

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

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

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

(4) The Consultant shall provide the City with four (4) sets of completed plans and three (3) sets of completed specifications for review and final acceptance by the City. Should the plans and specifications as submitted by the Consultant not be accepted by the City, the Consultant shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to the City.

(5) After acceptance of final corrections, if any, the Consultant shall provide the City with one set of accepted reproducible tracings and bid documents for the Project. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: AutoCAD 2018 and Microsoft Word.

(6) The Consultant shall submit a final estimate of construction cost for review and acceptance by the City. Such estimate shall be calculated as of the date all general construction contract documents are delivered to the City in final form ready for reproduction and advertising. Such estimate shall include, but

shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated basis, and any equipment, or fixtures which may be incorporated in or excluded from the general construction contract.

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part 2 as that which may be excluded from the general construction contract, the City shall have the option of accepting or rejecting the final estimate. If the City elects to reject the final estimate, the Consultant shall at no additional cost to the City, make such design changes as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by the City.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered, and deliverables submitted within thirty (30) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Resubmittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within seven (7) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

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

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

(2) The Consultant shall, within 7 calendar days of any request by the City, expeditiously draft and promptly provide addendum as determined by the City to be reasonable or necessary for the bidding process.

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by the City, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, the Consultant shall, within 14 calendar days of any request by the City, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, at no additional cost to the City provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. The Consultant shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to the City for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to the Consultant from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%.

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

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

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

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

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

(5) Upon written request by the City, the Consultant shall render written recommendations on change orders, claims, disputes, or other questions arising out of the general construction contract, in a timely manner. Recommendations by the Consultant in favor of a change order that is consequently accepted by the City shall constitute approval by the Consultant who shall then approve the change order in writing. The Consultant shall not unreasonably withhold written approval in the event the City accepts a change order that the Consultant recommended to be rejected. In the event of any technical disputes, the Consultant shall provide the City with the Consultant's

written interpretation of the contract documents. The period for the Consultant review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre- construction conference as mutually agreed upon by the City, the Consultant, and the general construction contractor. If the City, the Consultant, and the respective general construction contractor are unable to mutually agree on such period for the Consultant review, then the City will make the determination and that determination will be final.

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

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

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

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

(10) The Consultant shall prepare Record Drawings by updating the accepted general construction documents in Part 3 to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the City, (iii) the Consultant provided Request for Information responses, and (iv) any the Consultant bulletins, amendments, or clarifications. The Consultant shall provide the City with one set of vellum Record Drawings for the Project within twenty-one (21) calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Resubmittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within seven (7) calendar days from receipt of the City comments unless an extension of time is approved in writing by the Director. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of Record Drawings in the following format: AutoCAD 2018.

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

(a) Provide, upon request and cooperation of the Consultant, access to, and make all provisions necessary to, enter upon public or private lands as required for the Consultant to perform such services and inspections as are required in development

of the Project; provided, however, if the City is unable to obtain access to enter upon public or private lands, the Consultant shall not be relieved from performing its services as to those public and private lands that are accessible. If the Consultant notifies the City that a topographic survey is required by the Consultant in connection with the consulting services, then the City will be responsible for conducting the topographic survey.

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

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

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

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

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

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

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

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

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

3. Compensation.

(a) the Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of One Hundred and Forty-Nine Thousand Seven Hundred Seventy-Three dollars (\$149,773),

and a contingency amount not to exceed Ten Thousand Dollars (\$10,000) for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by the Consultant in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of the City business. Such statements shall be for an amount no greater than that attributable to the Part upon which the Consultant is then engaged as provided in Section 3(c) below.

(c) For purposes of determining the division of the total compensation to the Consultant as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by the City as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of the Consultant's performance as follows: Part 1 – Fifty-Four percent (54%), Part 2 – Seventeen percent (17%), Part 3 – Fifteen percent (15%), Part 4 – Three percent (3%) and Part 5 – Eleven (11%). Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to the Consultant.

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

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

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

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

(c) In the event of termination due to failure of the Consultant to

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

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

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

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

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

(h) 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 the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary

and confidential information of the City, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

i. Permission granted to the Consultant to disclose information on one occasion shall not authorize the Consultant to further disclose such information or any other information or disseminate the same on any other occasion.

ii. The Consultant shall not comment publicly to the press or any other media regarding the Agreement or the City's actions on the same, except to the City's personnel or the Consultant's personnel involved in the performance of this Agreement at public hearings or in response to questions from a Legislative committee.

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

i. In the event of the copyright of any reports or other products prepared under this Agreement by the 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 the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 5.

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

6. Professional Skill.

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

7. Indemnification.

To the furthest extent allowed by law, including California Civil Code section 2782.8, the Consultant shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Consultant, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

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

(b) If at any time during the life of the Agreement or any extension, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Consultant shall be withheld until notice is received by the City that the required insurance has been

restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

(d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Consultant and the City prior to the commencement of any services by the subcontractor. the Consultant and any subcontractor/sub-consultant shall establish additional insured status for the City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

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

(b) the Consultant shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, 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 the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The Consultant shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, the Consultant shall immediately notify the City of these facts in writing.

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

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

(e) Neither the Consultant, nor any firm affiliated with the Consultant, nor any of the Consultant's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project with the exception of any subcontractor whose services are limited to providing surveying or materials testing information. The Consultant and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. An affiliated firm is one which is subject to the control of the same person(s) through joint-ownership or otherwise.

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

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

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

10. Recycling Program.

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

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

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

(c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) 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 the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or designee.

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis. The 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. The 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. the 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 the Consultant and its subcontractors that are pertinent to the Agreement for audit, examinations, excerpts, and transcriptions. Copies thereof shall be furnished by the 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 the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this section 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.

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

Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

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

(e) The City will carry out applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, the 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.

12. Nondiscrimination.

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

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

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

(c) the Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant in pursuit hereof, state that all

qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

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

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

13. Independent Contractor.

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

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

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

14. Notices.

Any notice required or intended to be given to either party under the terms of this

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

15. Binding.

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

16. Assignment.

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

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

17. Compliance With Law.

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

18. Waiver.

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

19. Governing Law and Venue.

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

20. Headings.

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

21. Severability.

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

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.

22. 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.

23. Exhibits.

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

24. 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.

25. 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.

26. 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.

27. Extent of Agreement.

Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified

only by written instrument duly authorized and executed by both the City and the Consultant.

28. RFQ Document.

Any Request for Qualifications and documents issued therewith (collectively referred to herein as “RFQ”) by the City that resulted in selection of the 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.

29. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

30. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

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

CITY OF FRESNO,
A California municipal corporation

By: _____
Randall W. Morrison, PE, MCE,
Director
Capital Projects Department

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy

No signature of City Attorney required.
Standard Document **#DPW-S FHWA Eng. CSA, Long Form Total Fee - Contingency (11-2022)** has been used without modification, as certified by the undersigned.

By: Isaac Campos
Isaac Campos, Engineer II
Capital Projects Department

REVIEWED BY:

Jesus Avitia, P.E.
Jesus Avitia, PE, Assistant Director
Public Works Department

Addresses:

CITY:
City of Fresno
Attention: Isaac Campos, Engineer II
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8657
E-mail: Isaac.campos@fresno.gov

BKF Engineers,
A California Corporation

By: _____
Name: Jason Kirchmann

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

By: _____
Name: Jean Chen

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

Any Applicable Professional License:

Number: C 80868
Name: Rebecca Dower
Date of Issuance: _____

CONSULTANT:
BKF Engineers
Attention: Jason Kirchmann, Principal
4675 MacArthur Court, Suite 400,
Newport Beach, CA, 92560
Phone: (949) 526-8460
E-mail: Jkirchmann@bkf.com

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

EXHIBIT A

SCOPE OF SERVICES

**Consultant Service Agreement between City of Fresno
(City) and BKF Engineers (Consultant)
Shaw Avenue Roadway Improvements from
Fruit Avenue to Palm Avenue**

SCOPE OF SERVICES

PART 1 – SCHEMATIC DESIGN PHASE

1. **Project Management and Routine Project Team Meetings:** Consultant will provide general project management and consultant oversight services including defining and tracking tasks, status updates, and general coordination. Consultant will schedule regular progress meeting to discuss the status of the project, upcoming efforts, issues, coordination items, and other relevant information. Agendas, action items log, progress reports with invoices, updated project schedules, and meeting minutes will be prepared and distributed. Consultant will also maintain frequent and timely communication with City staff throughout the duration of the project.
2. **Project Kick-Off Meeting:** Consultant will facilitate a project kick-off meeting. Consultant will prepare meeting minutes and distribute to all in attendance for review and concurrence following the kick-off meeting.
3. **Site Investigation and Photo Diary:** Consultant will facilitate a site investigation meeting with City staff and other pertinent stakeholders as identified by the City. During the course of the site walk, Consultant will collect photos within the project limits and develop a Photo Diary. This Photo Diary will have an index map showing the location/orientation of where the photos were taken, for future City and design team reference.
4. **Utility Data Research and Coordination:** Consultant will contact the City, County, and other utility (including, and not limited to water, sewer, storm, irrigation, and electric/gas) companies that have utilities within the streets. We will prepare Utility A Letters and distribute to utility purveyors present within the Project Limits. Consultant will develop and maintain a record of utility notifications including contact numbers, dates or transmittals, and materials transmitted in a Utility Communication Log, to be provided to the City along with each design milestone.
5. **Utility Conflict Review and Resolution:** Consultant will prepare a utility composite drawing, indicating the record locations of utilities within the project limits. Using this composite drawing, consultant will identify potential conflicts between the proposed improvements and the existing utilities. These potential conflicts will be identified on a colored Utility Conflict Exhibit and will be provided to and reviewed with City staff.
6. **Pothole Exhibit:** Consultant will develop an exhibit illustrating the desired locations for utility pothole data collection, by others.
7. **Topographic Survey Data Processing:** The City will prepare a topographic and boundary survey under the direction of a California Licensed Professional Land Surveyor which will be provided to

the team for use during design. City will provide a CAD file with boundary linework, a topography, and control information. Consultant will utilize the CAD file as a background to our design drawings, modifying the display properties of the file. Consultant will also review CAD file and request any additional topographic survey as deemed necessary for design completion.

8. **Geotechnical Investigation and Report:** Consultant will provide new pavement structural sections and pavement rehabilitation recommendations for the proposed street improvements. Geotechnical investigation will include drilling seven (7) 5-foot deep borings within the project limits. Core samples of the existing pavement sections will be collected at each boring location. Based on the R-value test results, and the Traffic Index (TI) provided by City, a technical memorandum will determine pavement structural sections.
9. **Right of Way Needs Exhibit:** Under this task, consultant will develop a single, comprehensive exhibit of the project corridor, showing the mapped right of way (by others), the proposed project improvements, and the work areas outside of the right of way.
10. **Legal Descriptions and Plats:** Upon confirmation of the acquisition of easements and/or right of way, to be completed by City staff, consultant will prepare a legal description and plat to accompany each acquisition required. The legal description will provide a metes and bounds description (or other generally accepted land description method) of the property to be encumbered with a graphical plat.
11. **Schematic Design (30%) Layout:** Under this task, consultant will develop a conceptual-level design layout. To support our conceptual design, consultant, in conjunction with EMI, will develop a pavement rehabilitation matrix, identifying the rehabilitation options, considerations, limitations, and order-of-magnitude estimate. The package will include a graphical layout of the modified medians, new pedestrian push button poles, and replaced curb ramps (up to a total of 17 replacement ramps, based on the City provided graphic associated with the funding application).

PART 2 – DESIGN DEVELOPMENT PHASE

1. **Design Development (60%) Drawings:** Based on the comments received on the conceptual design submittal, consultant will advance the design of the street improvements. Consultant will prepare the following drawings for the schematic design submittal:
 - Title Sheet
 - Notes & Legend
 - Typical Roadway Sections
 - Demolition Plans
 - Street Improvement Plan
 - Signage and Striping Plan
 - Curb Ramp Grading Enlargements
 - Construction Details
2. **Engineer's Opinion of Probable Construction Costs:** An Engineer's Opinion of Probable Construction Costs will be developed and updated with each design submittal.

3. **Specifications:** Specifications will be developed using City standard boilerplate specification templates (UBIDS) and Caltran specifications.
4. **Quality Assurance/Quality Control (QA/QC):** Consultant will perform quality control checks for each submittal in accordance with consultant's Quality Manual prior to submitting to the City.
5. **Utility Coordination:** Once consultant has identified all 3rd party utilities present in the project area, consultant will engage with the impacted utility companies, and as needed, will proceed with the Utility Certification requirements for the project, including the Relocation Claim Letter, Notice to Owner, and Utility Agreement forms. The consultant will prepare and distribute the Utility B and C Letters as part of our utility conflict resolution process.

PART 3 – CONSTRUCTION DOCUMENTS PHASE

1. **Construction Document (100%) Drawings:** Consultant will finalize the plans and prepare the design for inclusion on the bid solicitation package. Consultant will prepare the following drawings for the construction documents submittal:
 - Title Sheet
 - Notes & Legend
 - Typical Roadway Sections
 - Demolition Plans
 - Street Improvement Plan
 - Signage and Striping Plan
 - Curb Ramp Grading Enlargements
 - Construction Details
2. **Engineer's Opinion of Probable Construction Costs:** An Engineer's Opinion of Probable Construction Costs will be developed and updated with each design submittal.
3. **Specifications:** Specifications will be developed using City standard boilerplate specification templates (UBIDS) and Caltran specifications.
4. **Quality Assurance/Quality Control (QA/QC):** Consultant will perform quality control checks for each submittal in accordance with consultant's Quality Manual prior to submitting to the City.
5. **Utility Coordination:** Consultant will continue to engage with the impacted utility companies and coordinate utility relocations, as needed.

PART 4 – BIDDING PHASE

- **Bid Support:** Consultant will assist the City during the construction bid solicitation process on an as-needed basis. Bid support services are anticipated to include the following:
 - a. Addend pre-bid conference
 - b. Respond to Requests for Information (RFIs) during the bid process
 - c. Assist City with issuing bid addendum packages
 - d. Summarizing and tabulating received bids

PART 5 – CONSTRUCTION PHASE

1. **Construction Support:** Consultant will allocate time to support the contractor during the construction phase of the project. Anticipated services include written responses to RFIs, review of contractor submittals, review of contractor change orders and drawings revisions, as needed. Consultant will be available to attend meetings and visits to the project site with the contractor during the construction process. Anticipated meetings include the following:
 - a. Pre-construction meeting
 - b. Two (2) coordination meetings/site visits during construction
2. **Project Close Out:** Following completion of construction, consultant will prepare record drawings based on the Contractor's as-builts to document the final location of the improvements. Final record drawings will be provided on Mylars and will include final CAD files. All project meeting minutes, design decisions, and other related project documentation will be packaged and turned over to the City for their records.

SCOPE QUALIFICATIONS AND ASSUMPTIONS

Consultant's services are limited to those expressly set forth in the scope. The consultant will have no other obligations or responsibilities for the project except as provided in this proposal letter, or as otherwise agreed to in writing. Consultant will provide the scope of services consistent with, and limited to, the standard of care applicable to such services. Any participation in non-adversarial procedures, or other right to repair items, is considered as additional services. For the scope of work identified, *some* key assumptions are identified below:

- a) **Topographic Survey:** A current design topographic base map using ground surveying methods will be provided prior to the start of 30% design. This survey will include the location, rim, and invert of gravity utilities and location of 'dry' utility surface facilities within the project area along with evidence of other buried utilities. A boundary survey for the project for use in design will be part of the survey.
- b) **Lighting Design & Photometric Analysis:** Design or modification of street lighting is not currently included in our scope of work. Consultant can provide these services if the City finds this work to be needed.
- c) **Traffic Signal Design:** Design or modification of traffic signals is not currently included in our scope of work. Consultant can provide these services if the City finds this work to be needed. The re-establishment of Traffic Loop Detectors will be shown on the Signage and Striping Plans.
- d) **Meetings:** Routine meetings are assumed to be held via remote conference.

Drawings: All drawings will be prepared in AutoCAD format. Submittals will be provided in PDF format and will also provide four (4) hard copies at each milestone.

EXHIBIT B
INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno
(City) and BKF Engineers (Consultant)

Shaw Avenue Roadway Improvements from
Fruit Avenue to Palm Avenue

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 Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance, or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to the Consultant’s profession.

MINIMUM LIMITS OF INSURANCE

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

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY (Errors and Omissions):**
 - (i) \$1,000,000 per claim/occurrence; and,
 - (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

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

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. the Consultant shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form

CG 20 10 11 85.

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

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

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

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

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to the City. The Consultant is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the

Consultant shall furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the City, the Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (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 the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

VERIFICATION OF COVERAGE

The Consultant shall furnish the City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or designee prior to the City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the City, the Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

SUBCONTRACTORS - If the Consultant subcontracts any or all of the services to be performed under this Agreement, the 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 the City Risk Manager or designee. If no side agreement is required, the Consultant shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and the Consultant shall ensure that the City, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with the Consultant, and the City, prior to commencement of any work by the subcontractor.

EXHIBIT C

DISCLOSURE OF CONFLICT OF INTEREST

Shaw Avenue Roadway Improvements from Fruit Avenue to Palm Avenue

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

Explanation: _____

☐ Additional page(s) attached.


Signature

9/29/2023

Date

Jason Kirchmann

Name

BKF Engineers

Company

4675 MacArthur Court, Suite 400

Address

Newport Beach, CA 92560

City, State, Zip

EXHIBIT D

FEDERAL AND STATE ASSURANCES

Consultant Service Agreement between City of Fresno (City) and BKF Engineers (Consultant)

Shaw Avenue Roadway Improvements from Fruit Avenue to Palm Avenue

1. The 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. The 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. The 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 the 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 the Consultant to the City.
3. Subcontracting
 - a. The 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 the Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or the Consultant services. The 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: the 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, the City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, the Consultant may either keep the equipment and credit the 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 the City procedures; and credit the City in an amount equal to the sales price. If the Consultant elects to keep the equipment, fair market value shall be determined at the Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to the City and the Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the 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 the City STATE OR FEDERAL FUNDS FOR LOBBYING

This section only applies to contracts where federal funding will exceed \$100,000.

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

1. No state, federal or the City appropriated funds have been paid, or will be paid by-or-on behalf of the 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; the 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. the 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, the 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. The Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. the 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. The 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.

The 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 BKF Engineers (Consultant)

Shaw Avenue Roadway Improvements from Fruit Avenue to Palm Avenue

(1) The 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) The 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. The 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 the 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 the 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) The Consultant shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to the 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 the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State of California (STATE) or the FHWA as appropriate and shall set forth what efforts the Consultant has made to obtain the information.

(5) In the event of the 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 the 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) The 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. the 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 the Consultant becomes involved in, or is threatened with, litigation with a sub- applicant or supplier as a result of such direction, the Consultant may request STATE enter into such litigation to protect the interests of STATE, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

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

I HEREBY CERTIFY that I am Jason Kirchmann, and duly authorized representative of the firm of BKF Engineers whose address is 4675 MacArthur Court, Suite 400, Newport Beach, CA 92560, 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 the 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 the 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) 9/29/2023

(Signature) 