

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

THIS AGREEMENT is made and entered into effect on January 6, 2020, by and between the CITY OF FRESNO, a California municipal corporation (City), and Kleinfelder, Inc., a California Incorporation (Consultant).

**RECITALS**

WHEREAS, City desires to obtain professional geotechnical engineering/environmental engineering services for site investigation of 2165 S. Elm Street (Project) and

WHEREAS, the Consultant is engaged in the business of furnishing services as a professional engineering firm 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 City by its PARCS Interim Director (Administrator) or designee.

**AGREEMENT**

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

1. Scope of Services. The Consultant shall perform to the professional Standard of Care defined herein, as that level of care and skill ordinarily provided by similar professionals operating in the same locality and time as the Services contemplate hereunder, and to the satisfaction of City the Services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through February 10, 2020, subject to any earlier termination in accordance with this Agreement. The services of the Consultant as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 \$40,500. Such fee includes all expenses incurred by the Consultant in performance of the services.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of City business.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to 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.

4. Termination, Remedies and Force Majeure.

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

(b) Immediately upon any termination or expiration of this Agreement, 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 City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by 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, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.

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

(e) the Consultant shall provide CITY with adequate written assurances of future performance, upon Administrator's request, 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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 Administrator. 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, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

(b) Any and all writings and documents prepared or provided by the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The writings and documents are not intended to be suitable for re-use by the City or others on extensions of the Project or any other project. Any re-use, without prior written verification or adaptation by the Consultant for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to Consultant.

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

Revised page to be inserted into agreement January 13, 2020

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 City's Risk Manager or designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to 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.

Signature / Acknowledgment

 1/13/20

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

9. Conflict of Interest and Non-Solicitation.

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

(b) the Consultant shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 the City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

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

(e) Neither the Consultant, nor any of the Consultant's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, the Consultant shall remain responsible for complying with Section 9(b), above.

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

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

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

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

11. General Terms.

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

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of the Consultant pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

13. Independent Contractor.

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

(b) This Agreement does not evidence a partnership or joint venture between the Consultant and the City. The Consultant shall have no authority to bind the City absent 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.

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

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

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

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained

within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

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

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

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

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

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

CITY OF FRESNO,  
a California municipal corporation

By: [Signature]  
TJ Miller,  
Interim PARCS Director

APPROVED AS TO FORM:  
City Attorney's Office

By: [Signature] 1/13/20  
[Name] Date  
Senior Deputy City Attorney

ATTEST:  
YVONNE SPENCE, CRM MMC  
City Clerk

By: [Signature] Date  
Deputy Marco Martinez 1/14/2020

Addresses:

CITY OF FRESNO:  
City of Fresno  
Attention: TJ Miller,  
Interim PARCS Director  
1515 E. Divisadero Street  
Fresno, CA 93721  
Telephone: 559-621-2900  
Facsimile: 559-457-1575

Attachments:

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

ALL-B Boilerplate CSA Total Fee (07-2019)

Kleinfelder, Inc.  
a California Incorporation

By: [Signature]  
Name: STEPHEN P. PLAUSON

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

CONSULTANT:  
Kleinfelder, Inc.  
Attention: Stephen Plauson,  
Principal Geotechnical Engineer  
3731 W. Ashcroft Avenue  
Fresno, CA 93722  
Telephone: 559-577-1449  
Facsimile: 559-442-5081

## Exhibit A

### SCOPE OF SERVICES Consultant Service Agreement between City of Fresno (City) and Kleinfelder, Inc. (Consultant) Site Investigation – 2165 S. Elm Street

#### INTRODUCTION

The purpose of the Workplan is to perform a preliminary evaluation of soil gas, soil, and groundwater conditions in those areas of the site that may have been adversely impacted from the operation of a form dry cleaner on the Property. This scope of work includes a summary of proposed tasks, cost estimates, and assumptions.

The scope of work consists of the following tasks:

Task 1 – Pre-Field Activities

Task 2 – Field Activities

Task 3 – Investigation-Derived Waste Characterization

Task 4 – Preparation and Submittal of the Investigation Report

#### **Task 1 – Pre-Field Activities**

Kleinfelder will perform the following tasks before conducting the on-site investigation:

- Prepare a Health and Safety Plan to identify key project personnel, potential site health and safety concerns, and to designate appropriate personalized protective equipment (PPE) levels
- Obtain appropriate City of Fresno Well/Boring permits and pay associated fees
- Mark proposed sample locations in white chalk or paint and obtain Underground Services Alert (USA) clearance for public utilities
- Coordinate a private utility locating contractor to conduct a utility survey of proposed sample locations and conduct a geophysical survey to determine the location and depth of any abandoned sewer lines on the Property.
- Coordinate with appropriate subcontractors

*Please note: The client should be aware that penetrating the site's surface is inherently risky. It is impossible to determine with certainty the precise location of all structures, which may be buried in the ground. Kleinfelder's fee is not adequate to compensate for both the performance of the services and the assumption of risk of damage to such structures. Underground Services Alert (USA) at 811 provides a partial location service free of charge for major utility lines (that are outside of private property). Kleinfelder and our drilling subcontractor will make contact with USA to mark utilities. This proposal also includes the use of a utility survey subcontractor to further assess for potential subsurface structures. We will also hand auger borings to either 5 feet below ground surface (bgs) or refusal for additional clearance.*

Pre-field and field activities will be conducted under the direction of a Professional Geologist (PG).

## Task 2 – Field Activities

The following field activities, which include soil gas, soil, and groundwater sampling; rationale for sample locations; and, corresponding recommended analyses are presented on Table 1.

### Active Soil Gas Survey

For active soil gas sampling, permanent soil gas probes will be installed as sampling points. For this study, the probes are proposed to be installed at 5.5 feet below ground surface (bgs). Soil gas probe installation, purging, and sampling will be conducted in general accordance with DTSC guidelines.

Sampling equipment will be provided by the analytical laboratory and inspected by Kleinfelder for proper pressurization prior to sampling. The equipment will include 1-liter (L) SUMMA canisters (for US Environmental Protection Agency [US EPA] Method TO-15), sample manifolds, and tubing.

**Probe Installation:** Soil vapor probes will consist of a new stainless-steel screened tip attached to new ¼-inch stainless steel tubing. The probe will be lowered inside the borehole, and then sand will be placed in the annulus between the probe and the borehole sidewalls. The above ground end of the tubing will be fitted with a brass ball valve. The sand interval will be approximately 1-foot thick, such that approximately 0.5 feet of sand will be above the probe tip. Above the sand filter pack, approximately 0.5 feet of dry bentonite crumbles will be placed. The remaining annulus will be filled with bentonite slurry to ground surface. To reduce the potential for cross-contamination, the probe rods will be decontaminated prior to advancing each new boring. Following installation, the surface of the probe installation will be completed with a vault box due to these probes being installed in the parking lot. The actual depth of the probe installation will be determined based on Site lithology.

**Pre-sampling Purging and Leak Checking:** Prior to sampling, the void space inside of the tubing and pore/void space of the sand pack around the probe will be purged of a minimum of three volumes of air to remove ambient air that may have been introduced during probe construction. In accordance with the DTSC guidance documents, sampling will not be performed for at least five days following a rain event of at least ½-inch in a 24-hour time period.

Surface seal and fittings will be checked for ambient air leakage using the following method. A sampling shroud consisting of an extra-large plastic bag will be placed over the top of the surface seal, canisters, and manifold. The shroud will be used to contain an atmosphere of helium gas (the chosen tracer compound) during leak checking and sampling. The helium-infused shroud (shown below) will be placed over the canisters and manifold during sampling.

Both leak testing and a vacuum test of the manifold fittings (a.k.a., shut-in test) will be conducted prior to purging and sampling.

Purging will be performed using a 6-liter summa canister connected to the soil gas manifold, at rate of 100 to 200 milliliters per minute (ml/min). The surface seal leak check is conducted (during purging) by placing the shroud over the seal and filling the shroud with helium.

**Sample Collection:** Following purging, the valve will be opened on the 1-liter SUMMA canister and the sample collected in the SUMMA canister. Following sampling, the SUMMA canisters will

be labeled and returned to their original packaging. The initial and final canister vacuum will be recorded on the labels. The temporary soil gas probes will be left in place until sample results are received and for potential re-sampling.

The soil gas samples will be transported using chain-of-custody protocols to Eurofins AirToxics in Folsom, California for analysis. The samples will be analyzed on a standard laboratory turnaround schedule, requiring approximately 10 working days for receipt of results. If helium is detected in the sampling above 5% of the amount of helium recorded under the shroud during sample collection, the specific sample analytical results will be invalidated due to a leak in the sampling apparatus and the probe will be resampled.

### Soil and Groundwater Sampling

Kleinfelder proposes the following drilling program for the investigation of soil and groundwater in the areas of concern identified on Figure 2 and Table 1. The purpose of the soil and groundwater investigation is to assess potential chemical impacts from compounds that may not be identified by the use of soil gas sampling or have migrated into groundwater.

#### **Soil Borings, Monitoring Well Installation, and Sampling:**

To assess the potential presence and migration of chemicals to soils and into the groundwater a California licensed C-57 driller will be contracted to advance six borings, three to 40 feet and three to 10 feet below ground surface. Soil samples will be collected continually from the 40 foot borings in and continually from the 10 foot borings. One of the 40 foot borings will be drilled to first groundwater (approximately 120 ft bgs) and a groundwater monitoring well will be installed per the Workplan.

During drilling, a Kleinfelder geologist or engineer will log the borings and screen the soil samples for the presence of VOCs using a photo ionization device (PID). PID readings will be recorded on a field data sheet. To reduce the potential for cross-contamination between the borings, equipment will be cleaned with soap and rinsed with distilled water prior to advancing each location.

48 hours following completion of the monitoring well, the well will be developed by surging, bailing, and pumping until the water is relatively clear.

The well will be sampled at a minimum of 48 hours following development. The groundwater sample containers will be labeled and placed in a cooler with ice, pending transfer under chain-of-custody control to APPL Labs in Fresno, California.

At each location, Kleinfelder will submit a maximum of 2 samples for laboratory analysis based upon field PID readings. Following completion of the soil boring, it will be backfilled to ground surface with cement/bentonite grout, in accordance with City of Fresno permit requirements. Kleinfelder will schedule a grout inspection with the City of Fresno prior to grout placement. The surface will be completed to match existing surface conditions.

### Laboratory Analyses

Samples will be analyzed for the constituents listed below using the indicated test methods for soil and groundwater samples.

*Active Soil Gas (Eurofins AirToxics)*

- Full Scan VOCs by gas chromatography (GC) and mass selective detection (MS), (gas samples) by EPA Test Method TO-15
- Helium (tracer compound) by ASTM Test Method D-1946

*Soil (APPL Lab)*

- TPH Diesel and Motor Oil by EPA Method 8015M
- TPH Gasoline + VOCs including fuel oxygenates by EPA Test Method 8260
- CAM 17 Metals by EPA Test Method 6000/7000 Series

*Groundwater (APPL Lab)*

- TPH-g and VOCs including fuel oxygenates by EPA Test Method 8260
- TPH-d and o by EPA Test Method 8015

**Task 3 – Investigation-derived Waste Characterization**

The subsurface exploration and sampling processes described above will generate investigation derived waste (IDW) in the form of soil cuttings, purge water and equipment rinse water. The IDW will be retained in drums and stored in an area that is designated by the client. IDW will be left on site pending disposal at an appropriate licensed facility by the client. Samples of the IDW will be collected for laboratory analysis (TPH-g, TPH-d,o, VOCs, and CAM 17 Metals) Kleinfelder will review the analytical data and discuss with the Client appropriate disposal options for the IDW. Additional analytical testing and disposal of these materials have not been included in the cost estimate.

**Task 4 – Preparation and Submittal of an Investigation Report**

The information accumulated during this Investigation will be presented in a report to the RWQCB. The report will include all data collected during the investigation and conclusions and recommendations for future work.

**FEE ESTIMATE**

Based on the level of effort and scope of work described herein, Kleinfelder has developed a budget estimate. The budget estimate is summarized below.

<b>Table of Estimated Fees</b>		
<b>Task</b>	<b>Description</b>	<b>Fee</b>
1	Pre-Field Activities	\$3,630
2	Field Activities	\$26,850
3	Laboratory Analysis	\$5,020
4	Preparation and Submittal of an Investigation Report	\$5,000
<b>Total Estimated Fees</b>		<b>\$40,500</b>

## **SCHEDULE**

Field activities will commence within 4 weeks of authorization from the client, dependent on availability of a driller. A report will be provided to the client within two weeks of receiving the analytical data from the laboratory.

## **ASSUMPTIONS AND CLIENT RESPONSIBILITIES**

Kleinfelder used the following assumptions in order to develop the scope of work and estimate of fees presented below. It is possible other unforeseen conditions or situations may arise that could impact this cost estimate. Such conditions and responses would be discussed with you and authorized prior to Kleinfelder expending the additional funds.

- The Client will provide or arrange right-of-entry and unrestricted access to the Site;
- Sample locations will be made accessible for roto-hammer, concrete coring and drilling as described above.
- Unanticipated conditions that may be present (i.e., inability to clear or core through concrete) or that would require additional study, assessment or remediation will be provided at additional costs upon approval.
- Estimated labor hours include the following: three days of drilling activities; one day of monitoring well development; one day of monitoring well sampling; and, one day of sampling soil gas.

Kleinfelder is committed to providing quality service to our Clients, commensurate with their wants, needs and desired level of risk. If a portion of this proposal does not meet your needs, or if those needs have changed, we will consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling and contract terms may result in changes to the risks assumed by you, as well as adjustments to our fees.

## **LIMITATIONS**

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions, and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.

This proposal is valid for a period of 45 days from the date of this proposal, unless a longer period is specifically required by the RFP in which case that time frame will apply. This proposal was prepared specifically for the client and its designated representatives and may not be provided to others without Kleinfelder's express permission.

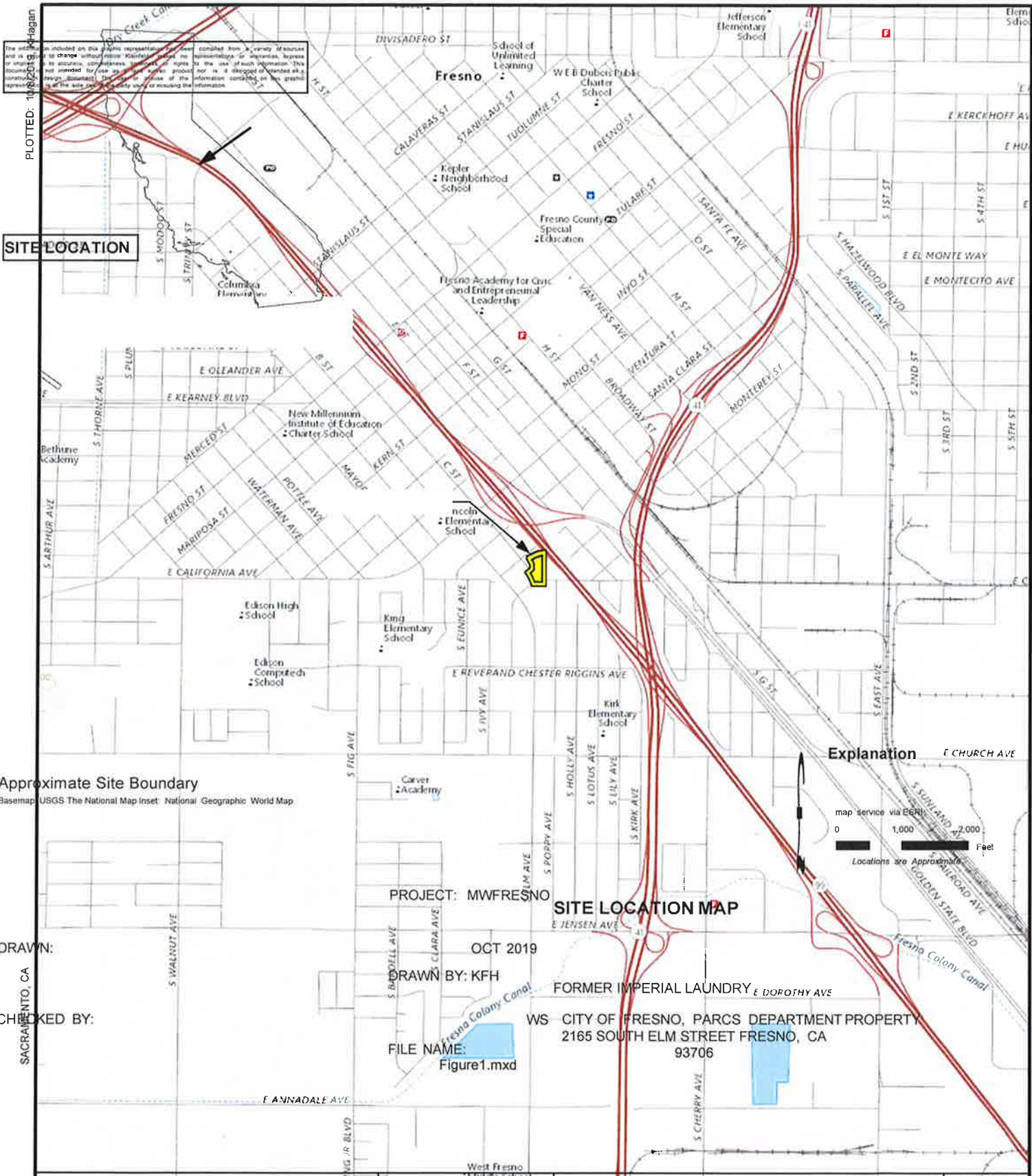
### **Attachments:**

Figure 1 – Site Vicinity Map

Figure 2 – Site Map with Proposed Soil Vapor, Proposed Soil, and Proposed Groundwater Sample Locations

Table 1 – Summary of Proposed Borings





PLOTTED: 10/18/2019 10:43 AM

**SITE LOCATION**

Approximate Site Boundary  
 Basemap: USGS The National Map Inset: National Geographic World Map

DRAWN:  
SACRAMENTO, CA  
CHECKED BY:



Table 1  
 Proposal for Site Investigation – Former Imperial Cleaners  
 2165 South Elm Street Fresno, California

Sample Location	Sample Type	Soil Sample Depth (feet)	Screened Interval (feet below ground surface)	Groundwater Sample	Laboratory Analysis
IL-MW-1	Soil and Groundwater	0-40	85' - 120'	Yes	APPL Labs
SB-1	Soil	0-40	-	-	APPL Labs
SB-2	Soil	0-40	-	-	APPL Labs
SB-3	Soil	0-10	-	-	APPL Labs
SB-4	Soil	0-10	-	-	APPL Labs
SB-5	Soil	0-10	-	-	APPL Labs
VMP-1	Soil Vapor	-	5.0'-5.5'	-	Eurofins Air Toxics
VMP-2	Soil Vapor	-	5.0'-5.5'	-	Eurofins Air Toxics
VMP-3	Soil Vapor	-	5.0'-5.5'	-	Eurofins Air Toxics
VMP-4	Soil Vapor	-	5.0'-5.5'	-	Eurofins Air Toxics
VMP-5	Soil Vapor	-	5.0'-5.5'	-	Eurofins Air Toxics
VMP-6	Soil Vapor	-	5.0'-5.5'	-	Eurofins Air Toxics

## Exhibit B

### **INSURANCE REQUIREMENTS** **Consultant Service Agreement between City of Fresno (City)** **and Kleinfelder, Inc. (Consultant)** Site Investigation – 2165 S. Elm Street

#### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

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

#### **MINIMUM LIMITS OF INSURANCE**

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

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

2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
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 City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

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

#### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

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

1. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. The Consultant shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company

endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims 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 completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. These requirements shall survive expiration or termination of the Agreement.

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

of cancellation, non-renewal, or reduction in coverage or in limits, the Consultant shall furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the City, the Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

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.

**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 will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

### **VERIFICATION OF COVERAGE**

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 City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the City, the Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

**Exhibit C**

**DISCLOSURE OF CONFLICT OF INTEREST**

Site Investigation – 2165 Elm Street

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input 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: \_\_\_\_\_

Currently under contract with BKF

Engineers in connection with the Herndon

Avenue Bridge Widening over BNSF RR

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional page(s) attached.

  
Signature

January 3, 2020  
Date

Stephen P. Plauson  
(name)

Kleinfelder, Inc.  
(company)

3731 W Ashcroft Avenue  
(address)

Fresno, CA 93722  
(city state zip)