

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

THIS AGREEMENT is made and entered into effective the ^{March} 23rd day of November, 2017, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and BKF Engineers, a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional engineering services for the design of plans and general construction contract documents for Herndon Avenue Widening between Polk and Milburn Avenues, hereinafter referred to as the "Project;" and

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

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

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

AGREEMENT

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

1. Scope of Services. CONSULTANT shall perform 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 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 CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in Part One. 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 CITY'S issuance of a written "Notice to Proceed." It shall, however, remain CONSULTANT'S offer to perform all remaining parts described herein. In the event CONSULTANT performs services without CITY'S prior written authorization, CONSULTANT will not be entitled to compensation for such services.

(a) Part One. Schematic Design Phase.

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

(2) CONSULTANT shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible CITY department/division that is available in CITY'S records and

is required by CONSULTANT in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions and easements. CONSULTANT shall notify CITY if a topographic survey is required.

(3) CONSULTANT shall provide a preliminary evaluation of the Project taking into consideration CITY'S estimate of the cost of construction ("Construction Budget") of Ten Million Six Hundred Sixty Thousand Dollars (\$10,660,000.00)], including alternative approaches to design and construction of the Project.

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

(5) CONSULTANT shall submit a preliminary estimate of construction cost for review and acceptance by CITY. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include 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) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist 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 CITY.

(7) CONSULTANT may not rely upon any as-builts provided by CITY, but shall investigate the existing conditions and ascertain the adequacy of such as-builts for CONSULTANT'S design. CONSULTANT shall bring to CITY'S attention any discrepancies in the as-builts that are discovered by CONSULTANT. 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 One Hundred Sixty-One (161) 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 CITY, shall be submitted to CITY within Twenty-One (21) calendar days from receipt of 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, CONSULTANT shall

prepare for review and acceptance by 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, 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 CITY.

(2) CONSULTANT shall submit a revised estimate of construction cost for review and acceptance by 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, CITY shall have the option of accepting or rejecting the revised estimate and CONSULTANT shall, at no additional cost to 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 CITY. CITY shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in CONSULTANT'S compensation.

(4) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist 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 CITY.

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within One Hundred Fifty-Four (154) 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 CITY, shall be submitted to CITY within Twenty-One (21) calendar days from receipt of 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) 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. 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 CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. CITY'S Standard Specifications must be used by 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 CITY shall be used by CONSULTANT unless the Director determines they would be impractical for this Project. CONSULTANT shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

(2) Upon request of CITY, 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) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist 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 CITY.

(4) CONSULTANT shall provide CITY with Six (6) sets of completed plans and Two (2) sets of completed specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

(5) After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one set of accepted reproducible tracings and bid documents for the Project. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: Microsoft Word, Microsoft Excel, and AutoCAD Civil 3D (latest versions).

(6) CONSULTANT shall submit a final estimate of construction cost for review and acceptance by CITY. Such estimate shall be calculated as of the date all general construction contract documents are delivered to 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, CITY shall have the option of accepting or rejecting the final estimate. If CITY elects to reject the final estimate, CONSULTANT shall at no additional cost to 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 CITY.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within One Hundred Seventy-Five (175) 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 CITY, shall be submitted to CITY within Twenty-One (21) calendar days from receipt of 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 CITY elects to proceed to bid, which shall constitute a written Notice to Proceed with this Part Four:

(1) CONSULTANT shall assist CITY in obtaining bids. CONSULTANT shall not communicate with potential bidders regarding this Project without the express prior written authorization of CITY'S Purchasing Manager.

(2) CONSULTANT shall, within 7 calendar days of any request by CITY, expeditiously draft and promptly provide addendum as determined by 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 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, CONSULTANT shall, within 14 calendar days of any request by 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 CITY provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. CONSULTANT shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to 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 CITY'S designated Construction Manager for the Project:

(1) CONSULTANT shall attend the pre-construction conference and, if called upon by CITY, act on CITY'S behalf in discussing the various aspects of the construction phase.

(2) CONSULTANT shall review and recommend in writing to 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 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 CITY, CONSULTANT and the general construction contractor.

(3) 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 CITY informed of the progress of the work. In the event that CONSULTANT'S visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, CONSULTANT shall immediately advise CITY and document, in writing, the work CONSULTANT deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. Based on CONSULTANT'S best knowledge, information and belief, CONSULTANT shall provide 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, CONSULTANT shall provide a written judgment of the acceptability of the work for payment applications and final acceptance, subject to CITY'S right to overrule CONSULTANT.

(4) Upon written request by CITY, 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 CITY, 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 CONSULTANT in favor of a change order that is consequently accepted by CITY shall constitute approval by CONSULTANT who shall then approve the change order in writing. CONSULTANT shall not unreasonably withhold written approval in the event CITY accepts a change order that CONSULTANT recommended to be rejected. In the event of any technical disputes, CONSULTANT shall provide CITY with CONSULTANT'S written interpretation of the contract documents. The period for 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 CITY, CONSULTANT and the general construction contractor. If CITY, CONSULTANT and the respective general construction contractor are unable to mutually agree on such period for CONSULTANT review, then CITY will make the determination and that determination will be final.

(6) Upon written request by CITY, CONSULTANT shall provide such design and specification services as may be requested by 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 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 CONSULTANT'S compensation.

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

(9) CONSULTANT shall provide 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) 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) CONSULTANT provided Request for Information responses, and (iv) any CONSULTANT bulletins, amendments or clarifications. CONSULTANT shall provide CITY with one set of vellum Record Drawings for the Project within Fourteen (14) calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within Fourteen (14) calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Director. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of Record Drawings in the following format: [AutoCAD Civil 3D (latest version)].

2. CITY'S responsibilities. CITY will:

(a) Provide, upon request and cooperation of CONSULTANT, access to, and make all provisions necessary to, enter upon public or private lands as required for CONSULTANT to perform such services and inspections as are required in development of the Project; provided, however, if CITY is unable to obtain access to enter upon public or private lands, CONSULTANT shall not be relieved from performing its services as to those public and private lands that are accessible. If CONSULTANT notifies CITY that a topographic survey is required by CONSULTANT in connection with the consulting services, then 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 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 CITY.

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

(g) Prepare all Progress Payment Estimates in cooperation with CONSULTANT following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon 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 CONSULTANT for acceptance to the end that there will be no substantial delays in CONSULTANT'S program of work. For an acceptance, approval, authorization, a request or any direction to CONSULTANT to be binding upon CITY under the terms of this Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by CITY and signed on behalf of CITY by the Director.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of Eight Hundred Sixty-Nine Thousand Five Hundred Twenty-Six Dollars (\$869,526)], and a contingency amount not to exceed Fifty-Two Thousand Dollars (\$52,000)] for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by CONSULTANT in performance of such services.

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

(c) For purposes of determining the division of the total compensation to CONSULTANT as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by CITY as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of CONSULTANT'S performance as follows: Part 1 – 25.72%, Part 2 – 30.69%, Part 3 – 29.55%, Part 4 – 2.83% and Part 5 – 11.21%. 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 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 CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an

authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. 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 CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

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

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

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

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

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

(g) 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 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. CONSULTANT hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

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

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

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

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

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

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under

this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

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

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

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

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

9. Conflict of Interest and Non-Solicitation.

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

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

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

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

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

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

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

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

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

11. General Terms.

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

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

to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

13. Independent Contractor.

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

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

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

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

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

16. Assignment.

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

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

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

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

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

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

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

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

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing

party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

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

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

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

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

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


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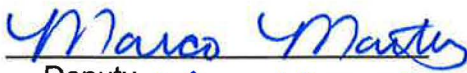
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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

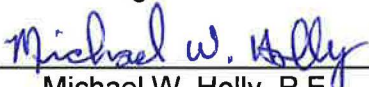
CITY OF FRESNO,
a California municipal corporation

By: 
Randall W. Morrison, P.E., M.C.E.,
Assistant Public Works Director
Public Works Department


ATTEST:
YVONNE SPENCE, CMC
City Clerk

By:  3/26/18
Deputy Marco Martinez

No signature of City Attorney required.
Standard Document #DPW-S 29.1 has
been used without modification, as certified
by the undersigned.

By: 
Michael W. Holly, P.E.
Professional Engineer
Public Works Department

REVIEWED BY:


Randall W. Morrison, P.E., M.C.E.,
Assistant Public Works Director
Public Works Department

Addresses:

CITY:

City of Fresno

Attention: Michael W. Holly, P.E.,

Professional Engineer

2600 Fresno Street, 4th Floor

Fresno, CA 93721

Phone: (559) 621-8701

FAX: (559) 488-1045

Attachments:

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

BKF Engineers,
a California Corporation

By: 

Name: CHRIS RIDEOUT

Title: PRINCIPAL/VICE PRESIDENT
[if corporation or LLC, Board
Chair, Pres. or Vice Pres.]

By: 

Name: Todd Adair

Title: Principal/Vice President
[if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary.]

Any Applicable Professional License:

Number: C 44922

Name: CHRISTOPHER RIDEOUT

Date of Issuance: July 14, 1989

CONSULTANT:

BKF Engineers

Attention: Chris Rideout, P.E.,

Principal

4670 Willow Road, Suite 250

Pleasanton, CA 94588

Phone: (925) 396-7700

FAX: (925) 396-7799

Exhibit A

SCOPE OF SERVICES

**Consultant Services Agreement between City of Fresno ("City")
and BKF Engineers ("Consultant")
Herndon Avenue Widening between Polk and Milburn Avenues
PROJECT TITLE**

PROJECT DESCRIPTION

In 2014, the City hired a Consultant to prepare a Preliminary Design Report (PDR) to provide preliminary design information to facilitate the final design and construction drawings. This report would include a geometric design of Herndon Avenue within the project limits, including the intersections at Polk and Milburn Avenues. Necessary modifications to the intersections and/or traffic signals were identified. The PDR includes an Advance Planning Study (APS) for the Herndon Overhead based on Caltrans procedures and includes structural investigations, seismic analysis and widening recommendations. The PDR also includes important or unusual design assumptions and any special railroad requirements. The PDR provided three alternatives - Alternative A: Class I Bike Path At-Grade Crossing at BNSF Railroad, Alternative B: 10' Class I Bike Path Alignment along Herndon Avenue, and Alternative C: 12' Class I Bike Path Alignment along Herndon Avenue. Alternative C is the selected concept of the City of Fresno.

This project will prepare construction plans and specifications for street improvements on West Herndon Avenue between North Milburn and North Polk Avenues. The ultimate project will widen Herndon Avenue to three lanes from two lanes in each direction, add a standard shoulder, widen the existing bridge over the Burlington Northern and Santa Fe (BNSF) Railway and associated roadway approaches, and include a Class I bike path and pedestrian trail along the north side of the roadway based on recommendations from APS. Herndon Avenue between Milburn and Polk Avenues is one of the last remaining four-lane bottlenecks in a regional circulation project between State Route 99 and DeWolf Avenue. This project will remove the bottleneck and improve circulation along Herndon Avenue, and close a gap between terminating Class I bike path/pedestrian trails on either side of the overpass, increasing the safety of both pedestrians and bicyclists.

PROJECT MANAGEMENT

Throughout the entire design phase, project management tasks will include the supervision and scheduling of project staff, review of work prepared by staff and sub-consultants, project coordination, acting as the client liaison, monitoring the project schedule and budget, preparation of project reports and attendance at meetings with the City and other agencies to receive input and discuss and review the project during its critical design periods. More specific responsibilities include:

- **Kick-off Meeting:** A kick-off meeting will be scheduled with the City soon after the Notice-to-Proceed to confirm Project scope and objectives.
- **Project Development Meetings (PDT Meetings):** To facilitate comprehensive input from the project stakeholders, the BKF's Project Manager and selected Team Members will attend monthly Project Development Team (PDT) coordination meetings with City staff members, other appropriate agency representatives, and stakeholders such as BNSF. These PDT meetings will include comment review meetings after the Schematic Design, Design Development and initial Construction Document submittals to review and reconcile the City and BNSF review comments. Agendas will be sent out to

all participants prior to the meetings, and timely minutes will be produced and distributed after the meetings along with an action item log.

Project Progress Report / Accounting: BKF will prepare monthly progress reports and invoices showing indicating the tasks completed by the Design Team for that month. BKF will prepare monthly reports of expenditures for the project by task and milestone. Expenditure reports will serve as the basis for the monthly invoices. BKF will also provide a summary of work completed that month and work anticipated the following month, using the City's Work Progress Form. BKF will prepare budgets for each task and milestone for the project; budgets will be monitored, and will be used as a basis for cost monitoring and control.

- **Project Schedule:** BKF will prepare and submit a Project Master Schedule in Microsoft Project to the City. The schedule will indicate all tasks, milestones and project activities, deliverables, and will reflect necessary review time by affected agencies. BKF will adjust and update the project schedule as necessary throughout the duration of the project, and provide updated schedules at each monthly progress meeting.
- **Quality Control (QA/QC):** BKF will perform quality assurance and quality control during the course of the design and submittals.

PART 1: SCHEMATIC DESIGN PHASE

Immediately after receiving the Notice-to-Proceed, the BKF Team will perform field investigations and review all available documentation, conduct preliminary investigations and verify utility locations. This task will consist of compiling, reviewing existing data pertinent to the Project and performing investigations and studies necessary to verify Project criteria and scope. Also included are planning phase activities, conducting site visits/field review, and obtaining information and requirements related to utilities. The BKF team activities will include the following during this task:

- **Data Collection and Field Review:** BKF will obtain and review available data and information necessary for final design of the Project. This information may be obtained from the City, BNSF, utility companies, and other agencies. Data to be reviewed includes the following:
 - City and BNSF record documents
 - Utility information
 - Roadway and Bridge As-Built plans and Inspection ReportsBKF will request the City and project stakeholders attend a field review on the Project site. This review meeting is imperative to ensure the design team and the City/Stakeholders are in agreement with the scope and limits of work. During this field review, the Project Team will evaluate and document the existing Project site conditions, constraints and opportunities.
- **Coordinate and Review Survey /Right of Way Data:** The City will provide a topographic survey and right-of-way for the Team to use during design. We will review the survey and during our field review identify any additional survey that may be necessary.
- **Initial Utility Investigation and Mapping:** BKF will coordinate with the City and other utility companies to verify location and depth of existing facilities. We will also perform utility research and surveys to map the existing utilities in the Project area, positively locate utilities that potentially conflict with the proposed improvements and develop relocation plans for conflicting utilities, if necessary. This level of effort will minimize construction costs and ensure the correct placement of the proposed improvements. BKF will:
 - Review and update as-built utility information for the project area

- Request utility mapping from all affected utility owners
- Update base mapping with existing utility information
- Submit utility maps to affected utility owners for verification
- Identify potential utility conflicts for potholing/relocation

All the information gathered from maps and field investigation will be compiled into a comprehensive utility map and matrix and will be updated throughout the course of the Project. This matrix will document all utilities within the limits of the Project, if relocation is necessary, prior rights, and potential relocation costs.

- **Geotechnical Investigation and Report:** BKF's Geotechnical Engineer will prepare for and conduct field investigations necessary to provide the Design Team recommendations for pavement, retaining walls, foundations, and other facilities.

Prior to field activities the following tasks occur:

- Prepare Traffic Control Plan
- Obtain City Encroachment Permit
- Obtain BNSF Railroad Access Agreement
- Notify BNSF Railway Master of Pending Drilling

After permits and agreements are obtained, the field exploration and laboratory testing will commence. BKF's Geotechnical Engineer will drill a four (4) test borings within the BNSF Railroad right-of-way between Abutment 1 and Bent 2 and between Bent 3 and Abutment 4. The borings within the BNSF Railroad ROW will be advanced to depths ranging from 80 to 100 feet to obtain subsurface soil data and samples for laboratory testing, evaluation, and analysis for driven pile foundations and Railroad Crash Walls.

Additionally four (4) test borings will be taken along the asphalt paved shoulder of Herndon Avenue on the approach fill to depths of 30 to 60 feet. The purpose of these borings are to obtain subsurface soil data and samples for laboratory testing, evaluation, and analysis for retaining wall foundations. Laboratory testing and analysis will place emphasis on the bearing capacity and settlement characteristics of the existing approach fill for support of retaining walls.

The final boring depths will be based on a field evaluation of foundation capacities utilizing penetration rates and soil profile being encountered. For use in design pavements two (2) soil samples will be collected from the approach fills and drill or hand auger four additional (4) test borings in proposed road widening areas to collect soil samples for R-value testing to support analysis and recommendations for approach slabs and pavement structural sections will be conducted.

Using the information/samples gathered in the field Laboratory Testing will commence. BKF's Geotechnical Engineer will perform at a minimum the following tests:

- In-Place Dry Density and Moisture Content - ASTM D2937
- Plasticity Characteristics - ASTM D4318
- Strength for Foundation Support - ASTM D3080 and/r D2166
- Sieve Analysis - ASTM C136
- Resistivity/Corrosion - Caltrans Test Method No. 417, 422, and 643.
- Resistance Value - Caltrans Test Method No. 301

BKF's Geotechnical Engineer will summarize their field investigation, laboratory testing and provide recommendations that will be used in the development of the design. Report will at a minimum include:

- Location and characteristic of Borings and Samples
- Descriptions of sub-surface conditions

- Design Peak Bedrock acceleration and Caltrans Seismic Design Criteria Version 1.7 ARS curve
 - Liquefaction Potential
 - Pile Foundation Recommendations
 - Design parameters for L-Pile analysis
 - Retaining Wall bearing, settlement, and active earth pressures
 - Recommendations for Crash Impact Wall foundation
 - Recommendations for asphalt concrete pavement sections
- **Project Base Plans:** BKF will prepare base plans using topographic, survey information (provided by City) and as-builts in accordance to City CADD standards. We will field verify the base map with the existing conditions prior to the design phase.
- **Alignment Concepts/Studies:** BKF will evaluate and further refine the alignments developed during the Project Design Report (PDR) to optimize lane/path configurations and parking areas and gain concurrence between the Design Team and the City.
- **Geometric Approval Drawings (GAD):** The geometric design will be developed with sufficient detail to describe the existing and proposed project elements. The GAD produces a design that minimizes right-of-way, cost and time consequences, and meets Stakeholder's standards, and gain necessary approvals. The drawings will show proposed pavement and structures, traffic lane/shoulder striping, record right-of-way, and other significant features. Profiles and typical cross sections will be developed for the main roadways and commercial driveway conforms. Access points to adjacent properties will be evaluated both on a construction sequencing, and ultimate configuration for both vehicles and pedestrians. The GAD drawing will be prepared based on the preferred alternative selected by the City.
- **Design Exceptions:** As the alignments are being refined and after review by the City and the Design Team a design exceptions becomes warranted, BKF will develop design exceptions including justifications for the deviation from the Standard and submit to the City for concurrence. After approval of these Design Exceptions, the elements will be incorporated into the Schematic Design.
- **Schematic Design Drawings:** With the geometry set and if necessary design exceptions approved, the BKF Team will develop the Schematic Design which equates to approximately a 30% design level. This deliverable will be of sufficient detail to identify any project risk points, right-of-way and utility and construction costs impacts. At a minimum this package will include:
- Typical Sections
 - Demolition Plans
 - Horizontal Control Plans
 - Plan and Profile Sheets
 - Composite Utility Plans
 - Street Lighting Plans
 - Bridge General Plan and Foundation Plan
 - Retaining Wall Typical Sections/Locations
 - Bridge Widening Plans
 - Planting Palette Plan
- The intent is to push the Bridge Design ahead at every milestone in order to get the package out to BNSF to review since their review time is longer than that of the City.
- **Preliminary Cost Estimate:** The preliminary engineer's cost estimate will be prepared. This estimate will be the baseline estimate to confirm the project is being developed in concert with the available funding source.

➤ **Schematic Design Phase Deliverables:**

- PDT Meeting Minutes/Agendas/Action Items
- Schematic Design Package (30% Level Design Plans and Estimate)
- BNSF Review Package
- Utility Letters and Matrix
- Geometric Approval Drawings
- Design Exceptions if required
- Geotechnical and Materials Report

PART 2 – DESIGN DEVELOPMENT PHASE

The BKF Team will meet with the City and BNSF to discuss review comments and gain resolution prior to starting the Design Development Phase.

- **Design Development Plans (60% Plans):** We anticipate at a minimum the following items to be included in the Design Development package:

Title Sheet: BKF will prepare a Title Sheet using the City standard sheet to provide an overview of the Project limits and an index of sheets. Contact information for the City and utility companies will be assembled along with the Project vertical datum and horizontal control information.

Typical Sections: Sections will be developed showing the location of the centerline, lane lines, medians, lip of gutter, new curb and gutter, multi-purpose path, right-of-way, landscaping, and fencing. These sections will show relative vertical differentials and horizontal dimensions of lane widths, sidewalks, and other hardscape items.

Demolition Plans: These plans will show the location and the limits of the anticipated demolition necessary to facilitate the construction of the new improvements.

Plan and Profile Sheets: All plan and profile sheets will be prepared showing both the horizontal and vertical alignments for the new improvements. Plan view will include location of curb ramps, pavement, path, and curb and gutter, while the profiles will confirm vertical alignments meet drainage patterns.

Signing and Pavement Delineation: Plans will be developed using the approved geometry and will be prepared to show the new signing and new pavement delineation to join existing.

Construction Detail Sheets: Sheets will be prepared showing construction items that will need additional details and information to ensure the Contractor can construct the Project as intended.

Composite Utility Sheets: BKF will show existing utilities gathered from topographic surveying and third party utility mapping. If relocations are necessary for wet utilities, both the horizontal and vertical locations will be depicted for storm drain, sewer, and water on the utility sheets. If third party relocations are necessary, BKF will prepare documents for the City to notify the utility owner. These documents will clearly show the location of the conflict, location of possible relocation, timeframe of when the relocation will be needed and confirm the liability of the relocation costs.

Landscape and Irrigation: Based on the written direction received from City on the schematic package, the landscape consultant will prepare 60% plans and details for the planting for the project. City Staff

will provide desired plant species to design team in advance. The City standard bench will be used. Landscape consultant will review and comment and will coordinate with irrigation designer on system parameters. Branding monuments are not included in this scope of work.

Street Lighting Plan: Based on the horizontal concept developed in the preliminary Design and refined in the 60% design phase, including functional feature designs conducted by BKF team, existing lighting levels will be evaluated to assist design of new street and pedestrian lighting in the corridor. Photometric calculations to identify appropriate spacing, location and type of post-top electroliers and pedestrian-scaled lighting will be identified in conformance with City special affect lighting requirements.

Stage Construction: BKF will generate the appropriate stage construction plans. These plans will be conceptually generated at the design development stage and discussed with City to ensure minimal impact to the travelling public.

Drainage Analysis: BKF will analyze the drainage patterns and make modifications associated with the new improvements.

Bridge Plans and Details Sheets: All bridge plan sheets will be prepared, including all details for the bents, abutments, precast girders, deck, barriers and bridge railing. The Design Development Bridge Package will essentially be a complete bridge plan package, before undergoing independent check.

Retaining Walls Plan and Details Sheet: Retaining wall layout sheets and typical sections for the approach retaining walls will be prepared. Data for various retaining wall heights will be tabulated.

Structural Calculations: Structure calculations for vertical and seismic loads for all bridge components, and for the non-standard retaining walls.

- **Specifications:** Technical Specifications will incorporate the City's standard formatting and will be updated based upon the Project needs using City Standards Measurement and payment clauses will be introduced and verified along with an outline of the Project specific front end specifications documents.
- **Engineers Estimate:** At the design development stage, BKF will develop a line item engineer's estimate matching the measurement and payment clauses in the specifications.
- **Coordination with CPUC and Diagnostics Meeting:** The Design Team will coordinate with the California Public Utilities Commission (CPUC) for an eventual GO-88B Application for the modification of the grade separation. A Field "Diagnostic Meeting" will be held with representatives of, City, CPUC and BNSF.
- **Design Development Phase Deliverables:**
 - PDT Meeting Minutes/Agendas/Action Items
 - Design Development PS&E Package (60% Level Design)
 - Updated Utility Letters and Matrix

PART 3 – CONSTRUCTION DOCUMENT PHASE / FINAL DESIGN

Using the information gathered by the Design Team in Part 1 and 2, and the review comments received from the City and BNSF, we will generate the Construction Document package. During this phase, BKF team will refine the following functions from the conceptual drawing:

DPW-S 29.1/03-24-14

- **90% Plans, Specifications and Estimate Submittal:** The BKF Project Team will focus on resolving and incorporating all design review comments resulting from the Design Development submittal. BKF may request the City, BNSF, and any impacted utilities to attend a second field review meeting, if necessary, to compare the Design Development plans with the current field conditions and requirements. All gaps in the design caused by changes or pending design and policy decisions will be specifically targeted for immediate resolution. Construction details for the project elements will be finalized as part of this phase of the design process.

We understand there is a finite construction budget associated with the funding and will compare this budget to the Engineer's Estimate to confirm both are in alignment. BKF will continue to monitor the construction engineer's estimate and make recommendations to the City, if necessary, for any adjustments to the base bid or introduction of bid additives. The technical specifications will carefully be reviewed to ensure that all federal requirements, utility coordination work and stage construction restrictions have been incorporated.

At 90% Design, a complete, checked and bid-ready set of documents will be available when the PS&E is prepared. Due to the coordination efforts with the City, utility owners and stakeholders, the review time during this phase will be minimized. Prior to delivering the 90% PS&E, BKF will complete its own in-house quality control review of all outgoing documents. Cost estimates and schedules will be updated and compared to the available budget. By preparing 90% documents which reflect a bid-ready set, project approval can be accelerated.

Independent Check: The Team will assign a completely independent team (not involved in the design) to independently check the structural calculations, plans, specifications and quantity take-offs for the bridge and retaining walls.

- **Final Plans, Specifications and Estimate:** Upon receiving final review comments from BNSF, and the City, BKF will incorporate or resolve all remaining comments received as a result of the 90% submittal. All aspects of the design will be finalized in order to prepare a complete set of final and constructible bid documents for advertisement.
- **Coordination with CPUC and GO-88B Applications:** The Design Team will continue coordinating with the CPUC and prepare and submit a GO-88B Application, and follow up for approval.
- **Coordination with BNSF and C&M Agreement:** The Design Team will continue coordinating with BNSF and prepare a Construction and Maintenance Agreement, and coordinate with the City and BNSF for signatures.
- **Construction Development Phase Deliverables:**
 - PDT Meeting Minutes/Agendas/Action Items
 - Construction Development PS&E Package (Both 90% Level Design and Bid Ready 100%)
 - Updated Utility Letters and Matrix
 - General Order 88B (GO88B) Application
 - Construction and Maintenance Agreement (C&M)

PART 4 – BIDDING PHASE

BKF will provide management services during the bidding and construction phases in accordance with the Local Assistance procedures manual. Our support during bidding will include:

- **Pre-Bid Conference:** BKF will attend a pre-bid conference to provide information to contractors and answer questions.
- **Bid Addenda:** BKF will respond to contractor questions and issue addenda. We will work with the project's design consultant to respond to technical questions.
- **Bid Opening:** BKF will be present at the bid opening.
- **Bid Review:** BKF will review all contractor bids and analyze for the lowest, responsive, and responsible bid. We will verify the bids comply with the City of Fresno, State of California, and Federal requirements. If requested, we will summarize our findings and provide a recommendation.
- **City Council Approval:** BKF will prepare necessary documents and support staff for City Council approval.

PART 5 – CONSTRUCTION PHASE / GENERAL CONSTRUCTION CONTRACT ADMINISTRATION

Our support during construction will include:

- Attend the pre-construction conference.
- Coordinate all contractor submittals with sub-consultants.
- Review contractor submittals and shop drawings.
- Answer clarification questions pertaining to the plans and special provisions, if needed.
- Review contractor RFI's (Request for Information) and provide written response.
- Coordinate relocation of public utilities.
- BKF will prepare Record Drawings of all Contractor redlines and will provide to the City.
- BKF will provide final electronic and hardcopies of all documents related to the project.

Exhibit B

INSURANCE REQUIREMENTS

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

Herndon Avenue Widening between Polk and Milburn Avenues
PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

MINIMUM LIMITS OF INSURANCE

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

1. COMMERCIAL GENERAL LIABILITY:

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

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

OR*

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

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

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

4. **EMPLOYER'S LIABILITY:**

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

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

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

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

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

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

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

must purchase "extended reporting" coverage for a minimum of five (5) years 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 CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

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

VERIFICATION OF COVERAGE

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


Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Herndon Avenue Widening between Polk and Milburn Avenues
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input 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: _____


Signature

8-31-17
Date

CHRIS RIEDEL
(name)

BKF ENGINEERS
(company)

4670 WILLOW RD, SUITE 250
(address)

☐ Additional page(s) attached.

PLEASANTON, CA 94588
(city state zip)