

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

THIS AGREEMENT is made and entered into effective the _____ day of December 2021, by and between the CITY OF FRESNO, a California municipal corporation (CITY), and Sherwood Design Engineers, a California Corporation (CONSULTANT).

RECITALS

WHEREAS, CITY desires to obtain professional engineering services for the design of plans and general construction contract documents for Southwest Fresno Trail (Project); and

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

WHEREAS, 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 (Director) or designee.

AGREEMENT

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

1. Scope of Services. 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 \$1,100,000, 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 ninety 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 fourteen 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 70 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 fourteen 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 seven (7) sets of completed plans and seven (7) 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: AutoCAD 2018 and Microsoft Word.

(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 56 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 fourteen 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 seven 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 fourteen 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 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 seven 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 2018.

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 \$144,923, and a contingency amount not to exceed \$10,000 for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by 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 – 27%, Part 2 – 28%, Part 3 – 29%,

Part 4 – 4% and Part 5 – 12%. 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) seven 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 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 designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or designee of the cessation of such occurrence.

(g) 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 including California Civil Code section 2782.8, CONSULTANT shall indemnify, hold harmless and defend State of California (STATE), CITY and each of their 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 STATE, CITY and each of their 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 designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to STATE, CITY, and each of their 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 STATE and 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 STATE, CITY and each of their 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:

(a) 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.

(b) 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.

(c) 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 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 Robyn Cooper, M.S., 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 designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or 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.


[SIGNATURE PAGE TO FOLLOW]

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 Morrison, PE, MCE,
Assistant Director
Public Works Department

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ 11/19/21
Brandon M. Collet Date
Senior Deputy

ATTEST:
TODD STERMER
City Clerk

By: _____
Deputy

Addresses:
CITY:
City of Fresno
Attention: Brandon Chacon,
Capital Development Specialist
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8713
FAX: (559)

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

Sherwood Design Engineers,
A California Corporation

By:  _____

Name: Peter Haase
Title: Principal
[If corporation or LLC., Board
Chair, Pres. or Vice Pres.]

By:  _____

Name: John Leys
Title: Secretary
[If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary.]

Any Applicable Professional License:

Number: C-72828

Name: John Leys

Date of Issuance: 1/15/2008

CONSULTANT:
Sherwood Design Engineers
Attention: Peter Haase, MS, PE,
Principal-in-Charge
1525 Seabright Avenue
Santa Cruz, CA 95062
Phone: (415) 677-7300
FAX:

EXHIBIT A

SCOPE OF SERVICES

Consultant Service Agreement between City of Fresno (City) and Sherwood Design Engineers (Consultant) Southwest Fresno Trail

PHASE 0: PROJECT MANAGEMENT AND MEETINGS (PARTS 1-5)

Task A – Project Management

As an on-going task throughout the project, Consultant will provide project management of the overall project and will manage sub-consultants to ensure that the workflow between the companies is seamless and timely. This task will cover internal design meetings and day to day correspondence by phone/video conference and e-mail.

Consultant will prepare and maintain a Project Schedule that will include a timeline for each task identified in this work plan (and included in this proposal). Consultant will coordinate with the subconsultants to ensure that the schedule is followed. Should there need to be any modifications to the schedule, Consultant and will notify the City immediately, gain consensus with the City as to the rational for any modification, and update the schedule accordingly.

Consultant will also prepare and maintain an overall Project Budget, for each task. Consultant will maintain the budget with weekly check ins and monthly invoicing to ensure close adherence to the agreed upon budget.

This task also includes time to prepare contact documents, invoicing, financial management, and project data management.

Task B – Coordination Meetings and Site Visits

Throughout the course of the project, Consultant anticipates a four (4) progress/coordination meetings and conference calls with the City staff. These meetings will include:

- A kick-off meeting – Key members of the Consultant Team will participate in a project kick-off meeting to visit the projects site and to confirm the overall project scope and schedule. The kick-off meeting will provide Consultant the opportunity to review data needs, receive data from the City, discuss project utility coordination, establish methods of communication, and review the requirements for the community engagement program (Task C). Consultant proposes to conduct a half-day visit to the project at the time of the kick off meeting.

- One full-day site visit – The Consultant Team has included time for select members to participate in a full day site visit. This site visit will take place after the basemap creation, to ground truth site features, and before the DD phase of design.
- One virtual meeting following each of the design deliverables
 - o Schematic Design (30% Level of Design)
 - o Design Development (65% Level of Design), and
 - o Construction Documents (100% Level of Design)

The progress and coordination meetings/calls will allow the City and the Consultant Team to review the progress of the project, explore issues, identify resolutions, and provide recommendations regarding the project design. As part of this task, Consultant will coordinate and attend meetings, prepare meeting agendas (as necessary) compile, and distribute meeting minutes.

This task also includes time to participate in conference calls with the City on a monthly basis, as needed, throughout the duration of the project. Consultant estimates that the monthly calls will last no more than 30 minutes. Consultant will follow up the call with an email summarizing the main points of the call to memorialize any decisions made. If a call is not needed or participants are not available, Consultant will provide a check-in email to summarize the status of the project.

Meetings in addition to those listed above will be billed on a time and expense basis for the individual attending the meeting.

Deliverables include:

1. Attend the following Meetings, Provide Meeting Summary after each
 - o Kick-off Meeting (includes half day site visit)
 - o One full day site visit
2. Virtual Meetings
 - o Schematic Design Submittal Review
 - o Design Development Submittal Review
 - o Construction Document Submittal Review
3. Attend monthly call to review the project status, Provide Meeting Summary after each

Task C – Public Outreach

In coordination with the City, and in compliance with the Transform Fresno Community Engagement Plan Narrative, the Consultant Team will work with the US Green Building Council (USGBC) Central California chapter's local consultant, Urban Diversity Design, to prepare an outreach strategy intended to fit within the framework of the overall community engagement plan. Based on a review of the addendum (item 2 attachment from the USGBC-CC) Consultant will plan to participate in one, full-day, community workshop and help organize and implement a tactical urbanism demonstration for this project. Consultant will provide necessary documents or design graphics that will be

needed for the outreach meetings and collaborate with USGBC team to design the tactical urbanism program, so the demonstration is aligned with proposed design. Consultant will also meet with USGBC-CC team, as needed, to make sure the proper communication is happening between the teams. In an effort to keep our fees low for this task, the Consultant Team has only included time to modify existing proposed deliverables to be used for stakeholder meetings. The stakeholder meetings will be organized, facilitated, and attended by USGBC and/or Urban Diversity Design. Requests for graphics and materials in excess of the proposed deliverables, may require additional time and budget. Fees will be assessed on a time and material basis for the firm and individual preparing the graphics.

PHASE 1: PROJECT PLANNING AND COORDINATION (PARTS 1-3)

Task D - Review of Existing Information and Scope Refinement

During the kick-off meeting (Task B, above), Consultant will obtain relevant data and information from the City. At a minimum, Consultant will review:

1. Proposed preliminary site plans (presented in the RFP),
2. Evaluation of site topographic data/mapping and applicable record data (LiDAR).
3. Review any pertinent GIS layers including but not limited to hard infrastructure and utilities
4. Evaluation of any available reports including traffic/soils/geology/site hazards/biotic/etc
5. Review of City of Fresno's trail Design Guidelines Document and Standard Drawings
6. Review of applicable regulatory and permitting requirements (Caltrans/City/etc)
7. Stormwater and Erosion control considerations
8. Stakeholder input, information, and data

Consultant and the Consultant Team will review the exiting information and identify any information and/or scope gaps. Consultant will work with City and the Consultant Team to refine the scope of the overall project, as necessary, to fill in any information gaps. A revised scope of work and cost estimate will be provided for any work identified. This task will be completed swiftly once the project is initiated to ensure that the timeline of the overall project is maintained.

Deliverables include:

1. One (1) Full Day site visit (Task B above)
2. One (1) Existing Conditions Due Diligence memorandum

Task E – Utility Coordination

Consultant will lead the Consultant Team in the Utility Coordination Efforts. This task will include identifying the various agencies and utilities that exist on site, preparing utility

notification letters to each entity informing entities of the potential project and requesting site meeting to determine impact on underground/above grade utilities (Telecom/Electrical). Prepare and submit plans to utility companies for Utility companies' approval and direction/approach to construction (Design of PG&E will be by PG&E based on PG&E requirements, standards, rules and regulations). Prepare report of data/information provided by each Utility Company (where available, obtain any maps, as-builts from Utility Company). Identify utility relocations required, provide recommendations on relocations, and preparing and submitting necessary documents to different agencies (per Utility Company direction).

Consultant will summarize their findings in a technical memorandum. The memorandum will identify all utilities found on site, describe the locations/size/type (as applicable), list any applicable design standards regulations related to relocating the utilities, and provide recommendations for any relocations necessary to complete the project. Relocations will be shown in the Schematic Plans (Task H below)

Deliverables include:

1. Electronic copies of correspondence with utilities entities
2. Memorandum summarizing findings and recommendations for relocations

Task F – Geotechnical Investigation

A geotechnical investigation will be conducted, and a geotechnical report prepared by Consultant. Consultant proposes to prepare a geotechnical work plan and will contact Underground Service Alert 72 hours prior to any drilling. Consultant will perform an exploration, sampling, and classification of surface and subsurface soils by drilling 2-3 test borings at accessible locations within the planned project area. The borings will range in depth from 10-20 feet and may be terminated at shallower depths if dense bedrock is encountered. Soil samples will be obtained at select depths within the test borings. The test borings will be backfilled with the soil cuttings upon completion of drilling and cold patched with asphalt, if necessary. The soil samples will undergo laboratory testing to determine their relevant engineering properties. The data from the laboratory testing will be analyzed and a geotechnical engineering report will be prepared summarizing results of the analysis and providing geotechnical recommendations for the design of the proposed project, including pavement sections (including subsoil compaction requirements, aggregate base, and AC pavement section).

Once the Draft Geotechnical Engineering report is complete, it will be submitted to the City for review and reference.

Deliverables include:

1. One (1) Geotechnical Engineering Report, electronic and three (3) wet stamped hard copies

Task G – Process Topographic Data and Preparation of Site Basemap(s)

Consultant will use existing and available topographic data, collected by the City (as stated in the RFP), to prepare a Basemap for the site. Consultant will process the City's data, import the preliminary trail alignment as identified in the RFP, insert any utility data identified in Task E above, and create a single comprehensive basemap for the site. The layering, colors, and line types will follow standard engineering protocol and any requirements identified by the City for conformance and consistency. The base map site will become the foundation for the Engineering Design plans developed in Phase 2 below.

A topographic survey was not included as a scope item in the RFP. If the topographic survey data, provided by the City, is not sufficient for the design of the proposed project, Consultant will inform the City immediately.

Deliverables include:

1. Consultant will present an electronic copy of the Basemap

PHASE 2: CONSTRUCTION DOCUMENTS (PARTS 1-3)

In this Phase, Consultant will develop Engineering Plans, Specifications, and Cost Estimates (PS&Es). Each deliverable is intended to build upon the previous deliverable, incorporating feedback and comments from the City and the project Stakeholders. The following tasks present the plan development from Schematic Design to Construction Documents in three successive submittals to the City.

Task H - Schematic Design (30% Level Design) PS&Es

The Consultant Team will prepare Schematic Level (30%) Design Plans for the proposed trail alignment, as shown in the figures presented in the RFP. The schematic design plans will include Engineering and Landscape Plans that show the proposed site improvements at a schematic level of design. Consultant will prepare the Civil Engineering Plans which may include a Cover/Civil Information Sheet, Staging and Demolition Plan, Overall Site Improvement Plan, Trail Alignment and Profiles, Wet Utility Alignments/Relocations, Grading and Drainage Plans, Erosion Control Plan, and any typical details necessary to convey the intent of the design. Consultant will prepare the landscape design plans which will include the layout of structures, site features, furnishings, and planting. Consultant will prepare plans for the Site Electrical and Dry Site Utility Alignments/Relocations. The Schematic Plans will include the sheets necessary to convey the concept and scope of the proposed project and the details required to provide an understanding of the construction intent.

The Consultant Team will also provide a list of Specifications to be developed in later phases of design.

The Consultant Team will prepare a materials list, quantities, and a preliminary Cost Estimate for the project as shown in the Schematic Design. The cost estimate will be commensurate to the level of design.

The Schematic PS&Es will be submitted for Review, Comment and Acceptance by the City. Consultant anticipated a single deliverable for this task and any comments received will be incorporated into the Design Development (65% level of Design, Task I below).

Deliverables include:

1. One (1) electronic copy, PDF, and a maximum of four (4) hard copy sets of the Schematic Design Plans (30% Level of Design)
2. One (1) electronic copy, in PDF format, of the Preliminary Cost Estimate
3. Two (2) copies, Microsoft Word and Adobe PDF, List of Specifications

Task I - Design Development (65% Level of Design) PS&Es

Once the Consultant Team has received feedback/comments on the Schematic Designs, we will begin work on the Design Development Design Plans. The plans will follow the same format and layout as identified in Task H above. The Design Development Plans will advance the design plans to the 65% design level. At this level of the design, the plans will begin to show how the improvements will be implemented and the details will begin to show how the project will be constructed. The details will be developed from typical details to drafts of the final design details.

At this level of design, the Consultant Team will provide a draft of the specifications to indicate the sections that the Consultant Team proposes to prepare as part of the final engineering plan set. This draft will identify all of the subsections within each specification. The Draft specifications at this level may not be tailored to the specific project but will provide guidance to prevent cross over or duplicate sections that may also be provided by other disciplines

The Consultant Team will update the list of materials and quantities to reflect the updated design plans and update the Opinion of Probable Cost for the Project. The cost estimate will be commensurate to the level of design.

The Design Development PS&Es will be submitted for Review, Comment and Acceptance by the City. Consultant anticipated a single deliverable for this task and any comments received will be incorporated into the Construction Documents (100% level of Design, Task J below).

Deliverables include:

1. One (1) electronic copy, PDF, and a maximum of four (4) hard copy sets of the Design Development Plans (65% Level of Design)
2. One (1) electronic copy, in PDF format, of the Updated Cost Estimate
3. Two (2) copies, Microsoft Word and Adobe PDF, Draft Specifications

Task J – Final Construction Documents (100% Level of Design) PS&Es

Once the Consultant Team has received feedback on the Design Development Plans (Task I above), we will begin work on the Final Construction Documents (100% level of Design). The plans will follow the same format and layout as identified in Task H above. The Construction Drawings will advance the design plans to the 100% construction ready design level. At this level of the design, the plans will show how each improvement will be constructed. The details will be developed from draft to a more complete and final level of design.

At this level of design, the Consultant Team will provide Final specifications. The Final specifications will identify all the subsections within each specification and will be tailored to specifically identify all proposed improvements for the site.

Based on the Final Engineering Plans, we will update the cost estimate to ensure that the project is within the funded budget while also providing options to the City for add alternate options, should they be needed or desired.

The Final PS&Es will be submitted for Acceptance by the City. Consultant anticipated a single deliverable for this task and any significant changes to the plans at this stage will require a contract amendment for the expansion of the scope of work (see Exclusions)

Deliverables include:

1. One (1) electronic copy, PDF, and a maximum of four (4) hard copy sets of the Construction Documents (100% Level of Design)
2. One (1) electronic copy, in PDF format, of the Final Cost Estimate
3. Two (2) copies, Microsoft Word and Adobe PDF, Final Specifications

PHASE 3: CONSTRUCTION ADMINISTRATION (PARTS 4-5)

Task K – Bidding

As part of this task Consultant will review the construction bid RFP, attend pre-bid walk-through and respond to bidder questions.

Consultant will assist the City staff by reviewing the RFP for construction estimates to be sent to qualified contractors in the region. Consultant will provide the Final Engineering Design Plans, Final Specifications, and a detailed project description. Consultant will provide other assistance, as necessary. Consultant has included time to review a draft of the RFP and provide comments.

Consultant will attend the pre-bid walk-through and will be available to describe the proposed project, the intent of the work to be completed, and respond to technical questions that arise through the bidding process.

Task L – General Construction Administration

As part of this task, Consultant and the Consultant Team will attend pre-construction meeting, respond to Requests for Information (RFIs), provide Supplemental Information (SIs), Review Submittals, and Conduct limited Construction Inspections. Through our conversations with the City Staff, Consultant understands that the City has a construction inspector and assistant inspector that will be performing the majority of the construction site visits and materials/soils testing. A Geotechnical will be contracted under a separate contract to conduct soils testing during the construction of the project.

Consultant and select Consultant Team members will attend the Pre-Construction meeting to review the project schedule and to discuss process (timing and procedures) for the RFI, SI and submittal process with the Contractor and the City. Consultant will also discuss any special considerations/conditions of approval that the Contractor should be aware of. Consultant will work with the Contractor to develop construction schedule that will be submitted to the City for review and approval.

Consultant will respond to request for information (RFIs), prepare supplemental information (SIs), as required. Consultant will also review contractor submittals in conformance with the project specifications and designs. All RFI, SIs, and submittals will be reviewed and returned to the contractor in a timely manner to keep the project on schedule.

Consultant will conduct as-needed construction inspection throughout the construction phase of the project.

Task M – Record Drawings and Final Approval Letter

As a final task, Consultant will prepare a Record Drawing and Final Approval Letter. The Record Drawings will update Final Engineering Design Plans and reflect any changes that were made throughout the construction of the project.

EXHIBIT B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno (CITY) and Sherwood Design Engineers (CONSULTANT)

Southwest Fresno Trail

INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to STATE OF CALIFORNIA (STATE), CITY OF FRESNO (CITY) and each of their officers, officials, employees, agents, servants 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 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 STATE and 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, vendors, suppliers, invitees, contractors, sub-contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability

policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

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

MINIMUM LIMITS OF INSURANCE

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

1. **COMMERCIAL GENERAL LIABILITY**

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

2. **COMMERCIAL AUTOMOBILE LIABILITY**

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

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

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

4. **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 STATE, CITY and each of their officers, officials, employees, agents, servants 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 self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or designee. At the option of the CITY'S Risk Manager or designee, either:

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

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice has been given to CITY, except ten days for nonpayment of premium. 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 calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name STATE, CITY and each of their officers, officials, employees, agents, servants and volunteers as an additional insured. CONSULTANT shall establish additional insured status for the STATE and CITY for all ongoing and completed operations under the Commercial General policy by use of ISO Forms or an executed manuscript insurance

company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

- (iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONSULTANTS' insurance shall be primary to and require no contribution from the STATE and CITY. The Commercial General policy is required to include primary and non contributory coverage in favor of the STATE and CITY for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to STATE, CITY and each of their officers, officials, employees, agents, servants and volunteers. If CONSULTANT maintains higher limits of liability than the minimums shown above, STATE and CITY requires and shall be entitled to coverage for the higher limits of liability maintained by CONSULTANT.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the STATE, CITY and each of their officers, officials, employees, agents, servants and volunteers. Any insurance or self-insurance maintained by the STATE, CITY and each of their officers, officials, employees, agents, servants and volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to STATE, CITY and each of their officers, officials, employees, agents, servants and volunteers.
- (viii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to STATE, CITY and each of their officers, officials, employees, agents, servants and volunteers.

PROVIDING OF DOCUMENTS - CONSULTANT shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or designee prior to CITY'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of 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. All subcontractors working under the direction of CONSULTANT shall also be required to provide all documents noted herein.

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

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) 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 work commencement date, CONSULTANT must purchase "extended reporting" period coverage for a minimum of five years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

SUBCONTRACTOR- If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONSULTANT will be solely responsible for ensuring that its subcontractor maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

EXHIBIT C

DISCLOSURE OF CONFLICT OF INTEREST

SOUTHWEST FRESNO TRAIL

		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 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 checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Additional page(s) attached.



Signature

November 22, 2021

Date

Peter Haase

(Name)

Sherwood Design Engineers

(Company)

1525 Seabright Avenue

(Address)

Santa Cruz, CA 95062

(City State Zip)