

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

THIS AGREEMENT is made and entered into effective the day of June, 2020, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Mark Thomas & Company Inc., 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 MLK Center Active Transportation Infrastructure Project, hereinafter referred to as the "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 (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 four million nine hundred thirty thousand dollars (\$4,930,000.00), 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 ninety (90) 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 (14) 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 sixty (60) 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 seven (7) 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, Adobe Creative Suite, and/or Microsoft Suite as applicable.

(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 sixty (60) 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 seven (7) 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 thirty (30) 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 2018, Adobe Creative Suite, and/or Microsoft Suite as applicable.

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 five hundred eighty four thousand eight hundred fifty nine dollars (\$584,859.00), and a contingency amount not to exceed thirty thousand (\$30,000.00) 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 – thirty three percent (33%), Part 2 – thirty two percent (32%), Part 3 – thirty percent (30%), Part 4 – two percent (2%) and Part 5 – three percent (3%). 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.

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

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

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

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

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

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

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

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

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

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

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

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required

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

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

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

9. Conflict of Interest and Non-Solicitation.

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

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, 23 U.S.C. § 112, FHWA regulations applicable to design and engineering consulting contracts found at 23 C.F.R. 172.1 *et seq.*, California Government Code Section 1090 *et. seq.*, the California Political Reform Act (California Government Code Section 87100 *et. seq.*), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 *et. seq.*) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor

that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

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

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

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

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

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

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

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

(i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and

facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

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

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

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

(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 James Polfer, PE/QSD, and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

(e) CITY will carry out applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, CONSULTANT agrees to comply with all

applicable federal and state assurances and requirements identified in **Exhibit D along with its Appendix A** and require that each subcontract include the same assurances by each of its subcontractors.

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

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

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

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

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

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

13. Independent Contractor.

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

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

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

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

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

16. Assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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, PE, MCE,
Assistant Director
Public Works Department

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

No signature of City Attorney required.
Standard Document #DPW-S 31.1 has
been used without modification, as certified
by the undersigned.

By: _____
John Honey, PE
Professional Engineer
Public Works Department

REVIEWED BY:

Scott Tyler, PE, Public Works Manager
Public Works Department

Addresses:

CITY:
City of Fresno
Attention: John Honey, PE,
Professional Engineer
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8651
FAX: (559) n/a

Mark Thomas & Company Inc.,
A California Corporation

By: _____
Name: Robert Himes

Title: President
[if corporation or LLC, Board
Chair, Pres. or Vice Pres.]

By: _____
Name: R. Matt Brogan

Title: Secretary
[if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary.]

Any Applicable Professional License:
Number: P.E. C74529
Name: James Polfer
Date of Issuance: July 2009

CONSULTANT:

Mark Thomas & Company Inc.
Attention: James Polfer, PE/QSD,
Project Manager
7571 N Remington Ave, Suite 102
Fresno, CA 93711
Phone: (559) 374-3118
FAX: n/a

Attachments:

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

Exhibit A

SCOPE OF SERVICES

Consultant Service Agreement between City of Fresno (“City”) and Mark Thomas & Company Inc. (“Consultant”)

MLK Center Active Transportation Infrastructure Project

PROJECT TITLE

Project plans, specifications, and engineer's estimate will be prepared based on the City's and Consultant's mutual understanding of the planned improvements given in the RFQ and the general descriptions of the planned improvements listed below.

Roadway Improvements (Back of Curb to Back of Curb)

- Church Avenue: Approximately 200-feet west of Walnut Avenue to MLK Boulevard - Rehabilitate/reconstruct existing AC and widen the roadway to accommodate: 2 - travel lanes with TWLTL; Class II bike lanes; on-street parking; curb and gutter along the south side of Church; and signing and striping.
- Jensen Avenue: Knight Avenue to MLK Boulevard: - Rehabilitate/reconstruct existing AC and widen the roadway to the north along the EB lane to accommodate a Class II bike lane and signing and striping.
- Walnut Avenue: Approximately 200-feet south of Jensen Avenue to Grove Avenue – Rehabilitate/reconstruct existing AC roadway as necessary; signing and striping the existing roadway for 2 - travel lanes and a TWLTL, Class II bike lanes, and on street parking; and Grove Avenue to Church Avenue - Rehabilitate/reconstruct existing AC and widen the roadway to accommodate: 2 - travel lanes and a TWLTL; Class II bike lanes; on street parking; curb and gutter on both NB and SB sides of Church; and signing and striping.
- MLK Boulevard: Jensen Avenue to Church Avenue - Rehabilitate/reconstruct existing AC and widen the roadway to accommodate: 2 - travel lanes with TWLTL; Class II bike lanes; on-street parking; curb and gutter along the west side of MLK; and signing and striping.

Landscape Architecture Urban Design (LAUD) Improvements (back of curb to property line)

- Class I Trails (including DG shoulders and center striping): South side of Church Avenue from Walnut Avenue westward to MLK Boulevard; and North side of Jensen Avenue from Knight Avenue westward to MLK Boulevard.
- Sidewalks (including ADA ramps and queuing space at corners): Both sides of Walnut Avenue from Grove Avenue to Church Avenue; and West side of MLK Boulevard from Jensen Avenue to Church Avenue.
- Planting and Irrigation Facilities: South side of Church Avenue from Walnut Avenue to MLK Boulevard; and North side of Jensen Avenue from Knight Avenue to MLK Boulevard.

FMFCD Facilities: Extend approximately 3,600 lf of 18-inch diameter stormwater collection system and install Drainage inlets and manholes

Traffic Signals and Street Lighting

- Existing Traffic Signals to be Modified: Church Avenue and MLK Boulevard; and Jensen Avenue and Martin Luther King Boulevard

- Street Lighting Plans: South side of Church Avenue between Walnut Avenue and MLK Boulevard; and North side of Jensen Avenue between Walnut Avenue and MLK Boulevard

Project Management:

CPM Schedule and Progress Reports

Consultant will prepare and maintain a project schedule for City review. The schedule will be updated regularly, with critical path activities clearly shown for team review purposes. Additionally, monthly progress reports will be provided to the City.

Project Development Team (PDT) Meetings (8 Total)

Consultant, in consultation with the City will establish a PDT for this project. PDT meetings provide a forum to share project information, identify critical issues, make decisions, assign project tasks, identify design criteria, or any other items critical to project delivery. Consultant will prepare agendas for each meeting and distribute them to the PDT prior to each meeting. Consultant will facilitate meetings as applicable and prepare meeting minutes with action items.

Management and Coordination

Consultant's project manager will provide management and coordination of the professional and technical services involved in the preparation of the plans, specifications, and engineer's estimate (PS&E). This task includes coordination with affected agencies and utilities.

Quality Assurance/Quality Control

Consultant will implement a Project-specific Quality Plan (PQP) in accordance with our Quality Management Manual. The PQP will clearly define the quality management system for the design project and govern the implementation of our quality policies at all levels.

Community Outreach

Stakeholder Database

Stakeholders may include locally affected communities or individuals and their formal or informal representatives, local government authorities, politicians, religious leaders, civil society organizations, special interest groups, the academic community and businesses.

This task will be led by a subconsultant which will coordinate with the City and any partnering agencies to update the Project Teams existing stakeholder database comprised of residents, businesses, elected officials, community-based organization, faith-based organizations and environmental justice groups such as Leadership Counsel for Justice and Accountability, Cultiva La Salud, Fresno Building Healthy Communities, Central California Environmental Justice Network, etc. The database will contain the name of the agency or individual, their physical and email addresses, telephone number(s), notes regarding attendance at community meetings or events, and comments received. The listing will be expanded and updated as work on the Project progresses. The stakeholder database will be used to assist with the dissemination of Project information, materials, and noticing.

Outreach Materials

Public information prepared for the Project will be straightforward, factual, and designed to be appreciated by the non-technical audiences. Project mailers, flyers, public meeting announcements and other outreach materials will be prepared to directly inform residents,

business owners, and other stakeholders of the Project, its limits and reasons for the Project. Each communication tool will include contact information, the appropriate contact name(s), office phone and email address. The communication shall include the description of work, the community meeting date, time and location, and other necessary information.

Subconsultant will create and print up to 1,000 community meeting mailers in English, Spanish and Hmong to ensure that the Project area's diverse population can easily read and understand the Project materials. Community meeting mailers will be delivered by subconsultant to City of Fresno staff for bulk postage and distribution to property owners and residents in the Project Area.

Subconsultant will also create up to 500 bilingual community meeting flyers in English, Spanish and Hmong and will distribute to local schools, Cecil C. Hinton Community Center and other major businesses and agencies in the Project Area.

Subconsultant will prepare and distribute bilingual meeting invites via eblast to the Project stakeholder database and other identified key stakeholders. A total of three (3) eblasts will be completed for the community meeting invite, which will include an initial eblast two weeks prior to the scheduled community meeting and two (2) follow-up reminders.

Community Meeting

The Project team will conduct one (1) community meeting during the schematic design phase of the MLK Center Active Transportation Infrastructure Project. The meeting will allow for organized group discussion with the goal of exchanging and gathering information. The meeting will give the Project team the opportunity to share information with many diverse stakeholders and the public who can ask questions and explore issues in detail while also encouraging stakeholders to network and share experiences.

Community meeting participants will learn about the construction of improvements for the project through one on one conversation with Project team members, Project exhibits and a rolling PowerPoint presentation. Participants will also be able to provide their comments through one on one staff/participant notes, by completing and turning in comment cards at the community meeting and/or through mailing back comment cards to the Project team.

As an optional subtask, the Project team could also solicit the services of a Court Reporter who would document all in-person comments received from community meeting attendees.

To further ensure broad participation of all community stakeholders and to meet environmental justice requirements, the community meeting will include Spanish translation services. Meeting materials including exhibits, information flyers, extra-large handouts (Tabloid/11x17), and comment cards will be available in both English and Spanish. In order to maximize attendance, workshop venues will be ADA accessible and held at time convenient for public stakeholders.

Meeting notifications will be distributed via eblast through the Stakeholder Database and City social media sites. Subconsultant will be responsible for securing the workshop locations and providing refreshments. Subconsultant will also be responsible for all workshop venue set-up and tear-down activities and provide all associated equipment (presentation, audio, visual, etc.). Finally, Subconsultant will provide a synopsis of the community meeting, identify the number and type of attendees, include a list of presentations made and materials provided, and document the comments received from meeting attendees.

Deliverables

- A maximum of 1000 mailers, distribution of 500 flyers to schools, community center, and other major businesses and agencies in the area, eblast to stakeholder database and other identified key stakeholders.
- Materials for and attendance at one (1) community meetings, Spanish and Hmong translation services, venue set-up and tear-down activities, community meeting synopsis.
- PDT Meeting Agenda & Minutes
- Monthly Progress Reports
- Maintained Project Schedule

Part 1 - Schematic Design Phase

1.1 Data Gathering / Field Review

Consultant will collect and review all information provided by or made available by the City. Also, field investigations will be conducted as needed to become familiar with the project site and check for any conditions that would affect, or be affected, by construction.

1.2 Utility Coordination / Relocation

Consultant will create a Utility Identification Plan and organize a list of Utility Contacts. Consultant will obtain utility mapping from utility companies and develop a utility base map, to be used as a base for utility location surveys. Consultant will continuously coordinate with utility companies as necessary to ensure proper identification of relocation requirements (extent, appropriate clearances, timing, Rights of Way, working space, etc.) are obtained.

Utility coordination services will be conducted in general conformance with Caltrans' Local Assistance and Utility Relocation Manuals following the Utility A-B-C process:

- Utility "A" Letter - A USA list is generated that shows all possible utility companies located within the project limits. A letter is sent to the respective utility company informing them about the project and asking them for as-built mapping and liability claims within the project area.
- Utility Meetings (2 total) - Once the schematic design is complete, Consultant will facilitate utility meetings with the utility companies and the City to discuss project impacts. At the meetings, it is preferred that the utility companies and the City reach a consensus regarding various items affected by the work including clearance requirements over underground utilities.
- Utility "B" Letter - Letter is issued to the utility companies with the design development document that demonstrate or show utility impacts. The utility companies are instructed to begin relocation plans at this time. Frequent follow ups with utility companies are required from this point forward.
- Utility "C" Letter (Notice to Owner) - Once utility relocation plans are received and approved from the utility companies, the notice to owner letter authorizes the company to relocate their utilities. Right of way acquisition must be cleared for this letter to be issued.

As part of utility mapping, Consultant will determine horizontal location of existing utilities and prepare a list of those utilities which have a potential conflict with proposed improvements. In areas of reconstruction where elevations of underground utilities are unknown and there is potential conflict, Consultant will hire a potholing company to perform non-intrusive vacuum excavation at critical locations to determine the positive locations of these utilities. For this scope of services, it is assumed a total of five (5) potholes may be necessary.

1.3 Topographic Survey Information

Consultant will use for final design topographic survey information provided by the City. The survey information provided will include the original ground surface with contours and existing

fixed facilities and improvements identified. The survey information provided by the City will be in Civil 3D format and ready for use by Consultant. This information will be used to create finish grade information, prepare existing grade profiles, cross section slopes, and drainage patterns along the corridors to be improved.

1.4 Site Reconnaissance and Soil Nutritional Analysis

Consultant landscape architecture division will visit the site to observe and document apparent site conditions that would impact the landscape design and collect up to four (4) one-quart samples of the existing topsoil to submit to a soil laboratory for nutritional analysis and recommendations.

Recommendations will be included in the technical specifications.

1.5 Geotechnical Investigation

This task will be led by Parikh to determine the most viable pavement rehabilitation strategy. If it is determined that in-place recycling, including full depth reclamation (FDR) or cold in-place recycling (CIR), is the best alternative Parikh, as an optional service, will provide the materials investigation and support as needed.

The specific project elements that will require geotechnical studies are:

- New pavement section for all the roadway corridors
- FMFCD stormwater system improvements.

The proposed geotechnical studies are planned to be performed through the PS&E phase of work. Overall scope of work will include preparation of a Geotechnical Report for the roadway work, and recommendations for storm drain materials and trenching.

1.5.1 Geotechnical Coordination

Parikh will meet with the design team to discuss preliminary design, project design needs, issues, and schedules. For field work a City encroachment permit will be obtained and fieldwork locations coordinated with the design team.

1.5.2 Sampling and Investigation

Parikh's engineer/geologist will direct the coring and sampling. Samples of the subgrade soil will be collected for pavement design.

These explorations will provide an evaluation of subsurface conditions for the proposed roadway portion of the project. R value samples from at-grade locations will be collected at approximately 1000' to 1200' intervals. The boring locations will depend upon the available access and permit conditions.

Pavement cores will be collected from areas that are planned to be overlaid or reconstructed. Traffic control is assumed at this time for 2 shifts. Widening areas are presently dirt shoulders and therefore are not expected to require traffic control.

Parikh will

- Review available geologic and soil literature in the vicinity of the site.
- Comply with City permit requirements.
- Field locate borings and call for USA clearance.

- Perform field exploration boring program as provided below.

Seven (7) pavement borings approximately three (3) feet deep to determine R-value and six (6) borings for the storm drain system; two (2) at fifteen (15) feet deep and four (4) at ten (10) feet deep.

- Classify and log subsurface soil conditions encountered in each test boring at the time of drilling. Obtain "relatively undisturbed" and bulk samples of substrata from test borings. The borings will be drilled and capped in accordance with the permit requirements. Generally, the borings are required to be backfilled with cement grout.

1.5.3 Laboratory Testing and Analysis

Parikh will perform laboratory tests on representative soil samples such as moisture density, unconfined compression, gradation analyses, R-value tests, corrosion tests, and Plasticity Index test.

Parikh will perform an engineering analyses and develop design recommendations for the proposed pavement design and storm drain trenches. Pavement design will be based on the proposed Traffic Index and the design life of the pavement. Corrosion tests will be conducted for the trench recommendations.

1.5.4 Geotechnical Design Report

Parikh will prepare a Draft Geotechnical Design Report to include existing pavement thicknesses obtained from pavement cores, which will be tabulated, and preliminary recommendations for pavement sections and storm drain construction.

Parikh will prepare the final Geotechnical Design Report which will include response to review comments from the City. Final design recommendations will be based on the updated design requirements. The log of test borings will be prepared in gINT format (8 ½ X 11).

Assumptions:

- Traffic Index will be provided by the City.
- Traffic control for two (2) shifts for coring within the existing roadway.
- There will be no fee for encroachment permits required for field investigations.

1.6 Schematic Design Drawings

1.6.1 Roadway - Geometric Approval Drawings

Consultant and subconsultant will update the 60% preliminary roadway Geometric Approval Drawings (GAD) prepared by the City for the City's review and comment. The City will provide all relevant AutoCAD files created in the preparation of the 60% GAD for Consultant and subconsultant use. The preliminary roadway plans will show, amongst other things, the proposed roadway layout and profile, typical roadway sections, and preliminary right of way impacts, if any. The electrical design plans will provide the layout of traffic signal equipment, including but not limited to locations of the existing signal controller/cabinet, poles, pedestrian countdown signals, emergency vehicle pre-emption, traffic markings, striping and signage design, intersection safety lighting, etc. Designs will be in accordance with Caltrans design standards, CA MUTCD guidelines, and the City's current design and CADD standards. These plans will serve as the geometric approval drawings.

1.6.2 Storm Drain System

Consultant will prepare schematic design for the proposed storm drain facilities and general appurtenances at the preliminary design locations. Such facilities will include stormwater collection mains, drainages inlets, manholes, lateral extensions, and all other devices and materials necessary to make serviceable mains.

Facilities are expected to comply with California State Water Resources Control Board regulations, City standards, and FMFCD standards for their storm water systems. Plans will be prepared using AutoCAD 2018 Civil 3D.

1.6.3 Preliminary Site Construction and Planting Plan

With information gathered above and feedback provided by City Staff, Consultant's landscape architecture division will prepare a preliminary site construction and planting plan package for all hardscape and softscape improvements outside of the back of curb. Draft package to include:

- A preliminary black and white site construction plan drafted in CAD illustrating the preliminary layout of all hardscape improvements (i.e. Class I trail, sidewalks, corner nodes, etc.) behind the new curb.
- A preliminary black and white planting plan drafted in CAD illustrating planting design and location of the irrigation point of connection(s).
- Up to three (3) illustrative cross sections
- Irrigation equipment list and plant list (with color photos)

1.7 Traffic Signal & Street Lighting

Subconsultant will prepare schematic design for the proposed traffic signal modifications, including but not limited to the locations of signal controllers/cabinets, poles, and signal heads. During the schematic design phase, Subconsultant will:

- Collect and review existing information pertaining to this project, including as-builts and design topographic survey.
- Perform field reconnaissance for an overall perspective on existing field condition and identify unusual or special conditions if any.
- Prepare base maps at a minimum scale of 1" = 40' utilizing a combination of as-built plans, design survey provided by the City, and field reconnaissance.
- Prepare a preliminary design for review and discussion with the City's representatives. The preliminary design will be based upon acceptable standards for roadway and traffic design including the City's and Caltrans design criteria. Impacts to existing facilities and key issues will be further defined.
- Meet with the City's project representatives and involved others to review and discuss the contents of the preliminary engineering and assist in reaching approval of a final design guide or approach.

Assumptions:

- Preparation of traffic signal timing plans is not included in the scope of work.
- Traffic studies are not included in the scope of work.
- Advance Yellow Flashing Beacons are not included in the scope of work.
- Preparation of Traffic Signal Warrants are not included in the scope of work.
- Traffic Signal Interconnect (other than by the use of wireless antennas) is not included in the scope of work.

1.8 Preliminary Estimate

As part of the schematic design phase a preliminary estimate of construction costs will be prepared. This estimate will include the work and materials determined at this phase of design to be incorporated into the project.

Deliverables

- Utility A, B, and C letters
- Draft Geotechnical Report
- Geometric Approval Drawing (GAD)
- Schematic Design Drawing - 7 copies – 24" X 36"; 1 electronic copy (PDF)
- Preliminary Estimate of Construction Costs

Part 2 - Design Development Phase

2.1 Design Development Plans and Details

Based upon the approved schematic design documents Consultant will prepare detailed drawings incorporating City standards as applicable to the improvements.

This submittal will represent a complete plan package. Major design features will have been reviewed; however, because of the review comments received for the 30% submittal, there may be some plan details that will be submitted for the first time.

Design plans will be prepared in accordance with the City drafting standards, format, and conventions. Final plans will be in AutoCAD format for standard 24-inch by 36-inch plans and comply with the City's and Caltrans' latest standard plans and specifications and the CA MUTCD.

2.2 Specification/Special Provisions

At this phase Consultant will develop the project special provisions outline using City standards. The technical specifications will be supplemented with Caltrans 2018 State Standard Specification, as necessary. The special provisions will be prepared using Microsoft Word. Consultant will incorporate the City's boilerplate contract language into the specifications.

2.3 Update Engineer's Estimate

At this phase the estimate prepared as part of the schematic design phase will be updated and expanded. This update will include the work and materials determined in the prior phase to be incorporated into the project design.

Deliverables

- 65% Design Drawings – 6 copies – 24" X 36"; 1 electronic copy (PDF)
- Outline of Project Specifications/Special Provisions
- Revised Estimate of Construction Costs

Part 3 - Construction Document Phase

3.1 Project Improvement Plans and Details (90%)

This submittal will represent a complete plan package. Design features will have been reviewed and approved. From this point, only minor "clean-up" will occur if necessary.

3.2 Specification/Special Provisions

This submittal will represent a complete set of project specifications ready for bidding.

3.3 Update Engineer's Estimate

To verify programmed funding matches the anticipated construction costs, Consultant will update estimates prepared in the previous phases. The estimates will be comprised of unit prices placed on detailed quantity and check quantity calculations. Unit prices will be developed using current bid results from similar projects, Caltrans data base information, and Caltrans latest Construction Cost Manual.

Deliverables:

- 90% Design Drawings – 6 copies – 24" X 36"; 1 electronic copy (PDF)
- Project Specifications/Special Provisions
- Updated Estimate of Construction Costs

Part 4 - Bidding Phase

4.1 Bid Support

Consultant and subconsultants will provide assistance, as required, to the City during bidding of the project. The work may include answering bid inquiries of prospective bidders and preparing addenda to the PS&E during bidding.

Deliverables:

- RFI Responses
- Addenda to Project Bid Documents

Part 5 - Construction Phase and General Construction Administration

5.1 Construction Support

Consultant and subconsultants will provide assistance, as required, to the City during construction of the project. The work may include responding to Requests for Information (RFI) by the contractor, providing consultation and interpreting the construction documents, preparing contract change orders, reviewing shop drawings, reviewing submittals for plan and specification compliance, attending construction meetings, and visiting the project locations during construction.

5.2 As-Built Plan Preparation

Consultant will complete the as-built drawings after receiving red-lined mark-ups from the contract manager after completion of construction.

Exhibit B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno ("CITY") and Mark Thomas & Company Inc. ("CONSULTANT")

MLK Center Active Transportation Infrastructure Project

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 to 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

MLK Center Active Transportation Infrastructure Project
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: _____

Additional page(s) attached.


Signature

05/20/2020
Date

Robert Himes
(name)

Mark Thomas & Company, Inc.
(company)

7571 N. Remington Ave, Suite 102
(address)

Fresno, CA 93711
(city state zip)

Exhibit D
FEDERAL AND STATE ASSURANCES
Consultant Service Agreement between City of Fresno (“CITY”)
and Mark Thomas & Company Inc. (“CONSULTANT”)
MLK Center Active Transportation Infrastructure Project

1. CONSULTANT shall comply with and require its Subcontractors to comply with the following:
 - a. 23 USC §112 regarding Highways and the letting of contracts to Architects and Engineers;
 - b. The provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900(a-f), set forth in Chapter of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Give a written notice of their obligations under this clause to any labor organizations with which they have a collective bargaining or any other agreements as appropriate. **INCLUDE THIS ENTIRE CLAUSE IN ANY AND ALL SUBCONTRACTS.**
 - c. **Appendix A** attached hereto and incorporated herein.
2. Cost Principles
 - a. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1 Part 31.000 et seq., shall be used to determine the allowability of cost for individual items.
 - b. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - c. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to CITY.
3. Subcontracting
 - a. CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the CITY’S Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
 - b. Any subcontract in excess of \$25,000 shall contain ALL the provisions stipulated in this Agreement to be applicable to subcontractors.
 - c. Any substitution of subconsultants/subcontractors must be approved in writing by the CITY’S Contract Manager.

4. Equipment Purchase

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

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

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

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

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

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

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

6. NON-DISCRIMINATION CLAUSE

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

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

APPENDIX A TO EXHIBIT D
Consultant Service Agreement between City of Fresno (“CITY”)
and Mark Thomas & Company Inc. (“CONSULTANT”)
MLK Center Active Transportation Infrastructure Project

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

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

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

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

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

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

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

(6) CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. CONSULTANT shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request STATE enter into

such litigation to protect the interests of STATE, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

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

I HEREBY CERTIFY that I am Robert Himes, and duly authorized representative of the firm of Mark Thomas & Company, Inc. whose address is 7571 N. Remington Avenue, Suite 102, Fresno, CA 93711, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:


(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement; nor

(b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

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

(Date) 05/20/2020

(Signature) 

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 four million nine hundred thirty thousand dollars (\$4,930,000.00), 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 ninety (90) 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 (14) 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 sixty (60) 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 seven (7) 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, Adobe Creative Suite, and/or Microsoft Suite as applicable.

(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 sixty (60) 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 seven (7) 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 thirty (30) 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 2018, Adobe Creative Suite, and/or Microsoft Suite as applicable.

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 five hundred eighty four thousand eight hundred fifty nine dollars (\$584,859.00), and a contingency amount not to exceed thirty thousand (\$30,000.00) 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 – thirty three percent (33%), Part 2 – thirty two percent (32%), Part 3 – thirty percent (30%), Part 4 – two percent (2%) and Part 5 – three percent (3%). 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.

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

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

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

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

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

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

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

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

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

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

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

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required

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

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

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

9. Conflict of Interest and Non-Solicitation.

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

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, 23 U.S.C. § 112, FHWA regulations applicable to design and engineering consulting contracts found at 23 C.F.R. 172.1 *et seq.*, California Government Code Section 1090 *et. seq.*, the California Political Reform Act (California Government Code Section 87100 *et. seq.*), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 *et. seq.*) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor

that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

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

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

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

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

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

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

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

(i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and

facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

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

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

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

(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 James Polfer, PE/QSD, and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

(e) CITY will carry out applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, CONSULTANT agrees to comply with all

applicable federal and state assurances and requirements identified in **Exhibit D along with its Appendix A** and require that each subcontract include the same assurances by each of its subcontractors.

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

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

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

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

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

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

13. Independent Contractor.

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

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

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

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

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

16. Assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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, PE, MCE,
Assistant Director
Public Works Department

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

No signature of City Attorney required.
Standard Document #DPW-S 31.1 has
been used without modification, as certified
by the undersigned.

By: _____
John Honey, PE
Professional Engineer
Public Works Department

REVIEWED BY:

Scott Tyler, PE, Public Works Manager
Public Works Department

Addresses:
CITY:
City of Fresno
Attention: John Honey, PE,
Professional Engineer
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8651
FAX: (559) n/a

Mark Thomas & Company Inc.,
A California Corporation

By: _____
Name: Robert Himes

Title: President
[if corporation or LLC, Board
Chair, Pres. or Vice Pres.]

By: _____
Name: R. Matt Brogan

Title: Secretary
[if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary.]

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

CONSULTANT:
Mark Thomas & Company Inc.
Attention: James Polfer, PE/QSD,
Project Manager
7571 N Remington Ave, Suite 102
Fresno, CA 93711
Phone: (559) 374-3118
FAX: n/a

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

Exhibit A

SCOPE OF SERVICES
Consultant Service Agreement between City of Fresno (“City”)
and Mark Thomas & Company Inc. (“Consultant”)
MLK Center Active Transportation Infrastructure Project
PROJECT TITLE

Project plans, specifications, and engineer's estimate will be prepared based on the City's and Consultant's mutual understanding of the planned improvements given in the RFQ and the general descriptions of the planned improvements listed below.

Roadway Improvements (Back of Curb to Back of Curb)

- Church Avenue: Approximately 200-feet west of Walnut Avenue to MLK Boulevard - Rehabilitate/reconstruct existing AC and widen the roadway to accommodate: 2 - travel lanes with TWLTL; Class II bike lanes; on-street parking; curb and gutter along the south side of Church; and signing and striping.
- Jensen Avenue: Knight Avenue to MLK Boulevard: - Rehabilitate/reconstruct existing AC and widen the roadway to the north along the EB lane to accommodate a Class II bike lane and signing and striping.
- Walnut Avenue: Approximately 200-feet south of Jensen Avenue to Grove Avenue – Rehabilitate/reconstruct existing AC roadway as necessary; signing and striping the existing roadway for 2 - travel lanes and a TWLTL, Class II bike lanes, and on street parking; and Grove Avenue to Church Avenue - Rehabilitate/reconstruct existing AC and widen the roadway to accommodate: 2 - travel lanes and a TWLTL; Class II bike lanes; on street parking; curb and gutter on both NB and SB sides of Church; and signing and striping.
- MLK Boulevard: Jensen Avenue to Church Avenue - Rehabilitate/reconstruct existing AC and widen the roadway to accommodate: 2 - travel lanes with TWLTL; Class II bike lanes; on-street parking; curb and gutter along the west side of MLK; and signing and striping.

Landscape Architecture Urban Design (LAUD) Improvements (back of curb to property line)

- Class I Trails (including DG shoulders and center striping): South side of Church Avenue from Walnut Avenue westward to MLK Boulevard; and North side of Jensen Avenue from Knight Avenue westward to MLK Boulevard.
- Sidewalks (including ADA ramps and queuing space at corners): Both sides of Walnut Avenue from Grove Avenue to Church Avenue; and West side of MLK Boulevard from Jensen Avenue to Church Avenue.
- Planting and Irrigation Facilities: South side of Church Avenue from Walnut Avenue to MLK Boulevard; and North side of Jensen Avenue from Knight Avenue to MLK Boulevard.

FMFCD Facilities: Extend approximately 3,600 lf of 18-inch diameter stormwater collection system and install Drainage inlets and manholes

Traffic Signals and Street Lighting

- Existing Traffic Signals to be Modified: Church Avenue and MLK Boulevard; and Jensen Avenue and Martin Luther King Boulevard

- Street Lighting Plans: South side of Church Avenue between Walnut Avenue and MLK Boulevard; and North side of Jensen Avenue between Walnut Avenue and MLK Boulevard

Project Management:

CPM Schedule and Progress Reports

Consultant will prepare and maintain a project schedule for City review. The schedule will be updated regularly, with critical path activities clearly shown for team review purposes. Additionally, monthly progress reports will be provided to the City.

Project Development Team (PDT) Meetings (8 Total)

Consultant, in consultation with the City will establish a PDT for this project. PDT meetings provide a forum to share project information, identify critical issues, make decisions, assign project tasks, identify design criteria, or any other items critical to project delivery. Consultant will prepare agendas for each meeting and distribute them to the PDT prior to each meeting. Consultant will facilitate meetings as applicable and prepare meeting minutes with action items.

Management and Coordination

Consultant's project manager will provide management and coordination of the professional and technical services involved in the preparation of the plans, specifications, and engineer's estimate (PS&E). This task includes coordination with affected agencies and utilities.

Quality Assurance/Quality Control

Consultant will implement a Project-specific Quality Plan (PQP) in accordance with our Quality Management Manual. The PQP will clearly define the quality management system for the design project and govern the implementation of our quality policies at all levels.

Community Outreach

Stakeholder Database

Stakeholders may include locally affected communities or individuals and their formal or informal representatives, local government authorities, politicians, religious leaders, civil society organizations, special interest groups, the academic community and businesses.

This task will be led by a subconsultant which will coordinate with the City and any partnering agencies to update the Project Teams existing stakeholder database comprised of residents, businesses, elected officials, community-based organization, faith-based organizations and environmental justice groups such as Leadership Counsel for Justice and Accountability, Cultiva La Salud, Fresno Building Healthy Communities, Central California Environmental Justice Network, etc. The database will contain the name of the agency or individual, their physical and email addresses, telephone number(s), notes regarding attendance at community meetings or events, and comments received. The listing will be expanded and updated as work on the Project progresses. The stakeholder database will be used to assist with the dissemination of Project information, materials, and noticing.

Outreach Materials

Public information prepared for the Project will be straightforward, factual, and designed to be appreciated by the non-technical audiences. Project mailers, flyers, public meeting announcements and other outreach materials will be prepared to directly inform residents,

business owners, and other stakeholders of the Project, its limits and reasons for the Project. Each communication tool will include contact information, the appropriate contact name(s), office phone and email address. The communication shall include the description of work, the community meeting date, time and location, and other necessary information.

Subconsultant will create and print up to 1,000 community meeting mailers in English, Spanish and Hmong to ensure that the Project area's diverse population can easily read and understand the Project materials. Community meeting mailers will be delivered by subconsultant to City of Fresno staff for bulk postage and distribution to property owners and residents in the Project Area.

Subconsultant will also create up to 500 bilingual community meeting flyers in English, Spanish and Hmong and will distribute to local schools, Cecil C. Hinton Community Center and other major businesses and agencies in the Project Area.

Subconsultant will prepare and distribute bilingual meeting invites via eblast to the Project stakeholder database and other identified key stakeholders. A total of three (3) eblasts will be completed for the community meeting invite, which will include an initial eblast two weeks prior to the scheduled community meeting and two (2) follow-up reminders.

Community Meeting

The Project team will conduct one (1) community meeting during the schematic design phase of the MLK Center Active Transportation Infrastructure Project. The meeting will allow for organized group discussion with the goal of exchanging and gathering information. The meeting will give the Project team the opportunity to share information with many diverse stakeholders and the public who can ask questions and explore issues in detail while also encouraging stakeholders to network and share experiences.

Community meeting participants will learn about the construction of improvements for the project through one on one conversation with Project team members, Project exhibits and a rolling PowerPoint presentation. Participants will also be able to provide their comments through one on one staff/participant notes, by completing and turning in comment cards at the community meeting and/or through mailing back comment cards to the Project team.

As an optional subtask, the Project team could also solicit the services of a Court Reporter who would document all in-person comments received from community meeting attendees.

To further ensure broad participation of all community stakeholders and to meet environmental justice requirements, the community meeting will include Spanish translation services. Meeting materials including exhibits, information flyers, extra-large handouts (Tabloid/11x17), and comment cards will be available in both English and Spanish. In order to maximize attendance, workshop venues will be ADA accessible and held at time convenient for public stakeholders.

Meeting notifications will be distributed via eblast through the Stakeholder Database and City social media sites. Subconsultant will be responsible for securing the workshop locations and providing refreshments. Subconsultant will also be responsible for all workshop venue set-up and tear-down activities and provide all associated equipment (presentation, audio, visual, etc.). Finally, Subconsultant will provide a synopsis of the community meeting, identify the number and type of attendees, include a list of presentations made and materials provided, and document the comments received from meeting attendees.

Deliverables

- A maximum of 1000 mailers, distribution of 500 flyers to schools, community center, and other major businesses and agencies in the area, eblast to stakeholder database and other identified key stakeholders.
- Materials for and attendance at one (1) community meetings, Spanish and Hmong translation services, venue set-up and tear-down activities, community meeting synopsis.
- PDT Meeting Agenda & Minutes
- Monthly Progress Reports
- Maintained Project Schedule

Part 1 - Schematic Design Phase

1.1 Data Gathering / Field Review

Consultant will collect and review all information provided by or made available by the City. Also, field investigations will be conducted as needed to become familiar with the project site and check for any conditions that would affect, or be affected, by construction.

1.2 Utility Coordination / Relocation

Consultant will create a Utility Identification Plan and organize a list of Utility Contacts. Consultant will obtain utility mapping from utility companies and develop a utility base map, to be used as a base for utility location surveys. Consultant will continuously coordinate with utility companies as necessary to ensure proper identification of relocation requirements (extent, appropriate clearances, timing, Rights of Way, working space, etc.) are obtained.

Utility coordination services will be conducted in general conformance with Caltrans' Local Assistance and Utility Relocation Manuals following the Utility A-B-C process:

- Utility "A" Letter - A USA list is generated that shows all possible utility companies located within the project limits. A letter is sent to the respective utility company informing them about the project and asking them for as-built mapping and liability claims within the project area.
- Utility Meetings (2 total) - Once the schematic design is complete, Consultant will facilitate utility meetings with the utility companies and the City to discuss project impacts. At the meetings, it is preferred that the utility companies and the City reach a consensus regarding various items affected by the work including clearance requirements over underground utilities.
- Utility "B" Letter - Letter is issued to the utility companies with the design development document that demonstrate or show utility impacts. The utility companies are instructed to begin relocation plans at this time. Frequent follow ups with utility companies are required from this point forward.
- Utility "C" Letter (Notice to Owner) - Once utility relocation plans are received and approved from the utility companies, the notice to owner letter authorizes the company to relocate their utilities. Right of way acquisition must be cleared for this letter to be issued.

As part of utility mapping, Consultant will determine horizontal location of existing utilities and prepare a list of those utilities which have a potential conflict with proposed improvements. In areas of reconstruction where elevations of underground utilities are unknown and there is potential conflict, Consultant will hire a potholing company to perform non-intrusive vacuum excavation at critical locations to determine the positive locations of these utilities. For this scope of services, it is assumed a total of five (5) potholes may be necessary.

1.3 Topographic Survey Information

Consultant will use for final design topographic survey information provided by the City. The survey information provided will include the original ground surface with contours and existing

fixed facilities and improvements identified. The survey information provided by the City will be in Civil 3D format and ready for use by Consultant. This information will be used to create finish grade information, prepare existing grade profiles, cross section slopes, and drainage patterns along the corridors to be improved.

1.4 Site Reconnaissance and Soil Nutritional Analysis

Consultant landscape architecture division will visit the site to observe and document apparent site conditions that would impact the landscape design and collect up to four (4) one-quart samples of the existing topsoil to submit to a soil laboratory for nutritional analysis and recommendations.

Recommendations will be included in the technical specifications.

1.5 Geotechnical Investigation

This task will be led by Parikh to determine the most viable pavement rehabilitation strategy. If it is determined that in-place recycling, including full depth reclamation (FDR) or cold in-place recycling (CIR), is the best alternative Parikh, as an optional service, will provide the materials investigation and support as needed.

The specific project elements that will require geotechnical studies are:

- New pavement section for all the roadway corridors
- FMFCD stormwater system improvements.

The proposed geotechnical studies are planned to be performed through the PS&E phase of work. Overall scope of work will include preparation of a Geotechnical Report for the roadway work, and recommendations for storm drain materials and trenching.

1.5.1 Geotechnical Coordination

Parikh will meet with the design team to discuss preliminary design, project design needs, issues, and schedules. For field work a City encroachment permit will be obtained and fieldwork locations coordinated with the design team.

1.5.2 Sampling and Investigation

Parikh's engineer/geologist will direct the coring and sampling. Samples of the subgrade soil will be collected for pavement design.

These explorations will provide an evaluation of subsurface conditions for the proposed roadway portion of the project. R value samples from at-grade locations will be collected at approximately 1000' to 1200' intervals. The boring locations will depend upon the available access and permit conditions.

Pavement cores will be collected from areas that are planned to be overlaid or reconstructed. Traffic control is assumed at this time for 2 shifts. Widening areas are presently dirt shoulders and therefore are not expected to require traffic control.

Parikh will

- Review available geologic and soil literature in the vicinity of the site.
- Comply with City permit requirements.
- Field locate borings and call for USA clearance.

- Perform field exploration boring program as provided below.

Seven (7) pavement borings approximately three (3) feet deep to determine R-value and six (6) borings for the storm drain system; two (2) at fifteen (15) feet deep and four (4) at ten (10) feet deep.

- Classify and log subsurface soil conditions encountered in each test boring at the time of drilling. Obtain "relatively undisturbed" and bulk samples of substrata from test borings. The borings will be drilled and capped in accordance with the permit requirements. Generally, the borings are required to be backfilled with cement grout.

1.5.3 Laboratory Testing and Analysis

Parikh will perform laboratory tests on representative soil samples such as moisture density, unconfined compression, gradation analyses, R-value tests, corrosion tests, and Plasticity Index test.

Parikh will perform an engineering analyses and develop design recommendations for the proposed pavement design and storm drain trenches. Pavement design will be based on the proposed Traffic Index and the design life of the pavement. Corrosion tests will be conducted for the trench recommendations.

1.5.4 Geotechnical Design Report

Parikh will prepare a Draft Geotechnical Design Report to include existing pavement thicknesses obtained from pavement cores, which will be tabulated, and preliminary recommendations for pavement sections and storm drain construction.

Parikh will prepare the final Geotechnical Design Report which will include response to review comments from the City. Final design recommendations will be based on the updated design requirements. The log of test borings will be prepared in gINT format (8 ½ X 11).

Assumptions:

- Traffic Index will be provided by the City.
- Traffic control for two (2) shifts for coring within the existing roadway.
- There will be no fee for encroachment permits required for field investigations.

1.6 Schematic Design Drawings

1.6.1 Roadway - Geometric Approval Drawings

Consultant and subconsultant will update the 60% preliminary roadway Geometric Approval Drawings (GAD) prepared by the City for the City's review and comment. The City will provide all relevant AutoCAD files created in the preparation of the 60% GAD for Consultant and subconsultant use. The preliminary roadway plans will show, amongst other things, the proposed roadway layout and profile, typical roadway sections, and preliminary right of way impacts, if any. The electrical design plans will provide the layout of traffic signal equipment, including but not limited to locations of the existing signal controller/cabinet, poles, pedestrian countdown signals, emergency vehicle pre-emption, traffic markings, striping and signage design, intersection safety lighting, etc. Designs will be in accordance with Caltrans design standards, CA MUTCD guidelines, and the City's current design and CADD standards. These plans will serve as the geometric approval drawings.

1.6.2 Storm Drain System

Consultant will prepare schematic design for the proposed storm drain facilities and general appurtenances at the preliminary design locations. Such facilities will include stormwater collection mains, drainages inlets, manholes, lateral extensions, and all other devices and materials necessary to make serviceable mains.

Facilities are expected to comply with California State Water Resources Control Board regulations, City standards, and FMFCD standards for their storm water systems. Plans will be prepared using AutoCAD 2018 Civil 3D.

1.6.3 Preliminary Site Construction and Planting Plan

With information gathered above and feedback provided by City Staff, Consultant's landscape architecture division will prepare a preliminary site construction and planting plan package for all hardscape and softscape improvements outside of the back of curb. Draft package to include:

- A preliminary black and white site construction plan drafted in CAD illustrating the preliminary layout of all hardscape improvements (i.e. Class I trail, sidewalks, corner nodes, etc.) behind the new curb.
- A preliminary black and white planting plan drafted in CAD illustrating planting design and location of the irrigation point of connection(s).
- Up to three (3) illustrative cross sections
- Irrigation equipment list and plant list (with color photos)

1.7 Traffic Signal & Street Lighting

Subconsultant will prepare schematic design for the proposed traffic signal modifications, including but not limited to the locations of signal controllers/cabinets, poles, and signal heads. During the schematic design phase, Subconsultant will:

- Collect and review existing information pertaining to this project, including as-builts and design topographic survey.
- Perform field reconnaissance for an overall perspective on existing field condition and identify unusual or special conditions if any.
- Prepare base maps at a minimum scale of 1" = 40' utilizing a combination of as-built plans, design survey provided by the City, and field reconnaissance.
- Prepare a preliminary design for review and discussion with the City's representatives. The preliminary design will be based upon acceptable standards for roadway and traffic design including the City's and Caltrans design criteria. Impacts to existing facilities and key issues will be further defined.
- Meet with the City's project representatives and involved others to review and discuss the contents of the preliminary engineering and assist in reaching approval of a final design guide or approach.

Assumptions:

- Preparation of traffic signal timing plans is not included in the scope of work.
- Traffic studies are not included in the scope of work.
- Advance Yellow Flashing Beacons are not included in the scope of work.
- Preparation of Traffic Signal Warrants are not included in the scope of work.
- Traffic Signal Interconnect (other than by the use of wireless antennas) is not included in the scope of work.

1.8 Preliminary Estimate

As part of the schematic design phase a preliminary estimate of construction costs will be prepared. This estimate will include the work and materials determined at this phase of design to be incorporated into the project.

Deliverables

- Utility A, B, and C letters
- Draft Geotechnical Report
- Geometric Approval Drawing (GAD)
- Schematic Design Drawing - 7 copies – 24" X 36"; 1 electronic copy (PDF)
- Preliminary Estimate of Construction Costs

Part 2 - Design Development Phase

2.1 Design Development Plans and Details

Based upon the approved schematic design documents Consultant will prepare detailed drawings incorporating City standards as applicable to the improvements.

This submittal will represent a complete plan package. Major design features will have been reviewed; however, because of the review comments received for the 30% submittal, there may be some plan details that will be submitted for the first time.

Design plans will be prepared in accordance with the City drafting standards, format, and conventions. Final plans will be in AutoCAD format for standard 24-inch by 36-inch plans and comply with the City's and Caltrans' latest standard plans and specifications and the CA MUTCD.

2.2 Specification/Special Provisions

At this phase Consultant will develop the project special provisions outline using City standards. The technical specifications will be supplemented with Caltrans 2018 State Standard Specification, as necessary. The special provisions will be prepared using Microsoft Word. Consultant will incorporate the City's boilerplate contract language into the specifications.

2.3 Update Engineer's Estimate

At this phase the estimate prepared as part of the schematic design phase will be updated and expanded. This update will include the work and materials determined in the prior phase to be incorporated into the project design.

Deliverables

- 65% Design Drawings – 6 copies – 24" X 36"; 1 electronic copy (PDF)
- Outline of Project Specifications/Special Provisions
- Revised Estimate of Construction Costs

Part 3 - Construction Document Phase

3.1 Project Improvement Plans and Details (90%)

This submittal will represent a complete plan package. Design features will have been reviewed and approved. From this point, only minor "clean-up" will occur if necessary.

3.2 Specification/Special Provisions

This submittal will represent a complete set of project specifications ready for bidding.

3.3 Update Engineer's Estimate

To verify programmed funding matches the anticipated construction costs, Consultant will update estimates prepared in the previous phases. The estimates will be comprised of unit prices placed on detailed quantity and check quantity calculations. Unit prices will be developed using current bid results from similar projects, Caltrans data base information, and Caltrans latest Construction Cost Manual.

Deliverables:

- 90% Design Drawings – 6 copies – 24" X 36"; 1 electronic copy (PDF)
- Project Specifications/Special Provisions
- Updated Estimate of Construction Costs

Part 4 - Bidding Phase

4.1 Bid Support

Consultant and subconsultants will provide assistance, as required, to the City during bidding of the project. The work may include answering bid inquiries of prospective bidders and preparing addenda to the PS&E during bidding.

Deliverables:

- RFI Responses
- Addenda to Project Bid Documents

Part 5 - Construction Phase and General Construction Administration

5.1 Construction Support

Consultant and subconsultants will provide assistance, as required, to the City during construction of the project. The work may include responding to Requests for Information (RFI) by the contractor, providing consultation and interpreting the construction documents, preparing contract change orders, reviewing shop drawings, reviewing submittals for plan and specification compliance, attending construction meetings, and visiting the project locations during construction.

5.2 As-Built Plan Preparation

Consultant will complete the as-built drawings after receiving red-lined mark-ups from the contract manager after completion of construction.

Exhibit B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno ("CITY") and Mark Thomas & Company Inc. ("CONSULTANT")

MLK Center Active Transportation Infrastructure Project

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 to 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

MLK Center Active Transportation Infrastructure Project
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: _____

Additional page(s) attached.



Signature

05/20/2020

Date

Date

Robert Himes

(name)

(name)

Mark Thomas & Company, Inc.

(company)

(company)

7571 N. Remington Ave, Suite 102

(address)

(address)

Fresno, CA 93711

(city state zip)

(city state zip)

Exhibit D
FEDERAL AND STATE ASSURANCES
Consultant Service Agreement between City of Fresno (“CITY”)
and Mark Thomas & Company Inc. (“CONSULTANT”)
MLK Center Active Transportation Infrastructure Project

1. CONSULTANT shall comply with and require its Subcontractors to comply with the following:
 - a. 23 USC §112 regarding Highways and the letting of contracts to Architects and Engineers;
 - b. The provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900(a-f), set forth in Chapter of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Give a written notice of their obligations under this clause to any labor organizations with which they have a collective bargaining or any other agreements as appropriate. **INCLUDE THIS ENTIRE CLAUSE IN ANY AND ALL SUBCONTRACTS.**
 - c. **Appendix A** attached hereto and incorporated herein.
2. Cost Principles
 - a. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1 Part 31.000 et seq., shall be used to determine the allowability of cost for individual items.
 - b. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - c. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to CITY.
3. Subcontracting
 - a. CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the CITY’S Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
 - b. Any subcontract in excess of \$25,000 shall contain ALL the provisions stipulated in this Agreement to be applicable to subcontractors.
 - c. Any substitution of subconsultants/subcontractors must be approved in writing by the CITY’S Contract Manager.

4. Equipment Purchase

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

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

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

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

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

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

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

6. NON-DISCRIMINATION CLAUSE

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

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

APPENDIX A TO EXHIBIT D
Consultant Service Agreement between City of Fresno (“CITY”)
and Mark Thomas & Company Inc. (“CONSULTANT”)
MLK Center Active Transportation Infrastructure Project

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

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

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

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

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

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

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

(6) CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. CONSULTANT shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request STATE enter into

such litigation to protect the interests of STATE, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

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

I HEREBY CERTIFY that I am Robert Himes, and duly authorized representative of the firm of Mark Thomas & Company, Inc. whose address is 7571 N. Remington Avenue, Suite 102, Fresno, CA 93711, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement; nor

(b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

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

(Date) 05/20/2020

(Signature) 