AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the 22nd day of ~~December~~ January JG, 2018, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and BKF Engineers, a California corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional Professional Engineering services for the design of plans and general construction contract documents for Mid-Town Trail Segments 1 and 3, 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 Two Million Six Hundred Seventeen Thousand Seven Hundred Dollars ($2,617,700), including alternative approaches to design and construction of the Project.

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

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

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

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

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within One Hunderd Twenty (120) 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 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 Fourty (40) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 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 Eight (8) sets of completed plans and Eight (8) sets of completed specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

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

(6) CONSULTANT shall submit a final estimate of construction cost for review and acceptance by CITY. Such estimate shall be calculated as of the date all general construction contract documents are delivered to CITY in final form ready for reproduction and advertising. Such estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated basis, and any equipment, or fixtures which may be incorporated in or excluded from the general construction contract.

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part 2 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the final estimate. If CITY elects to reject the final estimate, CONSULTANT shall at no additional cost to CITY, make such design changes

as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by CITY.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within Eighty (80) 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 14 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 that 10%.

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

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

(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of

the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor.

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

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

(5) Upon written request by CITY, CONSULTANT shall render written recommendations on change orders, claims, disputes or other questions arising out of the general construction contract, in a timely manner. Recommendations by CONSULTANT in favor of a change order that is consequently accepted by CITY shall constitute approval by CONSULTANT who shall then approve the change order in writing. CONSULTANT shall not unreasonably withhold written approval in the event CITY accepts a change order that CONSULTANT recommended to be rejected. In the event of any technical disputes, CONSULTANT shall provide CITY with CONSULTANT'S written interpretation of the contract documents. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor. If CITY, CONSULTANT and the respective general construction contractor are unable to mutually agree on such period for CONSULTANT review, then CITY will make the determination and that determination will be final.

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

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

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

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

(10) CONSULTANT shall prepare Record Drawings by updating the accepted general construction documents in Part 3 to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the CITY, (iii) CONSULTANT provided Request for Information responses, and (iv) any CONSULTANT bulletins, amendments or clarifications. CONSULTANT shall provide CITY with one set of vellum Record Drawings for the Project within Fourteen (14) calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within Seven (7) 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: ACAD 2018 and Adobe PDF.

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 Four Hundred Fifty Six Thousand Four Hundred Twenty Four Dollars ($456,424), and a contingency amount not to exceed Forty Thousand ($40,000) for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by CONSULTANT in performance of such services.

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

(c) For purposes of determining the division of the total compensation to CONSULTANT as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by CITY as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of CONSULTANT'S performance as follows: Part 1 – Fourteen Percent (14%), Part 2 – Fourty Percent (40%), Part 3 – Thirty Nine Percent (39%), Part 4 – One Percent (1%) and Part 5 – Six Percent (6%). 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 Emad Ehsani, 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 Morrison, PE,
Assistant Director
Public Works Department

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Cindy Bruer 1/22/19
Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: _____ 12/21/18
[Name] Date
[Senior Deputy/Deputy]

REVIEWED BY:

Scott Sehm PE, Public Works Manager
Public Works Department

BKF Engineers,
A California Corporation

By: _____

Name: Jaysen Long, PE

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

By: _____

Name: Dan Schaefer, PE

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

Any Applicable Professional License:
Number: CA 58084
Name: Jaysen Long
Date of Issuance: 2.20.98

Addresses:

CITY:
City of Fresno
Attention: Scott Sehm,
Project Manager
2600 Fresno St.
Fresno, CA 93721
Phone: (559) 621-8712
FAX: (559) 621-

CONSULTANT:
BKF Engineers
Attention: Emad Ehsani,
Project Manager
300 Frank H. Ogawa Plaza, Suite 380
Oakland, CA, 94612
Phone: 510-899-7305
FAX: 510-899-7319

Attachments:

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

Exhibit A

SCOPE OF SERVICES
Consultant Service Agreement between City of Fresno ("City")
and BKF Engineers ("Consultant")
Mid-Town Trails Segements 1 and 3
PROJECT TITLE

SCOPE OF WORK

CONSULTANT will provide engineering and construction support services, as described below, for the following two standalone bid packages:

-Class I trail along Shields Avenue from Fresno Street to Blackstone Avenue (Segment 1).
-Class I trail along the bank of the Herndon Canal from Shields Avenue to McKinley Avenue (Segment 3).

CONSULTANT will invoice the CITY separately for each bid package.

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

Kick-off Meeting:
A kick-off meeting will be scheduled with the CITY soon after the Notice-to-Proceed to confirm Project scope and objectives.

Project Development Meetings (PDT Meetings):
To facilitate comprehensive input from the project stakeholders, the CONSULTANT's Project Manager and selected Team Members will attend monthly Project Development Team (PDT) coordination meetings with CITY staff members and other appropriate agency representatives. These PDT meetings will include comment review meetings after the Preliminary Engineering, 60% and 90% submittals to review and reconcile the CITY review comments on these submittals. Agendas will be sent out to all participants one week prior to the meetings, and timely minutes will be produced and distributed after the meetings.

Project Progress Report / Accounting:
Supervise, coordinate, and monitor design for conformance with Caltrans and CITY standards and policies. Prepare monthly progress reports and invoices. Assist the CITY in coordination with FID. Employ and monitor sub-consultants. Close and archive the project records at the end of the project.

CONSULTANT will prepare budgets for each task and milestone for the project; budgets will be monitored, and will be used as a basis for cost monitoring and control.

CONSULTANT will prepare monthly reports of expenditures for the project by task and milestone. Expenditure reports will serve as the basis for the monthly invoices. CONSULTANT

will also provide a summary of work completed that month and work anticipated the following month, using the CITY's Work Progress Form.

Project Schedule:
CONSULTANT will prepare and submit a Project Master Schedule in Microsoft Project to the CITY. The schedule will indicate all tasks, milestones and project activities, deliverables, and will reflect necessary review time by affected agencies. CONSULTANT will adjust and update the project schedule as necessary throughout the duration of the project, and provide updated schedules at each monthly progress meeting.

Quality Control (QA/QC):
CONSULTANT will perform quality assurance and quality control during the course of the design and submittals.

PART 1: SCHEMATIC DESIGN PHASE
Immediately after receiving the Notice-to-Proceed, the CONSULTANT Team will perform field investigations and review all available documentation, conduct preliminary investigations and verify utility locations. This task will consist of compiling, reviewing existing data pertinent to the Project and performing investigations and studies necessary to verify Project criteria and scope. Also included are planning phase activities, conducting site visits/field review, and obtaining information and requirements related to utilities. The CONSULTANT team activities will include the following during this task:

Data Collection and Review:
CONSULTANT will obtain and review available data and information necessary for final design of the Project. This information may be obtained from the CITY, Fresno Irrigation District (FID), utility companies, Caltrans and other agencies. Data to be reviewed includes the following:

-CITY and Caltrans record documents
-FID information
-Utility information
-As-Built plans

CONSULTANT will request the CITY and project stakeholders attend a field review on the Project site. This review meeting is imperative to ensure the design team and the CITY/Stakeholders are in agreement with the scope and limits of work. During this field review, the Project Team will evaluate and document the existing Project site conditions, constraints and opportunities.

Coordinate and Review Survey /Right of Way Data:
The CITY will provide a topographic survey and right-of-way for the Team to use during design. CONSULTANT will supply a survey request to the CITY to ensure the field work can be accomplished efficiently. CONSULTANT will review the survey and during CONSULTANT's field review identify any additional survey that may be necessary.

Traffic Data Collection:
CONSULTANT will subcontract with a data collection firm to conduct vehicle, pedestrian and bicycle turning movement counts at the intersections of SB SR41 Off/On-Ramp, NB SR 41 Off/On-Ramp and Manchester/Shields intersection due to the close proximity of the signal to the ramp signal. The turning movement counts will be conducted for the two hour AM and PM peak period.

Initial utility investigation and Mapping:
CONSULTANT will coordinate with the CITY and other utility companies to verify location and depth of existing facilities. CONSULTANT will also perform utility research and surveys to map the existing utilities in the Project area, positively locate utilities that potentially conflict with the proposed improvements and develop relocation plans for conflicting utilities, if necessary. This level of effort will minimize construction costs and ensure the correct placement of the proposed improvements. CONSULTANT will:

-Review and update as-built utility information for the project area
-Request utility mapping from all affected utility owners
-Update base mapping with existing utility information
-Submit utility maps to affected utility owners for verification
-Identify potential utility conflicts for potholing/relocation

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

Potholing:
Potholing is excluded from the scope of this project.

Project Base Plans:
CONSULTANT will prepare base plans using topographic, survey information (provided by CITY) and as-builts in accordance to CITY CADD standards. CONSULTANT will field verify the base map with the existing conditions prior to the design phase.

Schematic Design Drawings:
The CONSULTANT Team will use the information gathered from the investigations in earlier tasks to analyze, evaluate and present design opportunities in a conceptual nature. For the schematic design, the development of the geometry and profile of a project is not just a check of horizontal and vertical conforms. Setting the geometry properly can minimize costly project impacts, including the impacts to the signalized intersections and Caltrans ramp facilities. Many sensitive components to cost and schedule involve grade differentials at conforms, impacts to existing features, effects to adjacent roads and environmental impacts. CONSULTANT will use the schematic drawing prepared by CITY of Fresno during the application process as the basis of design for Shield Avenue geometrics at SR-41. CONSULTANT will coordinate with CITY to make minor modification to the proposed geometry to obtain Caltrans initial approval. The schematic design will be developed with sufficient detail to describe the existing and proposed project elements. It is essential that the base line planes produce a design that minimize cost and time consequences while meeting the Project objectives and meeting Caltrans' and other necessary jurisdictional approval. CONSULTANT will compile a Schematic Design package for the CITY to present and discuss with FID and Caltrans to gain concurrence prior to proceeding with future design phases. This package will be of sufficient detail to identify project risk points, right-of- way and utility impacts, and construction costs impacts. At a minimum this package will include:

-Both horizontal and vertical alignments of the improvements proposed for the Project
  -Trail
  -Curb and gutter
  -Typical cross sections
-Anticipated impacts/relocations to existing and proposed utilities including:

-Street Lighting Locations
-Storm Drain Facilities
-Traffic Signal Impacts
-Right-of-Way impacts, both temporary and permanent
-Basis of Design indicating the design criteria used for the Project
-Initial trail landscape/amenities will be sketched out or shown as photos with alternatives where appropriate

Per Caltrans Request, CONSULTANT will evaluate alternatives with Class I facility on either side of Shield Avenue within Caltrans. The evaluation will be brief and on a magnitude of cost analysis basis to determine the least expensive construction alternative.

Pre-Fabricated Street Truss Bridge:
CONSULTANT is scoped to design approximately 60' long by 12' wide prefabricated steel truss bridge across Dry Creek canal. CONSULTANT will be responsible for the bridge foundation and wingwall design only. The bridge fabricator shall provide design drawings and calculations for the steel truss bridge. During construction, CONSULTANT will review the bridge fabricator design drawings and calculations for code and CITY requirements.

Preliminary Cost Estimate:
The preliminary engineer's cost estimate will be prepared once the geometric design concept has been finalized following CITY, FID and Caltrans initial review; this will also allow CONSULTANT to insure improvements are within the construction funding scope.

PART 2 – DESIGN DEVELOPMENT PHASE
Upon completing the review of available documentation on the project and in consideration of the operational analysis and refinement, the CONSULTANT Team will initiate the design plan process by incorporating elements of the Mid-Town Trail Preferred Concept Plan.

Traffic Operation Analysis and Traffic Forecasting (SR-41 and Shields Ave. Interchange):
CONSULTANT will prepare a Traffic Operations Analysis Report (TOAR) for the existing condition without project and Year 2035 with project to analyze the level of service at the following intersections:
-SB SR 41 Off-Ramp/Shields Avenue
-NB SR 41 Off-Ramp/Shields Avenue
-Shields Avenue/Manchester

CONSULTANT will summarize intersection data for the peak-hour analysis and perform an existing conditions analysis identifying operational deficiencies within the study limits, which will form the basis for the development of alternatives. Synchro/Sim-Traffic software is proposed for the intersection analysis and Highway Capacity Software (HCS) for the roadway segment analysis. CONSULTANT will analyze the existing conditions of the intersection and roadway segment and will compare the calculated results with field condition observations.

CONSULTANT will obtain the most current Fresno County Model for the travel demand forecasts and modeling and will check the accuracy of the model's network coding and current land use information. CONSULTANT will use the Fresno County Model to forecast base-year (2015) conditions (to identify the need and magnitude of post-processing adjustments), and design year (2035). CONSULTANT will extract the intersection volumes for each scenario and will make necessary adjustments to balance the volumes.

CONSULTANT will use the adjusted forecast intersection volumes as constrained based on existing upstream and downstream intersection operations to analyze future conditions for the design year (2035) no- build and build conditions. These constrained volumes will be used for the traffic operations analysis. For planning-level intersection analysis, CONSULTANT will continue to use Synchro/Sim-Traffic software for signalized intersections.

CONSULTANT will prepare the Traffic Operations Analysis Report (TOAR) summarizing the results and findings from the analysis. Based on comments received from Caltrans and the CITY, CONSULTANT will incorporate the comments into the final TOAR.

Coordinate and Review Geotechnical Investigation:
CONSULTANT will coordinate with the CITY to obtain the necessary information from the geotechnical engineer for the project. At minimum, the following information will be needed:

-Pavement section for the trail along the canal
-Pavement section within existing roadway
-Geotechnical recommendation for steel truss bridge foundation
-Geotechnical recommendation for small wall along SR-41.

Design Development Plans (60% Plans):
Having a complete set of plan sheets facilitates the preparation of remaining construction details, and cost estimates. Plans will be reviewed in consideration Caltrans Local Assistance's review requirements, including the interim PS&E Checklist which is used to verify federal conformance to the ATP grant. With this complete document, packaging is the clear ability to identify conflicting and missing information. This allows the CONSULTANT to focus and resolve these issues in a timely manner. The goal of this phase is to avoid "surprises" during the latter stages of the design process. CONSULTANT anticipate at a minimum the following items to be included in the Design Development package:

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

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

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

-Signing and Pavement Delineation: Plans will be developed using the approved geometry and will be prepared to show the new signing and new pavement delineation to join existing. Wayfinding signs for trail users will also be detailed.

-Mid-Block Crossing Improvements: Two Mid-block Crossing have been identified/scoped for this project.

-Construction Detail Sheets: Sheets will be prepared showing construction items that will need additional details and information to ensure the Contractor can construct the Project as intended. Details will include items such as, pavement rehabilitation/replacement sections, FID driveway locations, curb ramp details at the two intersections, detailed grading/elevations for new trail adjacent to the existing bus stop pad. It is anticipated that some traffic signal facilities will need to be modified and the location and extents of this modification will be shown on the construction details sheets.

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

-Bridge Structures: The prefabricated bridge will be a steel truss pedestrian bridge. CONSULTANT will be responsible for the bridge foundation and wingwall design only. The steel bridge fabricator shall provide design drawings and calculations for the steel truss bridge. It is assumed that the construction of the prefabricated bridge and foundation will not require the contactor to enter the FID canal. Therefore, rock slope protection or canal lining should not be required.

-Landscape and Irrigation: Based on the written direction received from CITY on the schematic package, the CONSULTANT will prepare 60% plans and details for the planting and furnishings portions of the project. CITY Staff will provide desired plant species to design team in advance. The CITY standard bench will be used. CONSULTANT will review and comment and will coordinate with irrigation designer on system parameters. Branding monuments are not included in this scope of work. Trail and landscape features such as standard benches on concrete pad, trees and general areas of understory planting and paving for 4-5 selected "pocket" areas of enhancement.

-Street Lighting Plan: Based on the horizontal concept developed in the preliminary Design and refined in the 60% design phase, including functional feature designs conducted by CONSULTANT team, existing lighting levels will be evaluated to assist design of new street and pedestrian lighting in the corridor. Photometric calculations to identify appropriate spacing, location and type of post- top electroliers and pedestrian-scaled lighting will be identified in conformance with CITY special affect lighting requirements. Special attention will be given to the light requirements under SR-41 to ensure a welcome and safe passage. A new point of connection will be coordinated with PG&E and an application for new service prepared for the CITY to submit.

-Traffic Handling Plans/ Stage Construction: CONSULTANT will generate the appropriate traffic handling (within SR-41 limits) and stage construction plans. These plans will be conceptually generated at the design development stage and discussed with CITY to ensure minimal impact to the travelling public. Stage construction outside of Caltrans Right-of Way will be addressed in specification and handled by the contractor.

-Signal Design: Modification to three existing signal have been identified/scoped for this project

- SB SR 41 Off-Ramp/Shields Avenue

- NB SR 41 Off-Ramp/Shields Avenue
- Shields Avenue/Manchester

-Drainage Analysis: With the new improvements for the trail and the installation of curb along Shields, CONSULTANT will analyze the drainage patterns and make modifications as necessary.

-Engineer's Estimates: At the design development stage, CONSULTANT will develop a line item engineer's estimate matching the measurement and payment clauses in the specifications that will be used as the baseline estimate for the Project throughout the design and into construction.

PART 3 – CONSTRUCTION DOCUMENT PHASE / FINAL DESIGN

Using the information gathered by the CONSULTANT Team in Part 1 and 2, and the review comments received from the Preliminary Design Concept, CONSULTANT will begin to generate the Construction Document package. During this phase, CONSULTANT team will refine the following functions from the conceptual drawing:

-90% Plans, Specifications and Estimate Submittal: The CONSULTANT Project Team will focus on resolving and incorporating all design review comments resulting from the 60% submittal. CONSULTANT may request the CITY/FID to attend a second field review meeting, if necessary, to compare the 60% plans with the current field conditions and requirements. All gaps in the design caused by changes or pending design and policy decisions will be specifically targeted for immediate resolution. Construction details for the project elements will be finalized as part of this phase of the design process.

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

At 90% Design, a complete, checked and bid-ready set of documents will be available when the PS&E is prepared. Due to the coordination efforts with the CITY, utility owners and stakeholders, the review time during this phase will be minimized. Prior to delivering the 90% PS&E, CONSULTANT will complete its own in-house quality control review of all outgoing documents. Cost estimates and schedules will be updated and compared to the available budget. Given the level of completion of the 90% Design, the PS&E may be submitted to Caltrans Local Assistance for review. By preparing 90% documents which reflect a bid-ready set, project approval can be accelerated. Based on CONSULTANT's recent submittals to Caltrans Local Assistance, two reviews are required for approval with the second submittal containing incorporation of minor comments.

-Final Plans, Specifications and Estimate: Upon receiving final review comments from Caltrans, FID, UPRR, and the CITY, CONSULTANT will incorporate or resolve all remaining comments received as a result of the 90% submittal. All aspects of the

design will be finalized in order to prepare a complete set of final and constructible bid documents for advertisement.

Caltrans sign off and approval will be obtained allowing the issuance of an E-76 approval. Schedules for utility relocations will be confirmed. The construction schedule and the cost estimate will be updated and formatted to its final form.

PART 3A – CONSTRUCTION DOCUMENT PHASE /CALTRANS PERMIT PACKAGE(S)

Due to the proximity and potential impacts to Caltrans facilities, CONSULTANT will need to process the improvements through not only Caltrans DLA, but through Caltrans Division of Permits. Aside from NEPA and CT DLA clearance and approval, a Caltrans Encroachment Permit will ultimately be necessary to secure CTC approval and capture ATP funding so that the construction documents can be advertised, awarded, and constructed. However, before CONSULTANT can submit the 95% PS&E through Caltrans Permits and the reviewing functional units, at a minimum, CONSULTANT will need to obtain verbal (or written) project consensus with Design, Highway Operations, Traffic Safety, Signals, and the Bicycle/Pedestrian Coordinator. This will be an iterative process and will require significant coordination between CONSULTANT, the CITY and Caltrans.

-Caltrans Coordination Meeting #1: The first order of work will be meeting with Caltrans with a draft of the Geometric Approval Drawings (GAD) for SR-41 interchange modifications in hand (from Part 3) to discuss the conceptual proposed improvements and impacts to Caltrans facilities, but most importantly - what Caltrans and the functional until will need or require to review, provide a determination (on concept feasibility), and ultimately approve the conceptual geometric design. As described in Part 3, CONSULTANT will use the conceptual GAD prepared by the CITY during funding application process as the basis of design. The draft GAD will present the concept and have ample design detail reflective of:

- Existing conditions, mapping, R/W and utilities
- Traffic Study Memorandum/recommendations
- Preliminary Engineering and Conceptual Design Plan Improvements, inclusive of Traffic Operations/Signal, Bicycle, and multi-use path Improvements

CONSULTANT will utilize GAD and the CT DLA assigned to Fresno Mid-Town Trail Project as a liaison to initiate and schedule a meeting at Caltrans, including (at a minimum) Design, Highway Operations, Traffic Safety, Signals, and the Bicycle/Pedestrian Coordinator. The discussions at this meeting will provide a road map on moving forward and navigating the Caltrans approval process and encroachment permit.

-Caltrans Reports: Based on the discussion conducted at the Caltrans Coordination Meeting #1, as well as the findings and results of the Traffic Study Report, ICE, and GAD/PS&E development, several Caltrans technical/supportive reports may be required to obtain project approval and an encroachment permit. The following reports have been scoped as part of the Project:

- Fact Sheet Exception to Mandatory Design Standards
- Fact Sheet Exception to Advisory Design Standards

- Traffic Management Plan (TMP) Report/TMP Checklist
- Lane Requirement Chart
- Lane Closure Chart Request

-The following reports are excluded from this scope:

- Longitudinal Utility Encroachment Exception (LUEE)
- Preliminary Engineering Evaluation Report (PEER)
- Road User Costs (RUC)/Damage Calculations
- Storm Water Data Report (SWDR)

-Subsequent Caltrans Coordination Meetings (#2, #3, and #4): In conjunction with design development and project coordination with Caltrans for the proposed Mid-Town Trail Project improvements affecting State facilities, CONSULTANT will participate in 3 additional Caltrans Coordination Meetings to facilitate project consensus and approval.

It is anticipated that a follow-up (face-to-face) meetings will be necessary to discuss comments/responses (JRT), changes/additions/omissions, alternative concepts/options, and steps necessary in moving forward with the Project and obtaining an encroachment permit. The following deliverables/submittals are anticipated to be the basis of further-discussion and need for subsequent Caltrans Coordination Meetings.

- GAD
- Traffic Operations Analysis Memorandum
- Fact Sheets (Mandatory/Advisory)
- 65% PS&E, 95% PS&E, and 100% PS&E

-Encroachment Permit Application - The encroachment permit application will be updated at the 65% PS&E. CONSULTANT's Project Manager will continually track the progress of the Caltrans review and encroachment permit process, and ensure that resolution is obtained in support of the Construction RFA so the CDs may be approved and processed for a Construction E-76 authorization.

-Notice of Intent (NOI) - The Contractor will be responsible to prepare/provide all QSP/QSD requirements including preparation, submittal, and processing of a SWPPP to State Water Resources Board/RWQCB to satisfy the CITY's National Pollutants Discharge Elimination System (NPDES) permit requirements as part of the MRP. CONSULTANT will assist by preparing and submitting a NOI.

-Caltrans Review/Coordination Process - CONSULTANT has assumed that Caltrans will approve the design exception to eliminate the required separation between travel lane and class I bike trail allowing for a shorter wall (3ft. max) within Caltrans Right-of Way. The small retaining wall would not impact the embankment fill at the abutments, and would not require the full approval process by Caltrans Structures in Sacramento.

PART 4 – BIDDING PHASE

CONSULTANT will provide management services during the bidding and construction phases in accordance with the Local Assistance procedures manual. It is the CONSULTANT's understanding that the project will be divided into two separate (Segment 1 and 3) bid

packages. The two separate bid packages will be divided at the end of the Construction Document phase of the project. CONSULTANT's support during bidding will include:

-Pre-Bid Conference: CONSULTANT will attend a pre-bid conference to provide information to contractors and answer questions.

-Bid Addenda: CONSULTANT will respond to contractor questions and issue addenda. CONSULTANT will work with the project's design CONSULTANT to respond to technical questions.

-Bid Opening: CONSULTANT will be present at the bid opening.

-Bid Review: CONSULTANT will review all contractor bids and analyze for the lowest, responsive, and responsible bid. CONSULTANT will verify the bids comply with the CITY of Fresno, State of California, and Federal requirements. CONSULTANT will summarize findings and provide a recommendation to the Department of the winning contractor.

-City Council Approval: CONSULTANT will prepare necessary documents for City Council approval. CONSULTANT will support staff during approval.

-Notice to Proceed: Upon approval of council and staff, CONSULTANT will issue a notice to proceed to the contractor.

PART 5 – CONSTRUCTION PHASE / GENERAL CONSTRUCTION CONTRACT ADMINISTRATION

CONSULTANT's support during construction will include:

-Attend a kickoff meeting with the contractor.
-Coordinate all contractor submittals
-Review contractor submittals and shop drawings.
-Answer clarification questions pertaining to the plans and special provisions, if needed.
-Review contractor RFI's (Request for Information) and provide written response.
-Coordinate relocations of public utilities.
-CONSULTANT will provide final electronic and hardcopies of all documents related to the project.

Lead Tasks by City of Fresno

-A comprehensive aerial topography and supplemental survey will be provided by the CITY.

-All necessary environmental documents for the project will be provided and coordinated by the CITY.

-The CITY will provide Right-of-Way/Parcel base mapping for the entire project (in AutoCAD). This will include Caltrans and FID Right of Way information.

-Geotechnical Investigation and Hydraulic Analysis (if required) will be provided before

starting Construction Documents and will be provided by others.

-Utility certifications process with Caltrans will be led by the CITY.

-The right of way certification process with Caltrans will be led by the CITY. CONSULTANT will support documents for utilities to support the Right-of Way-certification. CONSULTANT anticipates no Right-of-Way acquisition or easement establishment/modification for the project.

The following tasks are undefined at this time. CONSULTANT will work with CITY to identify the need for any of these tasks during the design coordination and will provide additional service request to the CITY for an addendum to this scope of work.

-Traffic study and signal modification at Fresno Street Blackstone Avenue Intersections
-The need for architectural pattern on the retaining walls
-Funding support
-Public outreach and preparation for the outreach including exhibits and graphical simulations
-Utility Relocation Design
-Intersection Control Evaluation (ICE)
-Preparation of Caltrans PEER and/or PA&ED Clearance Documentation
-Preparation of Caltrans RUC/Delay Calculations
-Preparation of Caltrans Drainage Report, SWDR, or Longitudinal Utility Encroachment Exception (LUEE) reports
-QSP/QSD Services and Preparation of SWPPP
-Post Construction Stormwater Treatment Facilities/Improvements
-R/W Engineering, Preliminary Title Reports, Plats/Legal, Appraisal Reports, Negotiations, Acquisitions, Closing Documentation, Record of Survey
-AQ Quality Conformity Analysis Report
-Additional (As-Needed) Traffic Engineering Services
-Maintenance Agreement Services
-Signage/branding components including standard distance markers (i.e. sign, painted symbol, embedded marker), custom interpretive elements, and wayfinding signs.
-Project Punch List
-Based on coordinateation/requests with stakeholders including Caltrans and FID, the construction estimate may exceed the CITY's current construction budget. Should the increases in construction cost result in an increase in the scope of design services, the CITY and CONSULTANT will negotiate an amendment to this agreement.

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and BKF Engineers ("CONSULTANT")
Mid-Town Trails Segements 1 and 3
PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

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

1. **COMMERCIAL GENERAL LIABILITY**:

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

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

2. **COMMERCIAL AUTOMOBILE LIABILITY**:

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

OR*

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

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

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

4. **EMPLOYER'S LIABILITY**:

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

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

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

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

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

CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

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

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

3. For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

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

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

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

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

VERIFICATION OF COVERAGE

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

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Mid-Town Trails Segements 1 and 3
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☐
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☐
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☐
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?	☐	☐
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?	☐	☐
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?	☐	☐
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

_____

_____

_____

_____

_____

_____

☐ Additional page(s) attached.

_____
Signature

_____
Date

_____
(name)

_____
(company)

_____
(address)

_____
(city state zip)

Exhibit D
FEDERAL AND STATE ASSURANCES
Consultant Service Agreement between City of Fresno ("CITY")
and BKF Engineers ("CONSULTANT")
Mid-Town Trails Segements 1 and 3

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 BKF Engineers ("CONSULTANT")
Mid-Town Trails Segements 1 and 3

(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 _____, and duly authorized representative of the firm of _____ whose address is_____, 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)_____ (Signature) _____