

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

THIS AGREEMENT is made and entered into effective the _____ day of June, 2017, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and AECOM, Inc. (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional Environmental Consulting services for River West Lewis S. Eaton Trail Extension, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a Profesional Engineering and Planning Consultant 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 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 to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or June 15, 2018, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within 365 consecutive calendar days from such authorization to proceed.

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 Seventy one thousand, seven hundred and eighty five dollars (\$71,785), and a contingency amount not to exceed Seven thousand Dollars (\$7,000) for any additional work rendered pursuant to Subsection (c) 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.

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

4. Termination, Remedies and Force Majeure.

(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 Director's request, 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 Director 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 Director of the cessation of such occurrence.

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

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

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

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

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

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

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance

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

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

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

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its

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

9. Conflict of Interest and Non-Solicitation.

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

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

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

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

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

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

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

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

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

11. General Terms.

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

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

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

perform the services called for by this Agreement (or that no license is required) before beginning work.

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.

///

///

///

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

AECOM,
Inc.

By: _____
Scott Mozier,
Public Works Director
Public Works Department

By: _____

Name: _____

Title: _____
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____

By: _____
Deputy

Name: _____

APPROVED AS TO FORM:
City Attorney's Office

Title: _____
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

By: _____
Raj Singh Badhesha Date
Deputy City Attorney

Any Applicable Professional License:

Number: _____

REVIEWED BY:

Name: _____

Date of Issuance: _____

Andrew Benelli, Assistant Director
Public Works Department

Addresses:

CITY:
City of Fresno
Attention: Andrew Benelli,
Assistant Public Works Director
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8723
FAX: (559) 457-1313

CONSULTANT:

AECOM
Attention: Petra Unger,
Principal
2020 L Street, Suite 400
Sacramento, CA 95811
Phone: (916) 414-5800
FAX: (916) 414-5850

Attachments:

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

Exhibit A

SCOPE OF SERVICES
Consultant Service Agreement between City of Fresno ("City")
and AECOM ("Consultant")
River West Lewis Eaton Trail Extension
PROJECT TITLE



AECOM
1360 E. Spruce Avenue
Suite 101
Fresno, CA 93720
www.aecom.com

559.448.8222 tel
559.448.8233 fax

June 7, 2017

Mr. Scott Mozier PE, TE
Public Works Director
City of Fresno
Public Works Department
2600 Fresno Street, 4th Floor
Fresno, CA 93721-3623

Subject: Proposal to Revise and Recirculate River West Lewis Eaton Trail Extension Project Draft Environmental Impact Report

Dear Scott:

This proposal sets forth AECOM's project understanding, approach, scope of services, assumptions, fee, and schedule for revising and recirculating the Draft Environmental Impact Report (EIR) for the 2017 River West Lewis Eaton Trail Extension Project.

The original Draft EIR for the River West Lewis Eaton Trail Project was prepared and circulated for public review by the San Joaquin River Conservancy as the lead agency under the California Environmental Quality Act (CEQA). Based on the extent and nature of public comments received, the City of Fresno (City) proposes to select a project alignment that closely adheres to the Alternative 5B considered in the prior EIR, and recirculate the Draft EIR acting as the CEQA lead agency for the recirculated document. The new design, previously referred to as Alternative 5B is conceptually described as follows:

Access to the San Joaquin River would be provided by constructing a road from the existing cul-de-sac at Palm Avenue north of Nees Avenue. The road, with two 15-foot travel lanes, would be constructed with a 10% gradient and would proceed across the bluff face downgradient toward the river bottom and then around the Fresno Municipal Flood Control District (FMFCD) basin. The proposed road would end at a proposed 40-space parking lot. The proposed trail would terminate at the new parking area, along with the proposed trail to the staircase to Spano Park. AECOM understands that the City will be assisted by Blair, Church and Flynn Consulting Engineers who will prepare a Feasibility Study and Schematic Design for Palm Bluffs River Access for Alternative 5B.

The new alternative represents significant new information warranting recirculation pursuant to Section 15088.5 of the California Environmental Quality Act (CEQA) and CEQA Guidelines. A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. The following outlines AECOM's proposed scope of work for recirculation of a new Draft EIR evaluating

the environmental effects of the redesigned project, followed by preparation of a final EIR and support for EIR certification.

Scope of Work

Task 1 Project Description

Working closely with the consulting engineers, the City, and the San Joaquin River Conservancy, an AECOM landscape architect will develop a conceptual illustration depicting the access road and trail alignment to help readers visualize the trail design. Using this information, AECOM will prepare a written project description for use in the recirculated EIR. The project description will contain all the information required under Section 15124 of the CEQA Guidelines including location; project objectives; and the technical, economic, and environmental characteristics of the project. In addition, the intended uses of the document will be described, including a list of discretionary actions requiring approval to implement the project; a list of agencies expected to use the EIR in their decision-making process; and a list of environmental consultation requirements to be met through the EIR.

Assumptions:

- The City is responsible for contracting with Blair, Church and Flynn Consulting Engineers and will provide the conceptual design in a timely manner to support development of the project description.
- The Conservancy will serve as the lead agency

Deliverables:

- AECOM will provide a digital copy of the draft project description.

Task 2 Notice of Preparation/Recirculation

Notice of Preparation/Recirculation - AECOM will prepare a Notice of Preparation (NOP) for the recirculated Draft EIR in accordance with Section 15087 of the CEQA Guidelines. The NOP will provide sufficient information to describe the reconfigured project, its location and potential environmental effects. The NOP will also describe in detail how the agencies and public can submit comments on the NOP and contents of the recirculated EIR. The NOP will reference the same State Clearinghouse number as the original Draft EIR. It will be sent to all responsible and trustee agencies, and the State Clearinghouse

Consistent with Section 15088.5(f)(1) of the CEQA Guidelines, the notice must also be sent to every agency, person, and organization that commented on the previously prepared EIR. The notice will inform all participants that all prior comments made on previously prepared Draft EIR are no longer under consideration and new comments must be submitted on the recirculated Draft EIR in order to be considered by the lead agency.

Assumptions:

- City will send the NOP by certified mail, with return receipt, to responsible, and trustee agencies, and the State Clearinghouse, and to all agencies, persons and organizations that commented on the previously prepared EIR.
- The Conservancy as lead agency will be responsible for consulting with the Native American tribes pursuant to the consultation requirements of Assembly Bill 52.
- The City will publish a public notice in the Fresno Bee.

Deliverables:

- AECOM will provide a digital versions of the NOP for use by the City and Conservancy

Task 3 Recirculated Environmental Impact Report**A. Prepare Recirculated Draft EIR**

AECOM will prepare a revised Environmental Impact Report (EIR) consistent with Section 15088.5 of the CEQA Guidelines. The revised DEIR will include a detailed introduction that describes the previous environmental review process and summarizes issues/comments raised in response to that document. The introduction will illustrate how the currently proposed access road (Route 5B from original DEIR) was formulated to address environmental issues raised during the previous review process. The EIR will address the following environmental topics:

Aesthetics	Land Use and Planning
Agricultural and Forestry Resources	Mineral Resources
Air Quality	Noise
Biological Resources	Population and Housing
Cultural Resources	Public Services
Geology, Soils, and Seismicity	Recreation
Greenhouse Gas Emissions	Transportation and Traffic
Hazards and Hazardous Materials	Utilities and Service Systems
Hydrology and Water Quality	Mandatory Findings of Significance

The revised Draft EIR will also address cumulative impacts, alternatives, growth-inducing effects, and other CEQA-required analyses. Of the topics listed above, some of the items listed above will be

evaluated in an Effects found Not Significant section and scoped from main body of EIR consistent with 15060 (d) of the CEQA Guidelines. This allows the agency to focus the analysis on issues ripe for consideration and limit review of resources that are clearly not impacted by the project. This work scope assumes that the topics scoped out in the Effects found Not Significant section will include agriculture and forestry, geology, soils and seismicity, mineral resources, population/housing, utilities, and public services (except fire and police protection).

AECOM proposes to utilize, as applicable, the supplemental feasibility study to be prepared by Blair, Church and Flynn Consulting Engineers and existing technical reports from the previous Draft EIR of the River West Eaton Trail Extension Project. The Draft EIR will incorporate by reference salient sections of the City's 2035 General Plan EIR to focus on the site specific conditions and impacts unique to this particular project. However, AECOM anticipates the need to update the information contained in the air quality and greenhouse analysis. Updated traffic analysis will also be needed for the revised project that considers two additional intersection locations and updates traffic volumes.

B. Notice of Availability

AECOM will prepare a Notice of Availability (NOA) to give notice to the public, responsible agencies, trustee agencies, and the county clerk that the EIR is available for review and comment. Consistent with CEQA Guidelines Section 15087(c), the notice will contain a brief project description and its location; the starting and ending dates for the review period during which the City will accept comments; the date, time and place of any scheduled public meeting or hearing; the address where copies of the Draft EIR are available for review; and if applicable, the presence on the site of any hazardous wastes per Government Code Section 65962.5.

C. Notice of Completion

AECOM will prepare a Notice of Completion (NOC) for filing with the County Clerk and the State Clearinghouse and electronic copy of the executive summary of the Draft EIR and provide both to the City.

Assumptions:

- This scope assumes one round of review and revision in response to comments on the administrative Draft EIR by the City and Conservancy and that the comments will be consolidated into a single non-conflicting set of comments for incorporation by AECOM.
- The City will print and distribute the NOC and hard copies of the executive summary of the draft EIR.
- The City will print and make available any hard copies of the DEIR needed for circulation.
- The City will submit the NOA to the Fresno Bee and to responsible and trustee agencies, and to agencies, organizations and persons who previously commented on the Draft EIR.

Deliverables:

AECOM will provide digital copies of:

- Administrative Draft EIR
- Draft EIR
- Notice of Completion
- Notice of Availability

D. Public Meeting

During the 45-day review period, AECOM's assigned project manager will attend and participate in one (1) public meeting hosted by the City and held during the public review period on the recirculated public Draft EIR. AECOM will prepare an information packet, including information about the project design, environmental review process and a pre-addressed comment form. This form will be designed to allow for written comments to be submitted at the meeting or folded and mailed to the City. The City's project manager should make a brief introductory presentation followed by a public workshop that provides an overview of the revised project, the CEQA process, and solicits input from the public. AECOM's project manager will be available to answer questions, attend a welcome desk and sign in sheet and to assist with discussing the project with attendees.

Task 4 Final EIR**A. Response to Comments and Final Environmental Document**

AECOM will prepare a draft Final EIR in conformance with CEQA Guidelines Section 15132. The Draft Final EIR will consist of the Draft EIR, or a revision of the draft, a list of persons, organizations, and public agencies commenting on the Draft EIR, comments received on the Draft EIR, and responses to comments raised in the review and consultation process.

CEQA Guidelines Section 15088.5(f)(1) notes that "When an EIR is substantially revised and the entire document is recirculated, the lead agency may require reviewers to submit new comments and, in such cases, need not respond to those comments received during the earlier circulation period." Consistent with this provision of the CEQA Guidelines, this scope of work assumes that the lead agency will require reviewers to submit new comments and that AECOM will not prepare responses to the comments received during the earlier circulation period.

AECOM's fee is based on receiving a moderate level of comments on the DEIR, e.g. no more than five substantive comments and 25 general comments, which we believe will be adequate for the task. If additional research and analysis is required to effectively respond to public comments on the Draft EIR, AECOM will work with the City to develop a new work scope, budget, and delivery schedule.

B. Notice of Determination and MMRP

AECOM will prepare a Notice of Determination to be filed with the State Clearinghouse by the lead agency following certification of the EIR in accordance with CEQA Guidelines, Section 15094. The lead

agency will be responsible for signing and filing the Notice of Determination and for paying associated fees. In compliance with Section 21081.6 of the California Public Resources Code, AECOM will also prepare a Mitigation Monitoring and Reporting Program (MMRP) for the Draft EIR. The MMRP summarize adopted mitigation requirements to be implemented during project implementation, and will identify timing and responsible parties for each mitigation measure.

Assumptions:

- The City will distribute digital copies of the Final EIR to trustee and responsible agencies consistent with the required period prior to project adoption and EIR certification.
- City staff will prepare all staff reports for the City Council
- The lead agency will post a Notice of Determination with the County Clerk and file it with the State Clearinghouse.
- The City will prepare the Findings of Fact and a Statement of Overriding Considerations, if applicable.
- City will print any hard copies of the FEIR and MMRP needed.
- The lead agency will be responsible for paying all CEQA filing fees.

Deliverables:

AECOM will provide a digital copy of the following:

- Administrative Draft Final EIR
- Final EIR
- Mitigation Monitoring and Reporting Program

Task 5 Meetings

AECOM's project manager will attend an initial kickoff meeting with the City to introduce key personnel; discuss project milestones and schedules; obtain materials relevant to the project; and establish appropriate channels for communications. Two additional meetings have been budgeted to review comments on the administrative Draft EIR, and coordinate responses to comments on the Draft EIR with City and Conservancy staff.

This SOW provides time for attendance at two (2) public hearings. These sessions will be attended, at a minimum, by the Project Manager. AECOM will be prepared to support staff in answering technical questions, and will document in writing the verbal comments received.

Schedule

AECOM understands that time is of the essence. An aggressive schedule is provided below that estimates timelines to complete the above scope. Work will commence upon receipt of a fully executed contract and written authorization to proceed from the City. There are significant variables involved with the proposed project that may affect overall timing, so this schedule should be considered subject

to revisions, based on achievement of deliverables identified in each task, including other City Contractors.

Task Description	Estimated Schedule	
	Begin Task	End Task
Task 1 Project Description	June 19, 2017	June 26, 2017
Task 2 Notice of Preparation	June 27, 2017	June 27, 2017
Public Scoping Period	June 27, 2017	July 18, 2017
Public Scoping Meeting	July 13, 2017	July 13, 2017
Task 3 Recirculated Admin DEIR	June 26, 2017	August 1, 2016
Review Admin DEIR	August 1, 2016	August 8, 2016
Revise Admin DEIR	August 9, 2016	August 16, 2017
Public Review of Draft EIR	August 21, 2017	October 6, 2017
Task 4 Final Recirculated EIR	October 7, 2017	October 30, 2017
Task 5 Meetings	Ongoing	

Fees

AECOM will provide the above scope of services on a time and materials basis. Our total estimated fee based on the scope of services and assumptions as described in this proposal is \$71,785. The breakdown of fees per task is shown in the table below. AECOM will invoice the City monthly on time and materials basis. Due to the potentially controversial nature of this project, AECOM recommends a contingency of \$7,000.00 be added to the above budget, to be released for use by the City as needed.

Task Description	Budget
Task 1 Project Description & Landscape Design	\$10,115
Task 2 Notice of Preparation	\$415
Task 3 Recirculated DEIR	\$48,783
Task 4 Final Recirculated EIR	\$7,472

Task 5 Meetings/Hearings	\$5,000
Total	\$71,785
Contingency	\$7,000.00

Thank you for the opportunity to provide assistance on this exciting project. If you have any questions about the enclosed proposal, please don't hesitate to contact either of us.

Sincerely,
AECOM



David K. Young
Project Manager / Senior Environmental Planner
(559) 490-8324
david.young@aecom.com



Petra Unger
Project Director
(916) 414-5835
petra.unger@aecom.com

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and AECOM ("CONSULTANT")
River West Lewis Eaton Trail Extension
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

River West Lewis Eaton Trail Extension

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)