

SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT (Amendment) is entered into effective _____, 2021, (Effective Date), by and between the CITY OF FRESNO, a California municipal corporation (City), and BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS, a California Corporation (Consultant). City & Consultant are collectively referred to as Parties.

RECITALS

WHEREAS, the City and the Consultant entered into an agreement on July 26, 2019, (Agreement) for professional consulting engineering services for the design of plans and general construction contract documents for the Recycled Water Extension to Martin Luther King Activity Center (Project) for a total fee not to exceed \$129,700 and a contingency amount not to exceed \$2,000; for a total contract price of \$131,700; and

WHEREAS, the First Amendment to the Agreement was executed on April 28, 2020, to increase the consultant compensation by \$55,270, to increase the contingency amount by \$8000 and to extend the Agreement to July 30, 2021, to complete Project; and

WHEREAS, the City desires to obtain environmental services during construction in compliance with the California Environmental Quality Act (CEQA) document; and

WHEREAS, due to the need for additional services of the CEQA environmental requirement of the recycled water main, the Parties desire to modify the Agreement to extend the time for performance, adjust the scope of services, and increase the compensation amount, and

WHEREAS, due to the need for additional services, the Parties desire to increase the compensation by \$58,083 resulting in a total Consultant fee not to exceed \$243,053 and a contingency of \$10,000; and

WHEREAS, the City and the Consultant desire to extend the Agreement to February 25, 2022; and

WHEREAS, with entry into this Amendment, the Consultant agrees it has no claim, demand, or dispute against the City.

AGREEMENT

NOW, THEREFORE, the Parties agree that the Agreement be amended as follows:

1. Scope of Services: Exhibit A of the Agreement is amended to expand the scope of services to include the "Additional Professional Services" identified in Exhibit A1, attached hereto and incorporated herein.

2. Term of Agreement and Time for Performance: Section 2 of the Agreement shall be replaced, in its entirety, by the following:

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 February 25, 2022,

subject to any earlier termination in accordance with this Agreement. The services of Consultant as described in Exhibit A and Exhibit A1 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 945 consecutive calendar days from such authorization to proceed."

3. Compensation: Section 3(a) of the Agreement shall be replaced, in its entirety, by the following:

"(a) Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed Two Hundred Forty Three Thousand Fifty Three Dollars (\$243,053), paid on a time and materials basis in accordance with the schedule of fees contained in Exhibit A, and a contingency amount not to exceed Ten Thousand Dollars (\$10,000) for any additional work rendered pursuant to Subsection (c) below and authorized in writing by the Director."

4. Except as otherwise provided herein, the Agreement entered into by the City and the Consultant on July 26, 2019, amended on April 28, 2020, respectively, remains in full force and effect.

[Signatures follow on the next page.]

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

CITY OF FRESNO,
A municipal corporation

By: _____
Michael Carbajal, Director
Department of Public Utilities

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Brandon M. Collet
Senior Deputy City Attorney

DocuSigned by:
Brandon Collet
2/12/2021

ATTEST:
YVONNE SPENCE, CRM MMC
CITY Clerk

By: _____
Yvonne Spence
Deputy

Date

BLAIR, CHURCH, & FLYNN CONSULTING
ENGINEERS,
A California corporation

By: _____
Jeffrey Brians
Name: Jeffrey Brians

DocuSigned by:
Jeffrey Brians
2/12/2021

Title: Vice President
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: _____
Adam Holt
Name: Adam Holt

DocuSigned by:
Adam Holt
2/12/2021

Title: CFO
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

Attachment: Exhibit A1

EXHIBIT A1

ADDITIONAL PROFESSIONAL SERVICES

Blair, Church & Flynn is pleased to present this professional services proposal to perform environmental services for the subject project in compliance with the CEQA document.

The existing agreement does not contain any environmental services during construction. The City now desires that certain environmental services be provided, which are included in this proposal and discussed below.

Proposed Environmental Services

As of the date of the proposal, bids have been opened and construction is expected to begin soon. Environmental services will occur prior to the start of construction and during the course of construction.

Worker Awareness Training and Development of Paleontological Resources Monitoring and Mitigation Plan (PRMMP)

We will provide up to one (1) worker education and awareness program to all on-site personnel by a qualified biologist and a qualified paleontologist/cultural resources specialist before the commencement of materials staging or ground disturbing activities.

The biologist will explain to construction workers how best to avoid impacts to sensitive resources (i.e., nesting birds, western pond turtle, burrowing owls, San Joaquin kit fox, special-status bats, and aquatic resources such as wetlands), project wide general best management practices (BMPs) that protect biological resources, and the presentation will include topics on resource/species identification, life history descriptions, and habitat requirements during various life stages. Handouts, illustrations, photographs, and project mapping showing areas where minimization and avoidance measures will be included as part of this worker training.

The paleontologist/cultural resources specialist will design and implement a paleontological monitoring program and prepare a Paleontological Resources Monitoring and Mitigation Plan (PRMMP) that is consistent with the Society for Vertebrate Paleontology Standard Guidelines and the requirements of the designated repository for any fossils collected.

The PRMMP will include a description of when and where construction monitoring would be required; unanticipated discovery procedures; sampling and data recovery procedures; procedure for the preparation, identification, analysis, and curation of fossil specimens and data recovered; preconstruction coordination procedures; and procedures for reporting the results of the monitoring program. As part of the PRMMP,

the paleontologist/cultural resources specialist will develop a brief training seminar for the project personnel. This seminar will be implemented by the paleontologist/cultural resources specialist during a one-day visit to the project site or location as determined. The training will consist of a ½-hour tailgate presentation that details the types of cultural and paleontological resources that could be encountered, where such remains are most likely to be encountered, and the actions to follow in the event of a discovery. The training seminar will also address the requirements of Mitigation Measure 4.12.2b and 4.12.4b. We will also provide a handout with photographs of resource types and an outline of procedures and contacts.

Preconstruction Biological Surveys

We will provide one (1) pre-construction survey of the MLK Activity Center pipeline segment, as described in Addendum #3, by a qualified biologist and before the commencement of materials staging or ground disturbing activities.

Nesting and Breeding Birds: To the extent feasible, tree trimming and removal activities associated with the project will be conducted outside the breeding season (which generally occurs between March 1 and August 15) for migratory birds and raptors. If tree trimming and removal activities are to take place during the breeding season for these species, we will provide a qualified wildlife biologist to conduct focused preconstruction nest surveys for active special and non-special status migratory bird and raptor nests. Preconstruction surveys for tree-nesting raptors and migratory songbirds shall be conducted within 15 days prior to any project activities that will occur between March 1 and August 15 of any given year. All suitable nesting habitat for tree nesting raptors and migratory songbirds within 250 feet of the proposed activity areas shall be surveyed. Should active nests be identified by these surveys, the nest sites shall be protected from all project activities within 250 feet of the nest site until the young have fledged. Project activities that must occur within 250 feet of an active nest shall not take place without prior consultation with the California Department of Fish and Wildlife (CDFW).

San Joaquin Kit Fox: Pre-construction surveys for the San Joaquin kit fox shall be conducted no less than two calendar weeks and no more than thirty calendar days prior to commencement of ground disturbance. Surveys shall be conducted by qualified biologists. When surveys identify potential dens (defined as burrows at least four inches in diameter which open up within two feet), potential den entrances shall be dusted for three calendar days to register and track activity of any San Joaquin kit fox present. If no San Joaquin kit fox activity is identified, the den may be destroyed.

Western Pond Turtle: No more than two weeks prior to the commencement of ground-disturbing activities a qualified biologist shall perform surveys for western pond turtle within suitable aquatic and upland habitat on the project site. Surveys shall include

western pond turtle nests as well as individuals. The biologist (with the appropriate agency permits or approvals) shall temporarily move any identified western pond turtles upstream of the construction site, and temporary barriers shall be placed around the construction site to prevent ingress. The results of these surveys shall be documented in a technical memorandum that shall be submitted to the CDFW (if turtles are documented) and/or the City.

Burrowing Owls: Pre-construction surveys for burrowing owls shall be conducted at any proposed project site containing suitable habitat by a qualified biologist (as approved by CDFW) within 30 days prior to the start of work activities where land construction is planned in known or suitable habitat for burrowing owls. If construction activities are delayed for more than 30 days after the initial preconstruction surveys, then a new preconstruction survey shall be required. All surveys shall be conducted in accordance with survey protocols from Appendix C and D of the CDFW's Staff Report on Burrowing Owl Mitigation.

Special-Status Bats: A qualified bat biologist shall survey for special-status bats prior to construction activities within 200 feet of trees from construction activities. If no evidence of bats (i.e., direct observation, guano, staining, or strong odors) is observed, no further mitigation shall be required. Should evidence of bats be observed, a no-disturbance buffer of 250 feet shall be created around active bat roosts during the breeding season.

It should be noted that if any sensitive tree resources are observed during the pre-construction surveys to be within the project footprint/alignment and may potentially be damaged as a result, they will be included in the survey report and recommend for protection within a tree protection zone (TPZ). In that case, weekly monitoring visits to check on the condition of the TPZ may be needed and that would require additional scope and budget.

Cultural and Paleontological Monitoring and Support

We will provide a paleontological monitor full-time during excavations as requested for forty (40) days of construction. The paleontological monitor will be fully trained in fossil identification and salvage techniques, ensuring the discovery of significant fossils does not unnecessarily hinder construction work on the project.

Monitoring Specifications:

- Monitoring will consist of inspections of fresh exposures of rock for fossils.
- The frequency of monitoring inspections will be based on the rate of excavation and grading activities. Should potential fossils be encountered during the course of construction, the paleontological monitor will temporarily divert or redirect activities to facilitate evaluation and salvage if necessary.

- The monitor will complete a daily log documenting construction activities and observations, including equipment type, location of excavations, soil conditions, and disturbances.
- The monitor will be supervised by our Paleontological Principal Investigator, who meets the criteria established by the Society for Vertebrate Paleontology.

For the purposes of this proposal, ESA assumes no scientifically significant paleontological resources will be unearthed at the project site. However, should fossils be found during construction, the monitor will temporarily divert or redirect grading and excavation activities in the area of the exposed fossil to facilitate evaluation and, if necessary, salvage. The monitor will evaluate the find's scientific significance in consultation with the Project Manager. Should the find be determined to be significant, a change order will be necessary to cover additional costs of treatment of these materials.

The fees for paleontological monitoring presented later in this proposal is the cost for 40 days of monitoring and includes the cumulative costs of the monitor's pay, associated costs for the monitor (mileage, etc.), associated support (GIS, etc.), and oversight of the monitor by the Principal Investigator and project manager.

Assumptions:

- Paleontological monitoring will be limited to a single monitor per day working not more than 8 hours per day, Monday - Friday. Should additional monitoring require overtime wages, additional expenses will be on a time and materials basis.
- No scientifically significant paleontological resources will be unearthed during construction.

Paleontological Resources Negative Significant Findings Monitoring Report

At the conclusion of monitoring activities, we will prepare a paleontological negative significant monitoring report that describes the paleontological monitoring methods, summarizes and interprets our findings and observed site conditions, and provides management recommendations for future projects, if appropriate. The report will also include photographs and figures and a project/resource location map.

Assumptions

- It is assumed that this is a negative significant findings report. Should significant paleontological resources be encountered, additional funding will be necessary to account for additional reporting (in addition to laboratory work, fossil identification, and curation).
- It is assumed that a draft of this report and figures will be submitted electronically for review, and that only one round of review will be necessary. Upon receipt of comments on the draft document, we will revise the draft report and produce the final report.

- It is assumed that only one electronic copy of the final report will be produced and submitted.

Coordination, Record Keeping, and Oversight

We will provide coordination, maintain all records, and provide oversight of the subconsultant services described above, including peer review of reports and deliverables. We will also update the Indirect Source Review (ISR) to reflect changes to overall recycled water project footprint associated with the revised alignment.