City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.	2A
COUNCIL MEETING:	11/01/2012
APPROVED BY	
DEPARTMENT DIRECTOR	MS
CITY MANAGER	Mark Scott

November 1, 2012

FROM: MARK SCOTT, Interim Director
Development and Resource Management Department

THROUGH: KEITH BERGTHOLD, Assistant Director
Development and Resource Management Department

BY: JOSEPH W. OLDHAM, Sustainability Manager
Sustainable Fresno Division, Development and Resource Management Department

SUBJECT: **AUTHORIZE THE INTERIM DIRECTOR OF THE DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT TO EXTEND THE CURRENT MASTER SERVICE AGREEMENT NO. 4400004295 BETWEEN THE CITY OF FRESNO AND PACIFIC GAS AND ELECTRIC COMPANY UNTIL DECEMBER 31, 2014 AND RECEIVE $5,600,000 IN FUNDING FROM THE CALIFORNIA PUBLIC UTILITIES COMMISSION TO IMPLEMENT AND ADMINISTER ENERGY EFFICIENCY PROGRAMS UNDER THE LOCAL GOVERNMENT PARTNERSHIP PROGRAM-DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT**

RECOMMENDATIONS

Staff recommends that the City Council authorize the Interim Director of the Development and Resource Management Department to extend the current Master Service Agreement No. 4400004295 between the City of Fresno and Pacific Gas and Electric Company (PG&E) until December 31, 2014 and receive $5,600,000 in funding from the California Public Utilities Commission (CPUC) to implement and administer energy efficiency programs under the Local Government Partnership Program, subject to City Attorney approval to form.

EXECUTIVE SUMMARY

On January 14, 2010, the City Council authorized the Director of the Development and Resource Management Department to enter into a service provider agreement with PG&E to administer the Local Government Partnership program within the City of Fresno using funding from the California Public Utilities Commission (CPUC). The current Master Services Agreement No. 4400004295 between the City of Fresno and PG&E is the result of that action and provides $935,000 in funding to the City of Fresno to implement and administer energy efficiency programs under the Local Government Partnership Program. The Sustainable Fresno Division of the Development and Resource Management Department administers the agreement on behalf of the City of Fresno.

The current Master Services Agreement No. 4400004295 expires on December 31, 2012 and PG&E is proposing to extend the contract until December 31, 2014 as part of their proposed Energy Efficiency Portfolio for 2013-2014 currently under review by the California Public Utilities Commission. PG&E is proposing to provide $5,600,000 in funding over the two year period to the City of Fresno to implement and administer energy efficiency programs across PG&E service territory in Madera, Fresno, Tulare, Kings, and Kern Counties.

Examples of the programs proposed by PG&E for implementation by the City of Fresno in 2013-2014 are; continuation of the successful Home Energy Tune-up in-home energy survey program, expanded commercial business energy assessment services, expansion of Property Assessed Clean Energy (PACE) financing availability, commercial property energy benchmarking services, and increased education and outreach to real estate professionals regarding building energy efficiency impacts on property valuation.

Staff recommends that the City Council authorize the Interim Director of the Development and Resource Management Department to extend the current Master Service Agreement No. 4400004295 between the City of Fresno and Pacific Gas and Electric Company (PG&E) until December 31, 2014 and receive $5,600,000 in funding from the California Public Utilities Commission (CPUC) to implement and administer energy efficiency programs under the Local Government Partnership Program, subject to City Attorney approval to form.

BACKGROUND

On January 14, 2010, the City Council authorized the Director of the Development and Resource Management Department to enter into a service provider agreement with PG&E to administer the Local Government Partnership program within the City of Fresno using funding from the California Public Utilities Commission (CPUC). The current Master Services Agreement No. 4400004295 between the City of Fresno and PG&E is the result of that action and provides $935,000 in funding to the City of Fresno to implement and administer energy efficiency programs under the Local Government Partnership Program through the end of December, 2012. The Sustainable Fresno Division of the Development and Resource Management Department administers the agreement on behalf of the City of Fresno.

PG&E has been very impressed with the success of the City of Fresno at implementing energy efficiency programs at a regional scale with funding from the U.S. Department of Energy. Because of that success, as the Federal funding ended in June, 2012, PG&E expanded the funding available to the City of Fresno through the Local Government Partnership Program by $575,000 to continue operation of the Home Energy Tune-up Program that provides no-cost, in-home energy surveys for homeowners in Fresno and Madera Counties. PG&E then worked with Sustainable Fresno Division staff to develop a scope of work and budget for programs to be funded as part of their new Energy Efficiency Portfolio for submission to the CPUC in the 2013-2014 funding cycle. The expanded services developed for 2013-2014 include continuation and expansion of the Home Energy Tune-up Program to PG&E service territories In Madera, Fresno, Tulare, Kings, and Kern Counties, expanded commercial business energy assessment services, expansion of Property Assessed Clean Energy (PACE) financing availability, commercial property energy benchmarking services, and increased education and outreach to real estate professionals regarding building energy efficiency impacts on property valuation. The budget for the services is $5,600,000 which represents an increase of nearly 600% in funding for the City of Fresno compared to the 2010-2012 funding cycle.

PG&E has proposed an extension of the current Master Service Agreement No. 4400004295 between the City of Fresno and PG&E through the end of December, 2014 to provide funding for the expanded services under the Local Government Partnership Program. Funding will become available starting January, 2013 pending final adoption of the decision approving 2013-2014 energy efficiency programs and budgets by the CPUC currently scheduled for November, 2012.

FISCAL IMPACT

There are no negative impacts to the General Fund from this project. All costs associated with the project will be paid for with funding from PG&E and the CPUC.

ATTACHMENTS

None

This page intentionally left blank.

City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. 2B
COUNCIL MEETING November 1, 2012
APPROVED BY
DEPARTMENT DIRECTOR MS
CITY MANAGER Mark Scott

November 1, 2012

FROM: CRAIG SCHARTON, Assistant Director
Development and Resource Management Department

BY: WILMA QUAN, Urban Planning Specialist
Development and Resource Management Department, DCR Division

SUBJECT: DOCUMENTS RELATING TO COMPLETION OF DOWNTOWN PLANS AND CODE PROJECT

(1) CONFIRM A FINDING OF EXIGENT CIRCUMSTANCES AUTHORIZING EXECUTION OF CONTRACTS WITHOUT COMPETITIVE BIDDING FOR, AND AUTHORIZE THE CITY MANAGER OR HIS OR HER DESIGNEE TO NEGOTIATE AND EXECUTE, CONSULTANT CONTRACTS TOTALING $713,627 IN ORDER TO COMPLETE DOWNTOWN PLANS AND CODE PROJECT.

(2) APPROVE A CONTRACT WITH TONY PEREZ ASSOCIATES NOT TO EXCEED $84,769 AND AUTHORIZE THE CITY MANAGER OR HIS OR HER DESIGNEE TO EXECUTE DOCUMENTS.

(3) APPROVE A CONTRACT WITH FEHR & PEERS NOT TO EXCEED $53,800 AND AUTHORIZE THE CITY MANAGER OR HIS OR HER DESIGNEE TO EXECUTE DOCUMENTS.

(4) APPROVE A CONTRACT WITH HISTORIC RESOURCES GROUP, LLC, NOT TO EXCEED $47,860 AND AUTHORIZE THE CITY MANAGER OR HIS OR HER DESIGNEE TO EXECUTE DOCUMENTS.

(5) APPROVE A CONTRACT WITH SHERWOOD DESIGN ENGINEERS, LTD. NOT TO EXCEED $13,068 AND AUTHORIZE THE CITY MANAGER OR HIS OR HER DESIGNEE TO EXECUTE DOCUMENTS.

(6) APPROVE A CONTRACT WITH MICHAEL BRANDMAN ASSOCIATES NOT TO EXCEED $514,130 AND AUTHORIZE THE CITY MANANGER OR HIS OR HER DESIGNEE TO EXECUTE DOCUMENTS.

(7) APPROVE THE 24TH AMENDMENT TO ANNUAL APPROPRIATION RESOLUTION (AAR) NO. 2012-125 APPROPRIATING $70,000 TO COMPLETE THE WORK ON THE DOWNTOWN PLANS AND CODE PROJECT.

(8) CREATE CONTINGENCY AND AUTHORIZATION OF PAYMENT TO SUBCONSULTANTS FOR OUTSTANDING CLAIMS TO FULFILL ALL OBLIGATIONS OF THE CITY UNDER THE ELIZABETH MOULE AND STEFANOS POLZYOIDES, ARCHITECTS AND URBANISTS (MPA) CONTRACT.

RECOMMENDATIONS

Staff recommends that the Council confirm a finding that per FMC section 4-107(d), the City Manager or his designee may execute contracts for consulting services with four firms (Fehr & Peers, Tony Perez Associates, Historic Resources Group, LLC, and Sherwood Design Engineers, Ltd.) previously engaged as subconsultants under a prior Consulting Agreement with Elizabeth Moule & Stefanos Polyzoides, Architects

and Urbanists (MPA), in order to complete work on the Downtown Neighborhoods Community Plan, the Fulton Corridor Specific Plan, and the Downtown Development Code (hereinafter Downtown Plans and Code), and a contract with Michael Brandman Associates to complete the necessary environmental work associated with the Downtown Plans and Code Project.

Staff also recommends Council authorize the City Manager or his designee to negotiate and execute these five contracts on behalf of the City in order to complete the work funded and approved by previous Council action. Finally, staff recommends Council approve the 24th amendment to AAR Reso Number 2012-125, appropriating $70,000 to complete the work on the Downtown Plans and Code Project.

EXECUTIVE SUMMARY

The Development and Resource Management Department (DARM) through its Downtown & Community Revitalization (DCR) Division is coordinating the City's efforts to revitalize the downtown area. These efforts include the creation of the Downtown Plans and Code, as well as the closely related High Speed Rail (HSR) Station Area Master Plan. Through the bidding and contracting process detailed in Administrative Order 6-19, DCR has engaged several consultants in the creation of the Downtown Plans and Code.

In 2010, with City Council approval and with funding provided by Federal Community Development Block Grant (CDBG) monies and State Proposition 84 monies, the City executed an agreement with MPA in the amount of $2,643,612 for the preparation of the Downtown Plans and Code. The City's contract with MPA has since been terminated due to non-performance, but the subconsultants have performed work in good faith which is now needed for completion of the Downtown Plans and Code and related environmental work.

In addition to contracts with the four previous subconsultants, staff is proposing that the City enter into a contract with Michael Brandman Associates for completion of the environmental work associated with the Downtown Plans and Code. The environmental scope of work was previously included in the overall contract with MPA.

The proposed Council actions being recommended by staff today will essentially allow the preparation of the Downtown Plans and Code to proceed to completion under new management.

BACKGROUND

In January 2010 the City Council approved, and the City executed, a contract with MPA for the preparation of the Downtown Plans and Code. This contract was between the City and only one firm, MPA, but its scope drew on the services of 17 other subconsultants. Of the 17 subconsultants, work has been completed by 13 of the subconsultants. Each of these subconsultants entered into a contractual relationship with MPA only; the City is not a party to these subcontracts.

At the outset of this Downtown Plans and Code process, Staff led a comprehensive and open search for the best possible consulting team. A Request for Qualifications (RFQ) yielded approximately 20 top consulting firms. These were narrowed down to six firms based on the established criteria. Subsequently, these six firms submitted responses to the City's incredibly detailed RFP. All six firms viewed the project areas on an arranged tour. Each firm presented to two panels totaling 18 members; nine members from the community representing neighborhood and property/business interests and nine City staff from various departments participated in the selection process. This was one of the most, if not the most extensive processes the consultants had ever participated in.

Even with this extensive process, the field of planning consulting changed dramatically consistent with economic declines experienced across the nation. With a lapse in private projects, lack of capital for projects and an absence of local government planning processes, many smaller, specialty firms contracted or disappeared. MPA has reduced their staff significantly as a result, and currently do not have the planners on board necessary to complete or manage the remainder of the project. While their work was excellent and still embodies the bulk of the planning documents, it is necessary for us to directly contract with the remaining subconsultants in order to complete the work that is still necessary for the completion of the documents and environmental studies.

Additionally, staff have increased the scope of work to meet federal environmental law requirements, which will allow the City to have shovel ready projects and to be in line for potential federal funding in the future.

The termination of the City's contract with MPA in August 2012, occurred before the Downtown Plans and Code Project was complete, and before several subconsultants had finished their own pieces of the work. However, in all of these cases, subconsultants had already performed significant work in service to the final product. These firms have an intimate knowledge of the process that has led the drafts and studies for the Downtown Plans and Code to the state they are in today, and these firms have an exceptional understanding of the work that remains to be done. This unique familiarity, technical expertise, and ability to deliver the project within schedule substantiates the finding of exigent circumstances. The alternative of rebidding the project would require that much of this work be redone by potential new awardees, adding significantly to the cost and the time for completion.

In some cases, these subconsultants are also awaiting compensation for work already completed. In all cases, these firms performed in good faith under the now terminated contract with MPA, and since termination have remained in contact with City staff and committed to the final outcome of the Downtown Plans and Code Project.

In essence staff is now proposing to proceed with the Downtown Plans and Code Project with City staff performing the coordinating duties of the prime consultant, instead of MPA. To achieve this management structure in the most successful, expeditious, and cost-effective way, staff proposes that the City now retain the four consultants that originally had a subconsultant relationship with MPA. In each case the scope of work is structured to continue, as seamlessly as possible, the firm's previous work as a subconsultant. These four consultants and a summary of their proposed scope of work follow:

Tony Perez Associates: To date, Tony Perez Associates (TPA) has been instrumental in preparing the Downtown Plans and particularly the related Downtown Development Code. TPA's scope of work to complete the Downtown Plans and Code Project includes refinements to the aforementioned documents, including finalizing and completion of the Public Hearing Draft and Final versions of the Downtown Plans and Code. In addition, TPA's scope includes finalizing work done to date on the Adaptive Reuse Guidelines, attending public hearing meetings and orchestrating up to 8 community outreach meetings to educate the community about the new Code and how their properties will be affected. TPA's individual contract amount is $84,769 and is detailed in the attached contract.

Fehr & Peers: To date, Fehr & Peers has provided all technical oversight relative to the transportation consulting services associated with the Downtown Plans and Code. Fehr & Peers has completed a large portion of the transportation impact study for the Downtown Plans and Code under the since terminated contract. Fehr & Peers scope to complete the Downtown Plans Project includes finalizing the transportation impact study, which may include a fair share analysis. In addition, Fehr & Peers scope will include the preparation of written response to comments associated with California Environmental Quality Act (CEQA) documentation, attendance at public hearing meetings, and the preparation of a technical analysis for the

Fulton Mall in accordance with federal environmental laws. The individual contract amount for Fehr & Peers to complete their work associated with the Downtown Plans and Code is $53,800 as detailed in the attached contract.

Historic Resources Group, LLC: To date, Historic Resource Group, LLC (HRG) has provided all technical assistance relative to historic resources for the Downtown Plans and Code. HRG has performed field survey work, prepared 300 DPR A and B forms for properties within the Downtown Neighborhoods Community Plan Area, and drafted a substantial portion of the Historic Resources Technical Report for the Downtown Plans and Code under the now terminated MPA contract. To finalize their work for the Downtown Plans and Code, HRG's scope includes completion of this analysis, refinements to the historic and cultural resources chapters of the Downtown Plans, response to comments associated with the CEQA documentation, attendance at public hearing meetings including the Historic Preservation Commission, and consultation on the historic technical analysis for the Fulton Mall in accordance with federal environmental laws. HRG's individual contract amount to complete this scope of work is $47,860 as detailed in the attached contract.

Sherwood Design Engineers: To date, Sherwood Design Engineers (SDE) has provided all technical oversight relative to the sewer and water infrastructure analysis associated with the Downtown Plans and Code. A substantial portion of SDE's Utility Technical Analysis for the Downtown Plans has been completed under the now terminated contract with MPA. SDE's scope of work under the new contract includes completion of this analysis, refinements to the infrastructure chapters of the Downtown Plans, response to comments associated with the CEQA documentation, and the preparation of a technical memorandum for the Fulton Mall in accordance with federal environmental laws. SDE's individual contract amount to complete this scope of work is $13,068 as detailed in the attached contract.

In addition to the four contracts described above with firms that were formerly operating as subconsultants, staff proposes a contract with a fifth firm, Michael Brandman Associates (MBA), to perform the necessary State and Federal environmental work. MBA is currently under contract with the City of Fresno to prepare the Master Environmental Impact Report (MEIR) for the Fresno Comprehensive Development Code (the Development Code applicable outside the Downtown Plans area) and Fresno General Plan Update. Although the 2010 contract with MPA also included environmental work in its scope, another firm, not MBA, was the subconsultant retained by MPA to perform this work. However, staff believes it is in the City's best interest to have MBA also prepare the necessary environmental work for the Downtown Plans and Code, in order to ensure consistency with the MEIR for the Fresno General Plan Update and Comprehensive Code. Staff also believes that, because of this existing contract and the close relationship between the environmental documentation for the General and Downtown Plans, MBA is uniquely qualified to perform this work for the Downtown Plans and Code. MBA's scope of work in the contract proposed for approval today includes studies and documentation necessary for the Downtown Plans and Code, and the proposed Fulton Mall Project in particular, to comply with the California Environmental Quality Act (CEQA), and for the proposed Fulton Mall Project to comply with the National Environmental Policy Act (NEPA) and other applicable federal laws and regulations. MBA's individual contract amount to complete this scope of work is $514,130.

Staff is requesting that $35,454 be held in contingencies for subconsultant work performed in good faith and completed to the satisfaction of the City under the MPA contract. This amount consists of: $28,341 of contingent expenses in connection with Prop 84 tasks; $5,264 to MPA for work associated with the public hearing Downtown Plans and project management; $1,849 to Impact Sciences for certified mailing of the Notice of Preparation for the EIR payable once appropriate receipts are made available to the City for reimbursement.

Finally, staff recommends Council approve the 24th amendment to AAR Reso Number 2012-125 appropriating $70,000 to complete the work on the Downtown Plans and Code Project.

To best serve the City's interests by keeping the Downtown Plans and Code Project moving forward in the most timely, cost-effective, and well informed manner possible, staff recommends Council authorize the City Manager to negotiate and execute the five contracts described in this report. Staff also recommends adoption of the attached resolution providing an exception from the procurement process identified in Administrative Order 6-19, allowing negotiation and execution of contracts with the five firms identified. In the ongoing commitment to full transparency, staff is looking to gain Council's commitment to continue to directly engage the subconsultants who had performed work in good faith under the now terminated agreement, with their own separate agreements. This exception will allow work already authorized by the Council to be completed.

In the event the requested awards are rejected by the Council, a minimum of 90 days would be required for staff to rebid the project.

FISCAL IMPACT STATEMENT

This project is funded through Federal Community Development Block Grant (CDBG) monies and State Proposition 84 monies, of which $566,629 remain to complete the project. Due to the unforeseen delays in terminating the prime consultant's agreement, and additional information relative to the federal environmental law requirements for the Fulton Mall, the estimated cost of completing the subconsultant work including the contingency as identified is $749,081. This amount is $182,452 in excess of the remaining funds. Not all of this amount is expected to be expended in the current fiscal year. Therefore, an AAR of $70,000 is recommended for approval with the balance to be budgeted in Fiscal Year 2014.

On March 8, 2012, Council adopted Resolution No. 2012-33, authorizing two City grant applications to the Fresno County Measure C Transit Oriented Development Program. One of these applications requested $2 million for preconstruction environmental, design, and engineering work in relation to the proposed Fulton Mall project. This application was submitted but, to date, not funded. Consistent with the Council's previously adopted resolution, and the Council action recommended today, staff intends to modify and resubmit the Measure "C" grant application to a lower amount encompassing the outstanding costs for the contracts recommended for approval today.

This page intentionally left blank.

AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the 1st day of November, 2012, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Michael Brandman Associates, a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional environmental consulting services for completion of the Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a comprehensive environmental planning services firm 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 Development and Resource Management Director (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises 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 ("Effective Date") and shall continue in full force and effect through June 30, 2015, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 not to exceed $514,130, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not

be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(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 Administrator'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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 the Administrator. 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, 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 writings and 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. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(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** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

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

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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) 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.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of 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.

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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(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 Administrator 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

By:_____
Mark Scott, City Manager

ATTEST:
REBECCA E. KLISCH
City Clerk

By:_____
Deputy

No signature of City Attorney required. Standard Document #ALL 2.1 has been used without modification, as certified by the undersigned.

By:_____
Wilma Quan
Urban Planning Specialist

Michael Brandman Associates,
a California Corporation

By: _____

Name: Jason M. Brandman

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

By: _____

Name: ROBERT FRANCISCO

Title: COO, Vice President
(if corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

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

Addresses:

CITY:
City of Fresno
Attention: Wilma Quan, Urban Planning Specialist
2600 Fresno Street, Room 2156-02
Fresno, CA 93721
Phone: (559) 621-8371
FAX: (559) 457-1504

CONSULTANT:
Michael Brandman Associates
Attention: Jason Brandman, Executive Vice President
1234 O Street
Fresno, CA 93721
Phone: 559-497-0310
FAX: 559-449-4515

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 Michael Brandman Associates ("Consultant")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
PROJECT TITLE

See Attached

ATTACHMENT A

Following is the proposal to prepare environmental documentation for the City of Fresno Downtown Neighborhoods Community Plan (DNCP)/Fresno Community Specific Plan (FCSP), Downtown Development Code (DDC), and Fulton Mall Project. This proposal includes two tasks: one is to prepare a Program and Project Environmental Impact Report (EIR) for the DNCP/FCSP, DDC, and the Fulton Mall Project pursuant to the California Environmental Quality Act and the second is to prepare up to the level of an Environmental Assessment (EIS) for the Fulton Mall Project, pursuant to the National Environmental Policy Act (NEPA). The scope of work presented below is for environmental documentation for NEPA up to a level of an EIS. In addition, the schedule for the NEPA process is an estimate based on an unknown NEPA start date. Assuming the start date is in 2012, the NEPA process is estimated to be completed by June 30, 2015.

Project Understanding

DNCP/FCSP and DDC

Based on the Notice of Preparation, MBA understands that the City of Fresno intends to introduce and adopt a new Downtown Neighborhoods Community Plan (DNCP) for the residential neighborhoods surrounding Downtown. In addition, the City intends to introduce and adopt the Fulton Corridor Specific Plan (FCSP) for the core of Downtown and a Downtown Development Code (DDC) that will apply within the boundaries of the DNCP.

The DNCP is located within the southern portion of the City and covers approximately 7,290 acres. It is generally bounded to the east by Chestnut Avenue, to the south by Church Avenue, to the west by Thorne, West, and Marks Avenues, and to the north by State Route 180. The western side of the DCNP extend as far north as Clinton Avenue.

The FCSP covers approximately 655 acres and is generally bounded to the north by Divisadero Street, to the west by State Route 99, to the south by State Route 41, and to the east by N Street, O Street, and the alley between M and N Streets.

MBA understands that the DDC is a form-based code that contains most of the standards and requirements for development and land use activity within the boundaries of the DNCP and FCSP. In addition, the DDC identifies the specific provisions of Fresno's Municipal Code that are being replaced or superseded.

Fulton Mall

The Fulton Mall consists of six blocks bounded by Van Ness Avenue to the east, Inyo Street to the south, Broadway Street to the west, and Tuolumne Street to the north. The proposed project includes three improvement options for the mall: (1) Reconnect the Grid on Traditional Streets, (2) Reconnect the Grid with Vignettes, and (3) Restoration and Completion. Each of the three options will be evaluated at the same level of analysis within the CEQA and NEPA documentation.

Environmental Documentation

It is MBA's understanding that the technical studies that are being prepared by technical consultants for the City and that will be used in preparing the Program and Project EIR and the Environmental Impact Statement include:

- Traffic Impact Study, Fehr and Peers
- Geology and Soils, Krazan and Associates
- Hazardous Materials (Phase I), Krazan and Associates
- Archeological Survey Report, Greenwood and Associates
- Historic Resources Survey and Report, Historic Resources Group
- Infrastructure Analysis, Sherwood Design Engineers
- Energy/Efficiency Programs, Sherwood Design Engineers)
- Urban Decay Study, RSG

MBA understands that the following technical analyses/evaluations will need to be provided and are part of this EIR and EIS scope of work:

Environmental Impact Report (EIR)

- Air Quality Analysis
- Health Risk Assessment
- Greenhouse Gas Evaluation
- Noise Analysis

Environmental Impact Statement (EIS)

- Air Quality Analysis
- Air Conformity Analysis
- Noise Analysis
- Section 4F/6F Evaluation
- Visual Impact Assessment
- HPSR/HASR
- Natural Environment Study – Minimal Impact (NES-MI)

Scope of Work

Task 1 – Environmental Impact Report

MBA has identified the following sub-tasks for Task 1 of the project. MBA understands that the project will require the City of Fresno to approve discretionary actions for the project, and therefore, environmental documentation in accordance with the California Environmental Quality Act (CEQA) will be required. MBA anticipates that a Program Environmental Impact Report (EIR) will be the appropriate environmental document to comply with CEQA for the DNCP/FCSP and DDC. In addition, this scope of work assumes that the Fulton Mall will be evaluated at a project-level analysis in the EIR.

MBA has identified the following sub-tasks to prepare a Program and Project EIR for the proposed DNCP/FCSP and DDC project and Fulton Mall Project:

Sub-Task 1.1: Project Initiation and Organization

MBA's project director (Jason Brandman) and project manager (Michael Houlihan) will meet with the City to obtain information necessary to expand upon the current project and alternative descriptions provided in the Notice of Preparation. Importantly, we will also establish early communication among various project team members and become familiar with the issues and concerns identified for analysis. More specifically, in an effort to provide a concise and straightforward description of the project, the first key task will be the formulation of a working project description for the EIR. MBA will work closely with the City project team members, as appropriate; to prepare a description that articulates the overall objectives of the project.

To facilitate this process, MBA will:

- Receive complete project information to be used in developing an EIR project description. Information will include project objectives (including those of the City), land use data and statistical summary, and graphics. MBA assumes that the project data is currently included in the DNCP and FCSP.
- Receive alternative criteria, land use data, and narrative program descriptions of project alternatives from the City sufficient to develop the EIR description of alternatives to the proposed project.
- Refine the project schedule, based upon agreements reached during contract negotiations and on information discussed at the initial meeting, if needed.
- Obtain all existing reference and research materials related to the project, the project site and vicinity, including base maps, aerial photographs, and environmental documentation of the City's consultants for this project.
- Review site-specific data, conduct a field visit, and interview relevant parties such as City and other agency staff to document baseline conditions.

Sub-Task 1.2: Prepare Administrative Draft EIR

MBA will prepare the Administrative Draft EIR, which will include the following contents:

Introduction

A discussion of the purpose of the Program and Project EIR will be provided. The scoping process will be discussed as well as a list of all commentors and a summary of their comments on the Notice of Preparation will be documented. Finally, the organization of the document will be discussed.

Executive Summary

MBA will prepare a summary, presenting the significant conclusions of the EIR for the DNCP/FCSP, DDC, and Fulton Mall, in a manner that is easily understood by the public. A summary "table" format will be used to identify the significant impacts and the effectiveness of the recommended mitigation measures. A brief summary of the alternatives will be presented, as will issues to be resolved and issues subject to potential controversy.

Project Description

One of the first key actions will be to formulate a working description of the project and project alternatives. MBA will work with the City to prepare a description that articulates the project's overall objectives. MBA will prepare the project description section of the EIR, based upon information provided during project initiation and comments received on the already prepared and distributed NOP, to include:

- Regional and local setting
- Project history
- Project goals and objectives of the City
- Project characteristics and important project features

Intended uses of the EIR (as required by CEQA Guidelines Section 15124(d)) will be provided, including a list of responsible and other agencies expected to use the EIR in decision making, and a list of approvals for which the EIR will be used.

Cumulative Projects Identification

MBA will describe the reasonably foreseeable projects that have been identified in the technical studies prepared by the City's consultants. MBA will work closely with City staff to ensure the EIR is prepared at the appropriate level of detail and pertinent projects are evaluated. As identified above, we assume the City will provide information on all reasonably anticipated projects to MBA so cumulative projects can be

adequately addressed. Potential cumulative impacts will be discussed for each technical issue. Growth-inducing impacts will be evaluated separately in the EIR.

Effects Found to be Not Significant

MBA will describe effects found not to be significant, in accordance with CEQA Guidelines Section 15128, by listing them with brief explanations of why they are not significant. Given the information provided in the Notice of Preparation, MBA assumes the following environmental issues will result in no significant impacts and can be justifiably "scoped out" of the EIR:

- Forestry Resources
- Mineral Resources

The Notice of Preparation identified Biological Resources; however, MBA anticipates that this issue will need to be discussed in the EIR.

Establishment of Thresholds of Significance

MBA will work with the City to establish thresholds of significance for each environmental issue to be addressed in the EIR. MBA anticipates that the thresholds of significance will be the same as those that have been identified for the General Plan and Development Code Update Master EIR. The thresholds will be stated in each topical section of the EIR to clearly illustrate analytical process used to identify potential project effects.

Effects Identified as Potentially Significant

MBA will conduct an environmental analysis of the proposed project to include the documentation of baseline conditions, conducting project and cumulative impact evaluations, and formulating mitigation measures for each environmental issue. The environmental issues that will be addressed include the following:

Aesthetics

MBA will evaluate the existing aesthetics, light, and glare conditions within and near the proposed plan area and evaluate potential impacts that may occur from the proposed project. The proposed project's aesthetic impacts will be evaluated through the use of ground-level photographs. Visual impacts will be assessed in terms of visibility of plan area, alteration of the visual setting, and sensitivity of viewpoints. Potential glare impacts from operation/buildout of the proposed project, including scale and illumination in relation to existing development, will also be evaluated. Photo-simulations are not proposed.

Agricultural Resources

MBA will evaluate the project's potential impacts to agricultural resources in the EIR. As detailed in the Notice of Preparation for the project, 10.70 acres of agricultural lands exist within the boundaries of the DNCP. Potential impacts to this agricultural land will be evaluated in the EIR.

Air Quality

The air quality evaluations will conduct model runs for the DNCP/FCSP and DCC project as well as individual model runs for the three options of Fulton Mall.

Data Collection and Consultation. MBA will collect relevant project and site background information, including base graphics showing the project area and vicinity, the policy design elements of the proposed project, adjacent land uses, and specific traffic information from Fehr and Peers. Ambient air quality data for the project area will be collected from the San Joaquin Valley Air Pollution Control District and the California Air Resources Board (CARB). We will identify the current attainment status of federal and state standards, and current San Joaquin Valley Air Pollution Control District attainment plans. Project

description and related documents will be reviewed for potential air quality impacts and to identify policy design features and sustainability features that help reduce air quality impacts.

Emissions Calculations. Emissions associated with construction and operation will be estimated using CalEEMod or an alternate method utilizing emission factors. The pollutants that will be estimated include the following: volatile organic compounds, oxides of nitrogen, carbon monoxide, sulfur dioxide, particulate matter (PM_{10} and $PM_{2.5}$), carbon dioxide, methane, and nitrous oxide. The construction equipment, including dozers, excavators, and dump trucks would emit air pollutants through exhaust. There would also be fugitive dust emissions from soil disturbance during construction. During operation, there would be emissions from the motor vehicles that would access the project site.

A carbon monoxide hot-spot analysis will be conducted for up to three intersections with the highest potential for congestion using the California Department of Transportation Caline4 model, the EMFAC2011 model, and information from the traffic analysis by Fehr and Peers. MBA will review the project's potential to generate a localized criteria pollutant impact.

Develop Mitigation Measures. In accordance with CEQA requirements, the air quality analysis will propose mitigation measures for air quality impacts that are potentially significant. The air quality analysis will address reasonable ways to mitigate air pollutant emissions through strategies such as construction best practices, energy conservation, shorter or fewer vehicle trips, increased use of alternative transportation, etc. Where quantification methodologies are available, mitigation measures will be quantified. The air quality analysis will then assess the impact significance after the application of mitigation.

Cumulative Air Quality Impact Analysis. MBA will prepare a cumulative impacts analysis for air quality. A study area for the cumulative impact analysis will be determined, which will likely equate to the San Joaquin Valley Air Basin (SJVAB). The SJVAB has been established by the CARB to define the limits in which the air pollutants generated by the various sources are circulated and often trapped. While a list of projects in the project area may be suitable for other cumulative analysis such as infrastructure, a list approach does not encompass all reasonably foreseeable future sources within the SJVAB.

CEQA Guidelines Section 15130 (b)(1)(B) addresses evaluation of cumulative effects allowing the use of a summary of projections in approved planning documents in a cumulative impact analysis. Therefore, the cumulative analysis of air quality impacts will use the current approved attainment plans for the SJVAB. The analysis will quantitatively show the project's emissions and whether or not these emissions were contemplated in the future emissions inventory used in these plans. A cumulative impact significance determination will then be made for the project that is based on the criteria described above and in consultation with key personnel at the San Joaquin Valley Air Pollution Control District (SJVAPCD).

Data Needs. The project traffic information from Fehr and Peers is required for portions of the air quality analysis. General information will be required for the DNCP/FCSP and DCC project; however, more specific information will be needed for the Fulton Mall project. Project construction phasing and estimated buildout dates, as applicable, for the Fulton Mall project are required. MBA will use default information for the generation of construction emissions estimates; however, if available from the City, MBA will use project specific information such as the types of equipment anticipated, and the amount of import or export of soil.

Greenhouse Gases

The greenhouse gas evaluations will conduct model runs for the DNCP/FCSP and DDC project as well as individual model runs for the three options of Fulton Mall.

The proposed project would result in construction-related, operational-related, and indirect emissions of greenhouse gases. MBA will prepare a greenhouse gas analysis that will quantify project emissions and identify mitigation measures to reduce climate change impacts to the extent feasible. The analysis will take advantage of data and mitigation measures identified to address air quality impacts to the extent feasible.

The Greenhouse Gas section of the EIR will describe the basics of greenhouse gas emissions and associated climate change effects and provide the federal, state, and local regulatory environment for climate change and greenhouse gases. MBA will employ CEQA Appendix G proposed greenhouse gas emissions thresholds:

Would the project:

- Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?
- Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?

The significance analysis will include the project's greenhouse gas emissions inventory and the project's implementation of current California greenhouse gas emission reduction strategies. The project's construction and operational greenhouse gas inventory will be calculated using the most current version of URBEMIS, CalEEMOD, and/or EPA emission factors. The inventory will include the off-site emissions resulting from energy generation based on estimated energy usage.

Impacts to the Project. Although certain environmental effects are widely accepted to be a potential hazard to certain locations, such as rising sea level for low-laying coastal areas, it is currently infeasible to predict all environmental effects of climate change on any one location. MBA will disclose the general categories of potential environmental impacts to a project from climate change, but focus the analysis on relevant environmental effects for which enough information is known to substantiate an impact analysis, principally the potential for increased flood risk from more severe storm events, increased risk from wildfire, and potential for reduced water supply.

Greenhouse Gas Mitigation Measures. The analysis would include sustainability measures that reduce direct and indirect greenhouse gas emissions from the project. MBA will assess the project's implementation of current California greenhouse gas emission reduction strategies, including applicable solutions contained in the latest state-issued documents. Where quantification methodologies are available, mitigation measures will be quantified. The greenhouse gas analysis will then assess the impact significance after the application of mitigation.

Data Needs. The greenhouse gas analysis will utilize much of the data collected for the air quality analysis. Information regarding energy efficiency policies will be required for the analysis.

Health Risk Assessment

MBA will prepare a stand-alone Health Risk Assessment that will generally identify cancer and non-cancer risks at sensitive receptors in the vicinity of SR-99, SR-180, and SR-41. MBA will calculate the DNCP/FCSP's generated concentration of diesel particulates from heavy-duty diesel truck activity along the freeways, using the EPA's AERMOD air dispersion model and SCAQMD guidance for air dispersion modeling at three representative modeling areas. In addition, organic compounds that are classified as toxic air contaminants will be qualitatively discussed to determine potential health risk impacts from the implementation of the DNCP, FCSP, and DDC.

Cancer and non-cancer health risks associated with project-generated diesel particulates will be predicted using the cancer risk potency factor method for cancer risk due to diesel particulates, and the Reference Exposure Level (REF) for non-cancer health risks of diesel particulates, developed by Office of Environmental Health Hazard Assessment (OEHHA). The appropriate modeling information will be used to identify the maximum exposed individual resident (MEIR), the maximum exposed individual worker (MEIW), and the maximum individual cancer risk (MICR – the greater of the MEIR and MEIW).

Biological Resources

Due to the location and nature of the proposed project, limited impacts to biological resources are expected to occur with the implementation of the project. The DNCP has various trees that could provide nesting opportunities for bird species. These potential impacts will be discussed as well as vegetation cover, wildlife, threatened and endangered species, and wetlands. The latter issues are expected to result in minimal or no impact.

Cultural Resources

MBA will review the Archeological Survey Report by Greenwood and Associates and the Historic Resources Survey and Report by Historic Resources Group and incorporate the findings and conclusions into the EIR. These documents will be provided as an appendix to the EIR.

Geology and Soils

MBA will review the two separate Geologic Hazards Summary reports (one for the Fulton Corridor Specific Plan project area and the second report for the Downtown Neighborhoods Community Plan area) by Krazan and Associates and incorporate the findings and conclusions into the EIR. These documents will be provided as an appendix to the EIR.

Hazards and Hazardous Materials

The ESAs prepared by Krazan and Associates will be used to prepare the Hazards and Hazardous Materials section of the EIR and will be provided as appendices to the EIR. In addition, this section of the EIR will evaluate potential impacts associated with aviation, emergency response, and wildland fires.

Hydrology and Water Quality

MBA will address hydrology and water quality issues based on the Infrastructure Analysis prepared by Sherwood Design Engineers (SDE). It is MBA's understanding that the infrastructure analysis includes an evaluation of drainage and hydraulics based on assumptions used to generate the master planning and modeling efforts for the DNCP area.

Land Use and Planning

MBA will review the policies and plans that are applicable to the proposed project (i.e., City of Fresno General Plan and City Development Code). MBA understands that the approval of the DNCP, FCSP, DDC, and Fulton Mall are expected to occur after the approval of the General Plan and Development Code Update. As a result, the project's consistency with the existing community plans would not be provided since these community plans would be repealed with the approval of the General Plan and Development Code Update. If the DNCP, FCSP, DDC, and Fulton Mall projects are approved before the General Plan and Development Code Update, the project's consistency with the existing community plans would need to be provided and this scope of work will need to be modified and may result in a budget augment.

As we discussed during our meeting on August 29, 2012, City staff will provide information regarding the consistency/inconsistency of the Fulton Mall – Option 3 with the DNCP and FCSP. MBA understands that the DNCP, FCSP, DDC, and Fulton Mall (Options 1 and 2) are consistent with the policies within the General Plan.

Mineral Resources

This issue will be discussed in the Effects Found Not To Be Significant section of the EIR because the project is not expected to affect mineral resources.

Noise

The mobile noise evaluation will be based on the traffic evaluation for the project. The evaluation will include model runs for the DNCP/FCSP and DDC project as well as individual model runs for the three options of Fulton Mall. Stationary construction and operational noise levels will be based on assumptions. MBA will prepare a noise analysis as follows:

Data Collection. MBA will obtain copies of all applicable noise regulations (City, State, or other relevant agency) and identify transportation-related noise sources such as roadways, airplane flight paths, and stationary (non-transportation related) noise impacts from adjacent land uses to the project study area.

Noise Monitoring. MBA's noise analyst will evaluate the existing noise environment and obtain short-term noise measurements in the project vicinity at up to six locations in order to determine the ambient noise conditions.

Construction Noise Modeling. MBA will qualitatively address construction noise levels for the DNCP/FCSP and DDC; however, we will utilize SoundPlan to model typical construction noise impacts on land uses surrounding Fulton Mall.

Vibration Analysis. We will utilize the Caltrans Transportation- and Construction-Induced Vibration Guidance Manual as the basis for evaluating construction and operational vibration. Typically, vibration impacts can be readily assessed qualitatively; however, if deemed necessary, MBA will quantify estimated vibration levels.

Offsite Roadway Noise Modeling. MBA will utilize the Federal Highway Administration (FHWA) prediction model to calculate the existing and future offsite traffic noise contours at the roadway segments included in the traffic study prepared for the proposed project. The future noise contributions will be calculated by comparing the pre-project and post-project noise contours on the study area roadways and comparing the results with the applicable noise standards.

Onsite Stationary Noise Modeling. MBA will utilize SoundPlan to model onsite sources of stationary noise and impacts on nearby land uses. The stationary noise levels will be calculated at the nearby sensitive receptors and the results will be compared with the applicable stationary noise standards.

Combined Onsite Stationary and Transportation Source Modeling. MBA will utilize SoundPlan to model onsite sources of stationary and transportation noise and impacts on nearby land uses, including sensitive receptors. The modeling will include a combined analysis of stationary and transportation noise and will be presented in graphical form to illustrate noise contours.

The proposed project would result in additional traffic-related noise and noise on a long-term basis, as well as short-term construction noise. Accordingly, the proposed project would have the potential to create noise and vibration impacts that could adversely affect surrounding land uses. The noise analysis will be used to prepare the Noise section of the EIR. Modeling outputs from the noise analysis will be provided as an appendix to the EIR.

Population and Housing

Based on information from the DNCP/FCSP and DDC, MBA will summarize the existing population and housing condition as well as the change in population and housing within each plan area. No changes in population and housing are assumed to directly occur with the Fulton Mall project.

Public Services

MBA will evaluate the potential impacts on police protection, fire protection, schools, park and recreational facilities, other public facilities from project implementation. MBA will consult with the affected service providers to assess the potential impacts of the proposed project. MBA will assess anticipated impacts and recommend appropriate mitigation measures, if necessary.

Transportation/Traffic

Development under the proposed plans will generate vehicle trips on the surrounding roadway network. MBA understands that Fehr and Peers has prepared a comprehensive traffic and transportation impact analyses and reports for the DNCP/FCSP and DDC. Based on a brief review, MBA has identified a need for a specific traffic analysis for the Fulton Mall. Once completed by Fehr and Peers, MBA will incorporate the analyses into the EIR.

Utilities and Service Systems

An Infrastructure Analysis was prepared by Sherwood Design Engineers. MBA understands that the analysis evaluated water, sewer, and drainage facilities throughout the DNCP and evaluated the impacts associated with the implementation of the DNCP, FCSP, DDC, and Fulton Mall. MBA will include mitigation measures applicable to the project.

Energy

MBA will evaluate potential impacts of the proposed project regarding energy usage. MBA will explore two basic impacts that the proposed DNCP/FCSP/DDC/Fulton Mall could have on energy consumption in the region: (1) changes in energy consumption during project construction, and (2) changes in energy consumption following full implementation of the DNCP/FCSP/DDC/Fulton Mall. MBA will evaluate potential energy impacts, recommending mitigation measures where necessary.

Significant Unavoidable Adverse Impacts

MBA will discuss all significant unavoidable adverse impacts, pursuant to CEQA Guidelines Section 15126(b). The discussion will include any impacts that can be partially mitigated, but not to a level that is less than significant. Any mitigation measures considered, but eliminated from suggestion because of new impacts that would be associated with their implementation, will also be discussed.

Growth-Inducing Impacts

Pursuant to CEQA Guidelines Section 15126(g), MBA will discuss any potential growth-inducing impacts of the proposed project. Potential sources of growth inducement and their corresponding impacts, such as removal of obstacles to growth (i.e., extension of infrastructure), new employment generation, or major economic influences, will be qualitatively analyzed, to the extent that they are applicable.

Alternatives to the Proposed Project

The purpose of the alternatives analysis is to evaluate feasible project alternatives that effectively reduce or eliminate significant adverse impacts without regard to attainment of project financial/economic objectives. MBA will evaluate up to three alternatives to the proposed DNCP/FCSP and DDC project as well as up to three alternatives to the proposed Fulton Mall. One alternative for each project will be the CEQA-required "No Project Alternative."

Each alternative will be described in sufficient detail and evaluated on a topical section basis against the proposed project to determine if it will have fewer, equivalent, or greater impacts. A matrix will be provided comparing each alternative's impacts on the various topical areas. The environmentally superior alternative will be identified. The Alternatives section will also include a description of alternatives that were initially considered but ultimately rejected from further consideration.

Other CEQA-Mandated Sections

MBA will be responsible for the preparation of the following:

- Table of Contents
- Irreversible and Irretrievable Commitment of Resources
- List of Organizations and Persons Consulted
- Preparers of the Environmental Document
- References
- Appendices

Deliverables

MBA will provide the following deliverables as part of the Administrative Draft EIR submittal:

- Ten (10) paper copies of the Administrative Draft each with CD
- Electronic files (Word format) of the Administrative Draft EIR and appendices on the MBA FTP site

Sub-Task 1.3: Preliminary Draft EIR

MBA will respond to the City's comments on the Administrative Draft EIR, complete necessary revisions, and provide the City with a Draft EIR for review and comment. MBA will coordinate with the City's project manager who will assemble comments on, and suggested revisions to, the Administrative Draft EIR. One set of unified City staff comments will be provided to MBA. The City will reconcile conflicting review comments, if needed between City staff.

One complete set of revisions to the Administrative Draft EIR, pursuant to review comments will be completed. The revisions will be prepared in conformance with the scope of work. If additional revisions are required based on factors such as substantial changes to the proposed project, changes to the alternative project descriptions, or changes in report format, additional funds may be required.

This scope of work includes providing electronic copies of the Preliminary Draft EIR, which will show the track changes that have occurred from the Administrative Draft EIR. This will allow City staff to focus on the revisions.

Deliverables

MBA will provide the following deliverable as part of the Preliminary Draft EIR submittal:

- Electronic files (Word format) of the Preliminary Draft EIR on the MBA FTP site. Text changes will be shown in **track changes**.

Sub-Task 1.4: Prepare Draft EIR

Upon receipt of final comments from the City, MBA will prepare the Draft EIR and issue it for public review. MBA will prepare the Notice of Completion (NOC) and the Environmental Transmittal Form (ETF) for City review and approval. MBA will forward the NOC and ETF to the State Clearinghouse with 15 paper copies of the Executive Summary and CDs of the entire EIR. MBA will reproduce 70 paper copies of the Draft EIR with the appendices on a CD in PDF format on the back cover of the Draft EIR. An additional 50 CDs of the Draft EIR and appendices will be provided for distribution to the local agencies and interested persons as well as the Planning Commission, City Council and staff. MBA will prepare the Notice of Availability (NOA) for review and approval by City staff. All CDs of the Draft EIR will be accompanied by a copy of the NOA.

MBA assumes that the City will post the NOA and the Draft EIR on the City's website as well as publish the NOA in the Fresno Bee. CEQA requires the newspaper publication of the NOA to occur a minimum of one day. MBA will e-mail the NOA in Word version for the City to publish it in the newspaper.

Deliverables

MBA will provide the following deliverables as part of the Draft EIR submittal:

- Seventy (70) paper copies of the Draft EIR each with CD to the City
- Fifty (50) CDs of the Draft EIR for agencies and interested individuals
- Fifteen (15) paper copies of the Executive Summary and 15 CDs of the Draft EIR and Appendices to the State Clearinghouse
- Electronic PDF files of the Draft EIR and appendices to the City for posting on the City's website

Sub-Task 1.5: Draft Response to Comments

MBA will prepare written responses to comments received on the Draft EIR that raise significant environmental issues and submit them for City staff review after the close of the public comment period. The responses to comments will be prepared based upon the CEQA Guidelines and the City's CEQA implementing procedures.

The following steps are proposed:

- The City will compile and transmit to MBA all written comments on the Draft EIR no later than the first business day after closure of the 45-day public review period. We strongly recommend that comments be forwarded to MBA as they arrive to allow an early start on response preparation.
- MBA will confer with City staff regarding comments received in order to develop a general framework and strategy for preparation of responses. The format of the Final EIR will be as an attachment of responses to comments to the text of the Draft EIR.
- Responses within this proposal's scope of work and budget consist of explanation, elaboration, or clarification of the data contained in the Draft EIR with a budgeted effort of up to 160 hours for technical staff in this task. The project's consultants (including but not limited to Historic Resources Group, Krazan and Associates and Fehr and Peers) will be responsible for responding to technical questions on their respective reports and providing responses to MBA for incorporation into the Final Response to Comments.

Deliverables

MBA will provide the following deliverables as part of the Draft Response to Comments submittal:

- Ten (10) paper copies of the Draft Response to Comments to the City
- Electronic files of the Draft Response to Comments on the MBA FTP site

Sub-Task 1.6: Preliminary Final Response to Comments

Given the nature of the responses to comment process, MBA anticipates that there will be two review cycles of the response to comments document: the Draft Response to Comments and the Preliminary Final Response to Comments.

The intent of the Preliminary Final Response to Comments is to allow City staff to review the final changes to the Final Response to Comments prior to publication. It is anticipated that any comments on the Preliminary Final Response to Comments would concern minor points and not require major revisions.

MBA will respond to one set of City staff comments on the Draft Response to Comments. This scope of work assumes that comments will be provided either in written form or as tracked changes on the Word files.

Upon receipt of the consolidated set of comments, MBA will prepare the Preliminary Final Response to Comments.

Deliverables

MBA will provide the following deliverable as part of the Preliminary Final Response to Comments:

- Electronic files of the Preliminary Final Response to Comments on the MBA FTP site. Text changes will be shown in **track changes**.

Sub-Task 1.7: Prepare Final Response to Comments

Once City staff provides final comments on the Preliminary Final Response to Comments, MBA will proceed with finalizing and producing the Final Response to Comments for public review. MBA assumes that 35 paper copies and 50 CDs of the Final Response to Comments will be produced. MBA will distribute copies of the CD to those who commented on the Draft EIR and provide the remaining CDs and paper copies to the City for their use and availability to the public.

Deliverables

MBA will provide the following deliverable as part of the Final Response to Comments submittal:

- Thirty five (35) paper copies of the Final Response to Comments to the City
- Fifty (50) CDs of the Final Response to Comments to the commentors and the remaining CDs to the City

Sub-Task 1.8: Prepare Mitigation Monitoring and Reporting Program

Pursuant to CEQA Guidelines Section 15097, MBA will prepare a comprehensive Mitigation Monitoring and Reporting Program (MMRP). The MMRP will contain all mitigation measures identified in the Draft EIR, as well as any text changes that are identified in the EIR, and it will provide columns for necessary actions, timing, and parties responsible for verification. The mitigation measures associated with DNCP/FCSP and DDC will be separated from the mitigation measures required with the implementation of Fulton Mall. The draft MMRP will be provided during the Preliminary Final Response to Comments submittal and the final MMRP will be provided following the submittal of the Final Response to Comments submittal.

Deliverables

- Draft and final electronic Word versions of the MMRP to the City

Sub-Task 1.9: Prepare Findings of Fact and Statement of Overriding Considerations

Pursuant to CEQA Guidelines Section 15091, the lead agency must adopt findings for each of those significant effects identified in the EIR. Accordingly, MBA will prepare the Findings of Fact necessary to allow for certification of the Program EIR. This task assumes one round of review/city comment on the Draft Findings of Fact.

Pursuant to CEQA Guidelines Section 15093, the lead agency is required to adopt a Statement of Overriding Considerations outlining the economic, legal, social, technological or other benefits of the project that outweigh its environmental consequences if the decision makers elect to override significant and unavoidable adverse impacts and proceed with approval of the project. As such, MBA will prepare the

Statement of Overriding Considerations. This task assumes one round of review/city comment on the Draft Findings of Fact.

Deliverables

- Draft and final electronic Word versions of the Statement of Overriding Considerations to the City

Sub-Task 1.10: CEQA Notices

MBA will prepare the NOC and NOD in compliance with the State CEQA Guidelines. Draft notices will be provided to the City for review and comment. MBA will revise the notices based on the comments and prepare a final version of the notices. The final NOC is assumed to be filed with the State Clearinghouse by MBA. The final NOD is assumed to be filed with the County Clerk by City staff. The final NOD will need to be filed with the County Clerk within 5 working days of each project approval. MBA assumes that the City will provide the funds necessary for the California Department of Fish and Game filing fees at the time of filing the NOD.

Deliverables

- Draft and final electronic Word versions of the Notice of Completion and Notice of Determination

Sub-Task 1.11: Meeting Attendance

MBA has extensive experience in public outreach programs and scoping, including public participation programs and public hearings. MBA will be present at public meetings and hearings to develop an understanding of the public's comments and concerns, be available to answer questions on environmental issues, and make presentations on the EIR.

MBA's role is as follows:

- MBA will attend an orientation/project kickoff meeting (this scope is assumed under Sub-Task 1.1) and six project coordination meetings (three in-person meetings and three teleconference meetings) with City staff throughout the EIR process.
- MBA will be present at public meetings/hearings to develop an understanding of the public's comments and concerns, answer questions on environmental issues, and make presentations on the EIR, as directed by City staff. MBA will also prepare handout materials regarding the EIR process, if needed. Meeting graphics depicting the project and other project description materials are assumed to be provided by City staff in drafting staff reports and recommendations to the Planning Commission and City Council. This scope of work includes eight (8) public hearings (i.e., two at Historic Preservation Commission, three at Planning Commission and three at City Council). The allocations of meetings can be altered by mutual agreement. This scope of work assumes the attendance by the MBA Project Manager. Attendance by the MBA Architectural Historian at public meetings is identified in Sub-Task 2.2 under Cultural Resources. MBA may attend additional meetings on a time-and-materials basis, with authorization.

Sub-Task 1.12: Project Management and Coordination

MBA is firmly committed to developing and maintaining close working relationships with City staff. Emphasis on communication, as well as involvement of MBA principals and senior staff in all projects, results in performance that satisfies project objectives, government requirements, and project needs. Communication is key to a successful project. MBA will place top priority on working as a partner with City staff and other project team members, as necessary, during environmental processing of the project. We will help anticipate controversial issues, devise solutions, and provide expert environmental compliance consultation. Understanding the City's objectives and ensuring they are reflected in the environmental review and analyses are key aspects of our approach. This scope of work assumes regular interaction with

City staff and other project team members, as necessary, and requires frequent information sharing among project team members.

Task 2- Environmental Impact Statement

MBA has identified the following sub-tasks for Task 2 of the project. MBA acknowledges that the following scope of work may be modified if specific approaches are modified by the lead agency. If the scope of work is modified, the budget will also be reviewed and modified, if necessary.

Sub-Task 2.1: Project Initiation

The MBA project manager, Michael Houlihan, will meet with the representatives from the City of Fresno and the NEPA Lead Agency to discuss the proposed Fulton Mall project. The specific format of the Environmental Impact Statement (EIS) will be discussed during the project initiation meeting.

Sub-Task 2.2: Preliminary Environmental Study

MBA will prepare the Preliminary Environmental Study (PES) form. A brief summary of each of the environmental components on the PES form will be provided. The purpose of the PES form is to establish a scope of work for the NEPA documentation that is approved by the NEPA Lead Agency and FHWA. A preliminary draft PES form will be submitted to the City and the NEPA Lead Agency for review and comment. MBA will make revisions to the PES form to incorporate City and the NEPA Lead Agency staff comments. A draft PES will be submitted to the City for signature. After the City sign the PES form, the City will submit the form to the NEPA Lead Agency for review and approval. MBA recommends one meeting to discuss the findings and recommended technical studies for the project. If the NEPA Lead Agency has comments on the PES form, MBA will make one round of revisions based on their comments and resubmit the PES form to the City. MBA assumes that after a maximum of one round of NEPA Lead Agency review, they will sign the PES form.

Sub-Task 2.3: Coordination Plan

MBA will prepare and submit a coordination plan to the NEPA Lead Agency. The coordination plan will outline how the NEPA Lead Agency will divided the responsibilities for compliance with the various aspects of the environmental review process and how the NEPA Lead Agency will provide the opportunities for input from the public and other agencies. The plan will also identify specific coordination points including the Notice of Intent, the public scoping meeting, the development of the purpose and need, identification of the range of alternatives, completion of the EIS, identification of the preferred alternative, completion of the Final EIS, and the completion of the Record of Decision.

Sub-Task 2.4: Notice of Intent

MBA will prepare the draft Notice of Intent (NOI) for publishing in the Federal Register. The NOI will be circulated for public review based on an agency and interested persons distribution list that is provided by the NEPA Lead Agency. MBA will reproduce up to 60 copies of the NOI and distribute copies by certified mail with return receipt under direction of the NEPA Lead Agency.

Sub-Task 2.5: Public Scoping Meeting

MBA will coordinate with City and the NEPA Lead Agency staff to participate in one scoping meeting. MBA will coordinate with the City and the NEPA Lead Agency to determine the format, strategies, and content of the scoping presentation. The primary focus of MBA's presentation will be to explain the NEPA environmental process and determine the environmental concerns of the attendees. The presentation may, at the request of the City or the NEPA Lead Agency, include graphics and handouts that describe environmental issues and processes.

Subtask 2.6: Technical Reports

The following technical reports are proposed under this subtask:

Section 4F and 6F Evaluation: Due to the project's potential affect to Section 4f and 6f resources, a Section 4f and 6f Evaluation will be prepared. Information for the Section 4f and 6f Evaluation will be obtained from the HPSR/HASR. Up to 4 alternatives are assumed to be evaluated within the Section 4f and 6f document. MBA assumes information for 2 of the alternatives will be the same as the information from the EIR. MBA assumes 2 new alternatives will need to be evaluated. This scope of work includes a teleconference among the MBA Project Manager, Architectural Historian, the NEPA Lead Agency, and the City to discuss the format of the Section 4f and 6f Evaluation. The evaluation will describe the 4f and 6f resources (i.e., historical and recreational resources), describe the alternatives, including the avoidance alternative, evaluate the potential impacts of each alternative on the resources, and describe the appropriate mitigation measures.

Traffic Impact Analysis (Fehr & Peers): The traffic impact analysis for the proposed project is being prepared by Fehr & Peers under a separate contract with the City.

Visual Impact Assessment: MBA will prepare a visual impact assessment that evaluates affected viewers and scenic resources. Ground level photographs of the project area will be provided. The visual renderings that have been prepared by the City staff are assumed to be adequate to represent the proposed alternatives. Mitigation for potential impacts will be provided to reduce the impacts.

HPSR/HASR Technical Report: The MBA team will prepare an HPSR/HASR Technical Report following the current NEPA Lead Agency guidelines for preparing an HPSR and HASR. MBA anticipates that up to two drafts will be necessary before the NEPA Lead Agency staff can concur with these documents. The goal of the HPSR/HASR is to determine whether there shall be adverse impacts to historic properties. The team will engage with the NEPA Lead Agency staff before the reports are prepared to discuss timing and general report production needs. This scope of work includes attendance of up to three public hearings by the architectural historian.

Air Quality Report: The Air Quality Report prepared for the EIR, described in Subtask 1.2, will be modified in order to comply with NEPA requirements. MBA will collect relevant project and site background information, including base graphics showing the project area and vicinity, the policy design elements of the proposed project, adjacent land uses, and specific traffic information from Fehr & Peers. Ambient air quality data for the project area will be collected from the San Joaquin Valley Air Pollution Control District and the California Air Resources Board (CARB). We will identify the current attainment status of federal standards, and current San Joaquin Valley Air Pollution Control District attainment plans. Project description and related documents will be reviewed for potential air quality impacts and to identify policy design features and sustainability features that help reduce air quality impacts.

Air Quality Conformity Analysis: MBA will prepare an Air Quality Conformity Analysis technical report that will compare the project's emissions to the de minimis annual thresholds as defined in 40 C.F.R.§93.153(b)(1). An action is considered to conform when the direct and indirect emissions either complies or is consistent with all relevant requirements and milestones in the State Implementation Plan. General conformity will be determined for any pollutants that would exceed the de minimis thresholds.

Noise Study: The noise evaluation that will be prepared under Subtask 1.2 for the EIR will be modified for use in the EIS. The mobile noise evaluation will be based on the traffic evaluation for the project. The evaluation will include model runs for the DNCP/FCSP and DDC project as well as individual model runs for the three options of Fulton Mall. Stationary construction and operational noise levels will be based on assumptions. The report will include data collection, noise monitoring, construction noise modeling, a

vibration analysis, offsite roadway noise modeling, onsite stationary noise modeling, and combined onsite stationary and transportation source modeling.

Natural Environmental Study – Minimal Impact (NES-MI): The information contained in the biological resources analysis that will be prepared for the EIR pursuant to Subsection 1.2 of this scope of work will be modified and incorporated into an NES-MI report. The NES-MI will discuss natural communities, wetlands and other waters of the United States, animal species, threatened and endangered species, and invasive species.

Environmental Justice Technical Memorandum: MBA will prepare a technical memorandum describing the current socioeconomic conditions in the project area. MBA assumes that the City has census data available to characterize the income and race of the populations in the project area and vicinity. It is anticipated that the income and race of the populations in the project area are not substantially disproportionally different than the income and race of the populations within the entire Downtown area.

Subtask 2.7: Administrative Draft EIS

The MBA project team will prepare an EIS in accordance with the NEPA Lead Agency format provided to MBA. The EIS will include the following contents.

Introduction/Purpose and Need/Project Description

The introduction to the EIS will include a description of the NEPA requirement for the proposed project. In addition, MBA will coordinate with the NEPA Lead Agency staff to develop an appropriate purpose and need for the proposed action as well as a project description.

Project Alternatives

It is anticipated that the following Alternatives (from the Fulton Corridor Specific Plan) will be discussed in the EIS at the same level of analysis. MBA anticipates the detailed descriptions will be obtained from the EIR. Following are the Alternatives that will be discussed in the EIS.

1. Reconnect the Grid on Traditional Streets – Completely remove the existing Mall and introduce a narrow, two-lane, two-way enhanced street with oversize sidewalks, stately trees, and on-street parking, throughout the Fulton Mall and its cross streets.
2. Reconnect the Grid with Vignettes – Introduce a two-way street through the Fulton Mall, keeping selected original features in their original Mall concepts ("vignettes"), in a manner that provides improved retail visibility and some on-street parking. Transform Kern, Mariposa and Merced into enhanced streets with narrow traffic ways, amble sidewalks, stately trees, and on-street parking.
3. Restoration and Completion – Keep Fulton Street, Merced Street, Mariposa Street, and Kern Street malls pedestrian-only. Renovate and repair them in their entirety, including their landscape and hardscape, and restore the artwork. A description of the Alternatives will be provided.

In addition to the three alternatives identified above, the No Build Alternative will be evaluated.

Environmental Evaluation

Based on our understanding of the EIS template from The NEPA Lead Agency, the following issues will be discussed for the project alternatives identified above.

Land Use

This evaluation will include a discussion of existing and future land use, consistency with State, regional, and local plans and programs, and parks and recreational facilities. The discussion will focus on the current and planned land uses within Fulton Mall as well as directly adjacent to the mall. Park and recreational facilities within the mall will be discussed. Impacts associated with the implementation of Fulton Mall will be described, and mitigation measures will be provided, if necessary.

In addition based on discussions with City staff, the City expects to receive funding from the Federal Highway Administration (FHWA) for the construction of the Fulton Mall project. Accordingly, the 4F evaluation identified in Subtask 2.5 will be summarized in the Land Use section.

Growth

Existing population and housing within the FCSP area will be identified and the impacts from the potential growth that could occur with the implementation of the Fulton Mall will be discussed.

Farmlands

No farmlands exist within the Fulton Mall, and a brief description will be provided.

Community Impacts

The community issues that will be discussed include community character, community cohesion, relocations, and environmental justice. Each of these community issues will be evaluated based on the implementation of the Fulton Mall improvements and included in a technical memorandum. MBA is not assuming relocations will occur with the project. In addition, MBA assumes that a qualitative discussion regarding environmental justice is expected to be adequate to address potential environmental justice issues. A separate technical report is not assumed as part of this scope of work.

Utilities/Emergency Services

These issues are assumed to be summarized from the public services and utilities sections of the EIR. No substantial additional research or analysis is assumed.

Traffic and Transportation/Pedestrian and Bicycle Facilities

These issues are assumed to be summarized from the traffic report that will be prepared for the Fulton Mall. The traffic report is assumed to be prepared by Fehr & Peers.

Visual/Aesthetics

These issues are assumed to be summarized from the aesthetics section of the EIR and from a visual impact assessment that will be prepared for the Fulton Mall.

Cultural Resources

Cultural resource issues are assumed to be summarized from the cultural, historical, and paleontological resources sections of the EIR. In addition, based on discussions with City staff, MBA will prepare the Historic Properties Survey Report (HPSR) and Historic Archeological Survey Report (HASR) in accordance with The NEPA Lead Agency requirements.

As part of a 2007 Programmatic Agreement (PA), The NEPA Lead Agency assumes FHWA's role in order to comply with the National Environmental Policy Act (NEPA) and Section 106 of the federal National Historic Preservation Act (Section 106). MBA cultural resource staff will form a multi-disciplinary team who individually meet The NEPA Lead Agency' Professionally Qualified Staff standards as a Principal Architectural Historian. Because it is known that there is one potentially eligible historical resource (The Fulton Street Pedestrian Mall) within the area of potential effect (APE) and three National-Register listed buildings less than 250 feet from the APE, two technical documents must be submitted to The NEPA Lead Agency for review in order to fulfill the FHWA- lead agency obligation under their PA. MBA will summarize the HPSR and HASR technical report in the EIS.

Hydrology and Floodplain

These issues are anticipated to be addressed in the hydrology and water quality section of the EIR based on information provided in the Infrastructure Analysis. No substantial additional research or analysis is assumed.

Water Quality and Storm Water Runoff
These issues are also anticipated to be addressed in the hydrology and water quality section of the EIR based on information provided in the Infrastructure Analysis. No substantial additional research or analysis is assumed.

Geology/Soils/Seismic/Topography
These issues are anticipated to be addressed in the Geology and Soils section of the EIR based on information provided in the two separate Geologic Hazards Summary reports. The findings and conclusions of these reports will be incorporated into the EIS.

Paleontology
Issues associated with paleontology are expected to be adequately addressed in the paleontological resources analysis that will be contained in the Cultural Resources section of the EIR. A discussion of the paleontological issues will be included in the EIS.

Hazardous Waste/Materials
This issue is expected to be adequately addressed in the hazardous materials section of the EIR and based on the Krazan Reports.

Air Quality
The air quality and greenhouse gas evaluation provided in the EIR will be summarized in a separate technical evaluation for the EIS. In addition, an Air Quality Conformity Analysis is required in a nonattainment and/or maintenance area. The Air quality section will summarize the analysis contained in the Air Quality technical report and the Air Quality Conformity Analysis.

Noise
The noise evaluation from the EIR will be converted into a noise report for the EIS and will be summarized and incorporated into this discussion.

Energy
The energy evaluation provided in the Energy section of the EIR will be summarized.

Biological Resources
The biological resources that will be discussed include natural communities, wetlands and other waters of the United States, animal species, threatened and endangered species, and invasive species. These issues will be discussed in a separate document called a Natural Environment Study – Minimal Impact (NES-MI). Many of these biological issues are expected to be minimally affected with the implementation of the proposed Fulton Mall.

Other NEPA Sections
MBA will include a discussion of agency consultation and coordination that has occurred during the preparation of the EIS as well as provide a discussion of federal environmental laws and regulations applicable to the proposed project. In addition, a list of references will be provided.

Compile Administrative Draft EIS
MBA will compile, prepare, and submit ten copies of the Administrative Draft EIS with supporting technical studies (six copies for The NEPA Lead Agency and four copies for the City) for review. This scope of work includes placing the technical studies on a CD and attaching it on the back of the Administrative Draft EIS.

Deliverables

MBA will provide the following deliverables as part of the Administrative Draft EIS:

- Ten (10) paper copies of the Administrative Draft EIS
- Electronic files of the Administrative Draft EIS on the MBA FTP site

Subtask 2.8: Second Administrative Draft EIS

MBA will respond to one complete set of comments from City of Fresno staff as well as The NEPA Lead Agency staff on the Administrative Draft EIS. MBA assumes that the comments on the Administrative Draft will require up to 120 hours of technical staff time to respond to the comments through revisions to the EIS.

Deliverables

- Electronic files of the Second Administrative Draft EIS on the MBA FTP site. Text changes will be shown in track changes.

Sub-Task 2.9: Preliminary Draft EIS

MBA will respond to one complete set of comments from City of Fresno staff as well as the NEPA Lead Agency staff on the Second Administrative Draft EIS. MBA assumes that the comments on the Second Administrative Draft will require up to 60 hours of technical staff time to respond to the comments through revisions to the EIS. MBA will provide the following deliverables as part of the Preliminary Draft EIS:

Deliverables

- Electronic files of the Preliminary Draft EIS on the MBA FTP site. Text changes will be shown in track changes.

Sub-Task 2.10: Draft EIS

Upon receipt of comments from the City and the NEPA Lead Agency on the Preliminary Draft EIS, MBA will prepare the Draft EIS. We anticipate that comments on the Preliminary Draft EIS would concern minor points and not require major revisions. The Draft EIS and Notice of Availability will be submitted by email to the City and the NEPA Lead Agency for distribution approval.

After receipt of distribution approval by the NEPA Lead Agency, MBA will distribute up to 75 CDs of the Draft EIS for public review in compliance with NEPA by certified mail, with approval of the distribution list from the NEPA Lead Agency. MBA will provide the following deliverables as part of the Distribution of the Draft EIS submittal:

Deliverables

- Thirty five (35) paper copies of the Draft EIS each with CD to the City/NEPA Lead Agency
- Seventy five (75) CDs of the Draft EIS for agencies and interested individuals
- Electronic PDF files of the Draft EIS and appendices to the City and the NEPA Lead Agency for posting on the Caltans and City's website

Sub-Task 2.11: Administrative Draft Responses to Comments on Draft EIS and Administrative Final EIS

MBA will be responsible for preparing responses to comments received during the comment period. Responses that are within the proposal's scope of work and budget consist of explanations, elaborations or clarifications of the data contained in the draft document, with a budgeted effort of up to 60 hours for technical staff in this task. If new analysis, issues, alternatives, or substantial project changes need to be addressed, or if the effort exceeds the budget amount because of the number or complexity of responses, a contract amendment will be needed. MBA anticipates that the issues raised on the Draft EIS will be similar to those issues raised on the Draft EIR. MBA will also revise the Draft EIS based on the comments and prepare an Administrative Final EIS. MBA will submit 10 paper copies of the Administrative Draft

Responses to Comments and Administrative Final EIS to the City/NEPA Lead Agency for review and comment.

Deliverables

MBA will provide the following deliverables as part of the Response to Comments and Final EIS submittal:

- Ten (10) paper copies of the Administrative Draft Response to Comments and Administrative Final EIS to the City/NEPA Lead Agency

Sub-Task 2.12: Preliminary Final EIS

MBA will respond to one set of comments from the City and the NEPA Lead Agency on the Administrative Draft Response to Comments and the Administrative Draft Final EIS. In addition, MBA assumes one additional round of review and comments in this scope. MBA assumes that the comments on the Administrative Draft Responses to Comments and the Administrative Draft Final EIS will require up to 60 hours of technical staff time to respond to the comments through revisions to the EIS. MBA will provide the following deliverable as part of the Preliminary Final EIS submittal.

Deliverables

- Electronic PDF files of the Preliminary Final EIS to the City/Federal Lead Agency. Text changes will be shown in track changes.
- Seventy five (75) CDs of the Final EIS for distribution to agencies and interested individuals.
- Electronic PDF files of the Final EIS to the City and the NEPA Lead Agency for posting on the the NEPA Lead Agency's and City's website

Sub-Task 2.13: Final EIS

MBA will compile the Final EIS based on one unified set of comments from the City and the NEPA Lead Agency. MBA assumes that the comments on the Preliminary Final EIS will require only nominal revisions and this task would be primarily associated with the final review, editing and compilation of the Final EIS. MBA will provide the following deliverables as part of the Final EIS submittal

Deliverables

- Twenty (20) paper copies of the Final EIS for the City/NEPA Lead Agency
- Seventy five (75) CDs of the Final EIS for distribution to agencies and interested individuals.
- Electronic PDF files of the Final EIS to the City and the NEPA Lead Agency for posting on the the NEPA Lead Agency's and City's website

Sub-Task 2.14: Draft Record of Decision

MBA will prepare the Draft Record of Decision, which will explain the NEPA Lead Agency's decision to approve the project, describe the alternatives that were considered (including the environmentally preferred alternative), and discusses plans for mitigating potential environmental effects and monitoring those commitments. MBA will follow the NEPA Lead Agency format for preparing this document.

Deliverables

- Electronic PDF files of the Draft Record of Decision to the City and the NEPA Lead Agency.

Sub-Task 2.15: Meeting Attendance

This scope of work assumes that the MBA Project Manager will attend up to five meetings with the NEPA Lead Agency. These meetings are expected to include coordination activities and/or review of the

environmental documentation. MBA may attend additional meetings on a time-and-materials basis, with authorization.

Sub-Task 2.16: Project Management and Coordination

This scope of work includes project management associated with the EIS. It includes interaction with the NEPA Lead Agency and the City related to the EIS.

This page intentionally left blank.

SCHEDULE OF FEES AND EXPENSES

See Attached

This page intentionally left blank.

FEE ESTIMATE

Fees

The fee proposal for the preparation of the CEQA and NEPA documentation for the proposed project is shown below. The fee to prepare the NEPA documentation has been reduced due to some overlap of similar evaluations that would be prepared for the CEQA documentation. The proposed fee assumes a NEPA document up to a level of an Environmental Impact Statement (EIS) and is based on the scope of work described above, and includes all labor and direct costs.

Task	Fee	Total
Professional Labor		
Task 1 – Program EIR		
Sub-Task 1.1: Project Initiation and Organization		$6,810
Sub-Task 1.2: Administrative Draft Program EIR		$155,550
Introduction	$3,325	
Executive Summary	$5,200	
Project Description	$5,390	
Environmental Evaluation	$118,020	
Technical Report (see below)		
Air Quality Report ($7,500)		
Health Risk Assessment Report ($8,000)		
Greenhouse Gas Report ($6,000)		
Noise Report ($11,000)		
EIR Issue Discussions ($85,520)		
Alternatives	$6,800	
Other CEQA Sections	$2,800	
Compile Administrative Draft Program EIR	$14,015	
Sub-Task 1.3: Preliminary Draft Program EIR		$12,600
Sub-Task 1.4: Draft Program EIR		$6,520
Sub-Task 1.5: Draft Response to Comments		$24,960
Sub-Task 1.6: Preliminary Final Response to Comments		$12,650
Sub-Task 1.7: Final Response to Comments		$5,490
Sub-Task 1.8: Mitigation Monitoring and Reporting Program		$4,220
Sub-Task 1.9: Findings of Fact and Statement of Overriding Considerations		$10,870
Sub-Task 1.10: CEQA Notices		$2,730
Sub-Task 1.11: Meeting Attendance		$25,155
Sub-Task 1.12: Project Management and Coordination		$12,000
Subtotal Task 1		**$279,555**
Task 2 – Environmental Impact Statement		
Sub-Task 2.1: Project Initiation		$2,455

Task	Fee	Total
Sub-Task 2.2: Preliminary Environmental Study (PES) Form		5,000
Sub-Task 2.3: Coordination Plan		3,000
Sub-Task 2.4: Notice of Intent		1,000
Sub-Task 2.5: Public Scoping Meeting		2,500
Sub-Task 2.6: Technical Reports		60,150
Section 4F and 6F Evaluations [$12,000]		
Traffic (to be provided by Fehr & Peers)		
Visual Impact Assessment [$5,000]		
HPSR/HASR [$20,550]		
Air Quality Report [$4,000]		
Air Quality Conformity Analysis [$6,000]		
Noise Study [$4,000]		
Biological Resources Report (NES-MI) [$3,600]		
Environmental Justice [$5,000]		
Sub-Task 2.7: Administrative Draft EIS		49,605
Introduction/Purpose and Need	$2,305	
Project Alternatives	$2,500	
Environmental Evaluation	$36,800	
EIS Issue Discussions [$32,000]		
Other NEPA Sections (Public Participation and Fed Env. Laws and Regs) [$4,800]		
Compile EIS	$8,000	
Sub-Task 2.8: Second Administrative Draft EIS		$9,200
Sub-Task 2.9: Preliminary Draft EIS		$8,000
Sub-Task 2.10: Draft EIS		$6,000
Sub-Task 2.11: Administrative Draft Responses to Comments and Administrative Final EIS		$7,500
Sub-Task 2.12: Preliminary Final EIS		$9,000
Sub-Task 2.13: Final EIS		$4,000
Sub-Task 2.14: Draft Record of Decision		$4,000
Sub-Task 2.15: Meeting Attendance		$10,000
Sub-Task 2.16: Project Management and Coordination		$9,000
Subtotal Task 2		**$190,410**
Direct Costs		
Task 1 – Program EIR		
Reprographics/Document Production	$17,825	
Mileage, Delivery, Postage, Noticing	$6,940	
Subtotal Direct Costs – Task 1		**$24,765**
Task 2 – EIS		

Task	Fee	Total
Reprographics/Document Production	$15,900	
Mileage, Delivery, Postage, Noticing	$3,500	
Subtotal Direct Costs – Task 2		**$19,400**
Total Fee for Task 1		**$304,320**
Total Fee for Task 2		**$209,810**
Total MBA Professional Fee for Tasks 1 and 2		**$514,130**

The assumptions used in calculating the above fees are:

1. The price is valid for up to 60 days from the date of the proposal, after which it may be subject to revision.
2. The price assumes that the EIR will be prepared prior to or concurrent with the EIS and the documentation in the EIR will be available to incorporate into the EIS.
3. MBA assumes the NEPA Lead Agency will finalize the Record of Decision.
4. This price is based on completion of the EIR and EIS work within the proposed schedule. If substantial delays occur (i.e., more than 3 months), an amendment of the price may be warranted to accommodate additional project management and other costs, and to reflect adjustment for updated billing rates.
5. Printing costs are based on printing method and binding proposed, specific numbers of copies proposed as work products, and estimated page lengths. Document printing costs are estimated and will be finalized at the time of printing. Estimated per copy printing costs are as follows: EIR - $120, Response to Comments - $55, Draft EIS - $120, and Final EIS - $160. CD's are $15 each.
6. Costs have been allocated to tasks based on MBA's proposed approach. During the work, MBA may, on its sole authority, re-allocate costs among tasks, as circumstances warrant, so long as the adjustments maintain the total price within its authorized amount. Fees will be billed monthly, based on percentage of project completion.
7. The above fee assumes preparation of a NEPA document up to a level of an EIS.

SCHEDULE

Following is the project schedule depicting tasks and timing for the Environmental Impact Report (EIR) and the Environmental Assessment (EIS) documents. The MBA project team is committed in meeting the project schedule; however, the overall schedule will be discussed during the project initiation meetings to determine availability of City and the NEPA Lead Agency staff to conduct reviews of draft documents. The following schedule assumes that MBA will receive authorization to proceed for the EIS on or after October 30, 2012. MBA does not anticipate that the EIR and EIS will be distributed for public review at the same time. The schedule for the NEPA process is estimated based on unknown NEPA start date. The NEPA process is anticipated to be completed by June 30, 2015.

Work Product/Milestone	Estimate Completion
Task 1 – Environmental Impact Report	
Authorization to Proceed/Project Initiation Meeting	October 30, 2012
Receive Final Version of Technical Reports Prepared for DNCP/FCSP and DDC	December 7, 2012
Receive Final Version of Technical Reports Prepared for Fulton Mall	December 5 - 21, 2012
Submit Administrative Draft EIR to City	February 15, 2013
Receive Comments on Administrative Draft EIR from City	February 29, 2013
Submit Preliminary Draft EIR to City	March 21, 2013
Receive Comments on Preliminary Draft EIR from City	April 4, 2013
Complete Draft EIR and Submit to City for Distribution Approval	April 18, 2013
Distribute Draft EIR for Public Review	April 25, 2013
Begin 45-day Public Review Period	April 27, 2012
Close of 45-day Public Review Period	June 10, 2013
Submit Draft Response to Comments to City	July 1, 2013
Receive Comments on Draft Response to Comments from City	July 15, 2013
Submit Preliminary Final Response to Comments to City	July 29, 2013
Receive Comments on Preliminary Final Response to Comments from City	August 12, 2013
Submit Final Response to Comments/Draft MMRP and Findings to City	August 26, 2013
Receive Comments on MMRP and Findings from City	September 9, 2013
Submit Final Versions of MMRP and Findings to City	September 23, 2013
Planning Commission Hearing	October 2013
City Council Hearing	November 2013
Task 2 – Environmental Impact Statement	

Authorization to Proceed	Week 1
Project Initiation Meeting with City and the NEPA Lead Agency	Week 1
Submit Preliminary Environmental Study (PES) Form/Purpose and Need/Range of Alternatives	Week 3
Submit Coordination Plan to NEPA Lead Agency	Week 4
Site Visit with the NEPA Lead Agency to Discuss Findings on PES Form	Week 5
Receive Comments on PES Form	Week 6
Submit Final PES Form to City and the NEPA Lead Agency for Signature	Week 7
Submit Draft Notice of Intent to City and the NEPA Lead Agency for Review	Week 7
Receive Comments from City and the NEPA Lead Agency on Draft NOI	Week 8
Distribute NOI for Public Review	Week 9
Submit Technical Reports and Memorandums to City and the NEPA Lead Agency for Review	Week 10 - 23
Public Scoping Meeting	Week 12
End of Public Review for NOI	Week 13
Receive Comments from City and the NEPA Lead Agency on Technical Reports and Memorandums – up to two rounds of review	Week 16 - 33
The NEPA Lead Agency Submits HPSR and HASR to SHPO for Concurrence	Week 27
The NEPA Lead Agency approves Technical Reports and Memorandums	Week 22 - 35
Submit Administrative Draft EIS to City and the NEPA Lead Agency	Week 36
The NEPA Lead Agency Consults with SHPO and National Park Service on Section 4f and 6f Evaluation	Week 37
Receive City and the NEPA Lead Agency Comments on Administrative Draft EIS	Week 40
SHPO Provides Concurrence on 4f Evaluation and National Parks Service Provides Determination on 6f Evaluation	Week 41
Submit Second Administrative Draft EIS to City and the NEPA Lead Agency	Week 43
Receive the NEPA Lead Agency Comments on Second Administrative Draft EIS	Week 45
Submit Preliminary Draft EIS to the NEPA Lead Agency for Review	Week 47
Receive NEPA Lead Agency Review Comments on Preliminary Draft EIS – up to two rounds of review	Week 54 - 65
Submit Draft EIS to NEPA Lead Agency.	Week 67
The NEPA Lead Agency Submits Draft EIS to EPA	Week 69
EPA Prepares Notice of Availability for Federal Register	Week 70

The NEPA Lead Agency Distributes Draft EIS for 45-Day Public Review	Week 71
End of 45-Day Public Review	Week 77
The NEPA Lead Agency Submits Public Review Comment Letters to City	Week 78
Submit Administrative Draft Responses to Comments and Administrative Final EIS to City and the NEPA Lead Agency	Week 83
Receive City and the NEPA Lead Agency Comments on Administrative Draft Response to Comments and Administrative Final EIS	Week 87
Submit Preliminary Final EIS with Incorporation of Responses to Comments to the NEPA Lead Agency	Week 89
Receive the NEPA Lead Agency Comments on Preliminary Final EIS – up to two rounds of review	Week 91 - 109
Submit Final EIS to the NEPA Lead Agency	Week 111
The NEPA Lead Agency Submits Final EIS to EPA	Week 113
EPA Prepares Notice of Availability for Federal Register	Week 114
The NEPA Lead Agency Distributes Final EIS for 30-Day Public Review	Week 115
Submit Draft Record of Decision for the NEPA Lead Agency Use	Week 117
End of 30-Day Public Review	Week 119
The NEPA Lead Agency Prepares Final Record of Decision	Week 120
Project Approval by The NEPA Lead Agency	After Week 120 and After City Approves Project

The assumptions used in determining the above project schedule are:

1. Assumes receipt of all approved project description and conceptual plans, project-related information, base maps, photographs, and previous environmental documentation at the project initiation meeting.
2. Assumes MBA will receive the final version of the technical studies prepared for the DNCP/FCSP and DDC by December 7, 2012.
3. Assumes MBA will receive the technical studies prepared for the Fulton Mall between December 5, 2012 and December 21, 2012.
4. The periods shown assume a set amount of time for concurrent review of the documents by the City and Caltrans of each submittal. If review schedules change, the elapsed time of other tasks will be maintained.
5. The review period for the EIR will be the state-mandated 45 days and the review period for the EIS will be the NEPA-mandated 45 days. The EIR and EIS are not assumed to be distributed to the public for review at the same time.
6. Assumes that the project plans will provide adequate information regarding utility systems.
7. The above schedule assumes preparation of a NEPA document up to a level of an EIS.

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and Michael Brandman Associates ("CONSULTANT")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code 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 shall maintain limits of liability of not less than:

1. General Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability:

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

3. Employer's Liability:

   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

   $1,000,000 per claim/occurrence
   $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).

Deductibles and Self-Insured Retentions

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, 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

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.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

3. CONSULTANT'S insurance coverage shall be primary and no contribution shall be required of CITY.

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 "Retro 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 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

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 hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. 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 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

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.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

A Master Environmental Impact Report (MEIR) For The City Of Fresno 2035 General Plan and Development Code Update
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: Please see attached page.

Additional page(s) attached.

Signature

10-25-2012
Date

ROBERT FRANCISCO
(name)

MBA
(company)

2409 Merced St.
(address)

Fresno, CA 93721
(city state zip)

MBA is currently preparing a Master EIR for the City of Fresno General Plan and Development Code Update. The Planning Area for the General Plan and Development Code Update include comprehensive revisions to address the City's vision for the future and specifically for the year 2035. The Master EIR addresses the potential environmental effects of implementing the buildout of the General Plan and Development Code Update and specifically evaluates a list of identified subsequent projects.

AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the 25th day of October, 2012, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Tony Perez Associates , a Sole Proprietorship (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional planning services for completion of the Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a 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 Development and Resource Management Director (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises 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 ("Effective Date") and shall continue in full force and effect through June 30, 2014, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 not to exceed $84,769, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with

applicable copies of representative and identifiable receipts or records substantiating such expense.

(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 Administrator'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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 the Administrator. 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, 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 writings and 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. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(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** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

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

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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) 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.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of 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.

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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(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 Administrator 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

By:_____
Mark Scott, City Manager

ATTEST:
REBECCA E. KLISCH
City Clerk

By:_____
Deputy

No signature of City Attorney required. Standard Document #ALL 2.1 has been used without modification, as certified by the undersigned.

By:_____
Wilma Quan
Urban Planning Specialist

Tony Perez Associates,
a Sole Proprietorship

By: _____

Name: Joseph Anthony Perez

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

By: _____

Name: _____

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

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

Addresses:

CITY:
City of Fresno
Attention: Wilma Quan, Urban Planning Specialist
2600 Fresno Street, Room 2156-02
Fresno, CA 93711
Phone: (559) 621-8371
FAX: (559) 457-1504

CONSULTANT:
Tony Perez Associates
Attention: Tony Perez, Principal
225 Camino La Madera
Camarillo, CA 93010
Phone: 805-603-6671
FAX: N/A

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 Tony Perez Associates ("Consultant")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
PROJECT TITLE

See attached

City of Fresno: Fulton Corridor Specific Plan, Downtown Neighborhoods Community Plan, Downtown Development Code Scope of Services

12 October 2012

CONSULTANT's proposal for services to complete the project, including the Adaptive Reuse Guidelines and Consistency Rezoning Program, is attached. In order to complete this work efficiently, Juan Gomez-Novy will be a subconsultant to CONSULTANT and will take the lead on work related to the Downtown Neighborhoods Community Plan and Fulton Corridor Specific Plan. Tony Perez will take the lead on work related to the Downtown Development Code.

This proposal is based on CONSULTANT's understanding of the project and on conversations with CITY as follows:

Revisions to Documents: The CITY will provide CONSULTANT with all relevant comments and direction to address in the Downtown Neighborhoods Community Plan, the Fulton Corridor Specific Plan, and the Downtown Development Code. This information will be provided to CONSULTANT prior to beginning any work on the draft documents and will consist of one, non-contradictory set of comments and direction. This scope of services is identified with the understanding that CONSULTANT will provide Draft and Final versions of the Downtown Neighborhoods Community Plan (DNCP), the Fulton Corridor Specific Plan (FCSP), and the Downtown Development Code (DDC) documents which address the CITY's comments and directions. Comments and direction that necessitate the generation of new diagrams or substantial content which are not the result of something that was overlooked or a mistake in the previous drafts are considered extra work and are not included in the fee schedule.

Procedure for Completion of Documents: CONSULTANT will provide the CITY with both a PDF "screen check" copy and an editable electronic version (in Adobe InDesign) of the 'completed' Draft and Final FCSP, DNCP, and DDC documents prior to their public release with the understanding that revisions and adjustments generated during the CITY's review are to be minor. Upon receiving one non-contradictory set of revisions and adjustments, CONSULTANT will revise the documents in preparation for the City's release of the documents for public review. As an alternative, CONSULTANT and CITY may mutually agree to submit completed sections of each document per the above arrangement.

Meetings and Adoption Hearings: CONSULTANT will be available for two sets of meetings, one set in Task 3 (Project Management/Client Coordination/Meetings) for meetings with CITY and the Environmental Impact Report (EIR) Consultant regarding the various documents and a second in Task 5 (Adoption Hearings) for adoption hearings. Task 3 meetings will be attended and charged per the meeting scenario costs described in the fee schedule and within the allotted fee shown in the fee schedule. For Task 5 meetings, CONSULTANT will participate in any or all of the adoption hearing meetings at the CITY's request per the number of meetings provided in the fee schedule. Task 5 meetings will be attended and billed per the '1/2-Day's Meetings' scenario in the fee schedule.

Revisions to Regulating Plan: In response to the public process, CONSULTANT will prepare markups of the Regulating Plan for the CITY's GIS staff to change on the CITY's official zoning map records.

Specific Plan, Community Plan, and Downtown Development Code Preparation Tasks

1. Consistency Re-zoning: CONSULTANT will attend up to eight consistency rezoning workshops or hearings for the Plan Area. Upon concluding these workshops, CONSULTANT will assist CITY staff in reviewing and/or marking-up the Regulating Plan and/or the DDC in response to the meetings and review one draft staff report for each of the four areas (West Area, Edison, Roosevelt and the Downtown Specific Plan).

   Deliverables: Attendance (per the '1/2 day' meeting scenario listed in the project budget), meeting facilitation, notes and PowerPoint presentation for up to eight meetings. Mark-ups of up to four City-generated staff reports. Mark-ups of the Regulating Plan for the City's GIS staff to change on the City's official zoning map records.

2. Documents: Based on input and direction received during the public hearing process, Consultant will make final minor revisions to the FCSP, DNCP, and DDC, including the Adaptive Reuse section of the DDC. Relevant comments and direction to address in the documents will be provided to CONSULTANT prior to beginning any work on the final documents and will consist of one, non-contradictory set of comments and direction.

   Deliverables: Public Hearing Draft and Final FCSP, DNCP, and DDC in PDF format and editable electronic version (in Adobe InDesign).

   10/15/2012

3. Project Management/Client Coordination/Meetings: The CONSULTANT will coordinate its work with the CITY's project manager throughout all phases of work. In addition, CONSULTANT will attend meetings with CITY staff and the EIR Consultant regarding the FCSP, DNCP, and DDC. Meetings will be attended and charged per the meeting scenario costs described in the project fee schedule and within the allotted fee shown in the project fee schedule.

   Deliverables: Communication primarily via email, with telephone and hardcopy communication as appropriate. Meetings as agreed to by CONSULTANT and the CITY.

4. Website and Mailer Development: CONSULTANT will periodically update the project website and prepare a master mailer template that will be used to generate up to ten mailers announcing the consistency rezoning meetings and adoption hearings. The CITY will be responsible for printing, distribution, postage, and mailing of all consistency rezoning and adoption hearings mailers.

   Deliverables: Updated website and one mailer template to be used as the basis for up to ten mailers.

5. Adoption Hearings: CONSULTANT will attend up to six public hearings as determined by CITY to deliver a presentation summarizing the Final Documents, respond to questions, and receive comments from the Planning Commission and/or the City Council.

   Deliverables: Attendance at up to six public adoption hearings per the "1/2-day" scenario as shown in the project budget, PowerPoint presentations, and notes.

This page intentionally left blank.

SCHEDULE OF FEES AND EXPENSES

See attached

This page intentionally left blank.

Fresno Fulton Corridor Specific Plan, Downtown Neighborhoods Community Plan, and Downtown Development Code
Proposal to complete FCSP, DNCP, and DDC.
Tony Perez Associates
October 12, 2012

	Task	Budget							Notes
		FY 2012 - 2013			FY 13-14			Total	
		Fee	Meetings	Hours	Fee	Meetings	Hours	Fee	
1	Consistency Rezoning	$12,640	8	33				$12,640	Tony Perez will attend up to 8 community meetings for this work. In addition, Tony Perez and Juan Gomez-Novy will devote up to 33 hours to review and comment on City-generated draft staff reports and to provide the City with zoning map change mark-ups in PDF form for the City to input into GIS.
2	Documents (Fulton Corridor Specific Plan, Downtown Neighborhoods Community Plan, Downtown Development Code)	$43,124	0	308	$4,572		33	$47,696	This includes fee and hours for Tony Perez and Juan Gomez-Novy to complete Task E15 (Public Hearing Draft Documents) and E16 (Final Documents) for the FCSP, DNCP, and DDC.
3	Project Management/Client Coordination/Meetings	$13,856				TBD		$13,856	Please see below for individual meeting costs.
4	Website and Mailer Development	$1,467		10	$734		5	$2,201	Juan Gomez-Novy will update website and create Consistency Rezoning mailers for City's review.
5	Adoption Hearings				$8,376	6		$8,376	Proposed fee is for Tony Perez and/or Juan Gomez-Novy to attend 1/2 day meetings.
TOTAL		$71,088	8	352	$13,681	6	38	$84,769	

Notes:

Attend Meetings in Fresno		
1/2 day (arrive at noon, depart at 5:00 pm)	$1,396	Meeting attendance fees include costs for both Tony Perez and Juan Gomez-Novy to attend meetings as well as all travel costs. Cost is half if only one person attends.
1 day (arrive at 6:00 pm previous day, depart at 5:00 pm)	$3,176	
2 days (arrive at 6 pm on day 1, depart at 5 pm on day 3)	$5,656	
Participate in Teleconference		
Teleconference (at $140/hour at 15 minute increments)	$70 - $1,120	Teleconference fees include costs for both Tony Perez and Juan Gomez-Novy to participate. Cost is half if only one person participates.

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and Tony Perez Associates ("CONSULTANT")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code 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 shall maintain limits of liability of not less than:

1. General Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability:

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

3. Employer's Liability:

   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

   $1,000,000 per claim/occurrence
   $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).

Deductibles and Self-Insured Retentions

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, 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

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.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

3. CONSULTANT'S insurance coverage shall be primary and no contribution shall be required of CITY.

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 "Retro 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 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

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 hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. 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 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

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.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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

OCTOBER 15, 2012
Date

JOSEPH ANTHONY PEREZ
(name)

TONY PEREZ ASSOCIATES
(company)

225 CAMINO LA MADERA
(address)

CAMARILLO, CA 93010
(city state zip)

AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the 25th day of October, 2012, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Fehr & Peers, a California S-Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional transportation consulting services for completion of the Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a transportation planning and engineering firm 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 Development and Resource Management Director (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises 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 ("Effective Date") and shall continue in full force and effect through June 30, 2014, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 not to exceed $53,800, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not

be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(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 Administrator'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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 the Administrator. 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, 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 writings and 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. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(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** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

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

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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) 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.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of 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.

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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(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 Administrator 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

By:_____
Mark Scott, City Manager

ATTEST:
REBECCA E. KLISCH
City Clerk

By:_____
Deputy

No signature of City Attorney required. Standard Document #ALL 2.1 has been used without modification, as certified by the undersigned.

By:_____
Wilma Quan
Urban Planning Specialist

Fehr & Peers,
a California S-Corporation

By: _____

Name: Matt Henry

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

By: _____

Name: Marion Donnelly

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

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

Addresses:

CITY:
City of Fresno
Attention: Wilma Quan, Urban Planning Specialist
2600 Fresno Street, Room 2156-02
Fresno, CA 93721
Phone: (559) 621-8371
FAX: (559) 457-1504

CONSULTANT:
Fehr & Peers
Attention: Alan Telford, Principal
2990 Lava Ridge Court, #200
Roseville, CA 95661
Phone: 916-773-1900
FAX: 916-773-2015

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 Fehr & Peers ("Consultant")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
PROJECT TITLE

CONSULTANT will perform the tasks below to finalize the transportation impact study, assist the CITY in responding to comments on the draft environmental impact report (DEIR), and attend public hearings related to the project.

TASK E9 SECOND ADMINISTRATIVE DRAFT DOCUMENTS
For transportation policy support associated with the second administrative draft documents of the Downtown Plans and Code that the CONSULTANT performed in good faith and completed to the satisfaction of the CITY under the Elizabeth Moule & Stefanos Polyzoides, Architects and Urbanists contract.

TASK E12 PUBLIC HEARING DRAFT DOCUMENTS
Consultant will provide transportation policy support associated with the public hearing draft documents of the Downtown Plans and Code. CONSULTANT has budgeted up to seven hours of staff time to complete this task.

TASK F6 FINALIZE TRANSPORTATION IMPACT STUDY
CONSULTANT will address comments from CITY staff on the administrative draft transportation impact study. This will include coordinating with CITY staff on mitigation language related to travel demand management (TDM) measures and potential identification of triggers for mitigation. CONSULTANT has budgeted up to 30 hours to coordinate with CITY and respond to the CITY's comments.

Upon responding to the CITY's comments, CONSULTANT will finalize the transportation impact study for inclusion as a technical appendix to the Draft Environmental Impact Report (DEIR). The CONSULTANT understands the CITY or its consultant will incorporate the information in the final transportation impact study into the DEIR Circulation/Transportation section and the appropriate NEPA document section.

Completion of the final transportation impact study will fulfill the technical analysis as originally described in CONSULTANT's previous scope of work.

TASK FP1 FULTON MALL TECHNICAL REPORT
CONSULTANT will prepare a transportation technical report in accordance with NEPA requirements for traffic reports. The information in the technical report will be obtained from the finalized transportation impact study in Task F6. CONSULTANT assumes that no additional analysis will be necessary to prepare this technical report. Should the CITY require additional technical support for the CEQA and/or NEPA document, an additional scope of services could be provided at the CITY's request.

CONSULTANT has budgeted up to 12 hours to respond to comments on the Fulton Mall technical report.

TASK F13 RESPONSE TO COMMENTS ON DRAFT EIR

CONSULTANT will prepare written responses to comments on the Circulation/Transportation section of the DEIR for inclusion in the Final EIR. CONSULTANT has budgeted up to 60 hours to respond to comments on the DEIR. Additional staff time will be billed on a time-and-materials basis based on CONSULTANT's current billing rates with the CITY's prior authorization.

TASK G4/G5 PUBLIC HEARINGS

CONSULTANT will attend up to two Planning Commission meetings and two City Council meetings to discuss the Downtown Plans and environmental document. This includes attendance at the plan adoption hearing.

TASK F10 MEETINGS

CONSULTANT has budgeted for attendance at one in-person meeting and three conference calls over the course of completing the above tasks. Additional in-person meetings or conference calls will be billed on a time-and-materials basis based on our current billing rates with the CITY's prior authorization.

OPTIONAL TASK FP2 FAIR SHARE ANALYSIS

The CITY has indicated that a fair share analysis for mitigation measures which include physical improvements to Caltrans facilities may be desired. If authorized by the CITY, CONSULTANT will prepare a fair share analysis for up to 28 locations for the Cumulative Plus Project mitigation measures. The fair share cost analysis will be based on the project's cumulative traffic contribution during the two analysis periods (AM and PM peak hours).

This page intentionally left blank.

SCHEDULE OF FEES AND EXPENSES

See attached

This page intentionally left blank.

EXHIBIT B

FEE ESTIMATE – FRESNO DOWNTOWN PLANS – ENVIRONMENTAL DOCUMENT REVIEW & PUBLIC HEARINGS

The table below details the Fehr & Peers cost estimate to prepare the scope of work contained in Exhibit A.

		Staff Person Labor (hours)				Total	
	Task	**Principal**	**Associate**	**Engineer**	**GIS/ Support**	**Hours**	**Cost**
		$250 / hr	$200 / hr	$130 / hr	$115 / hr		
E9	Second Administrative Draft Documents						$136
E12	Public Hearing Draft Documents	2		5		7	$1,208
F6	Finalize Transportation Impact Study	10	4	49	4	67	$10,176
FP1	Fulton Mall Technical Report	12	8	64	24	108	$15,680
F13	Response to Comments on Draft EIR	12		48		60	$9,240
F10	Meetings	12	2	14		28	$5,220
G4/G5	Public Hearings	8		38		46	$6,940
	Total	56	14	218	28	316	**$48,600**

	Optional Task	**Principal**	**Associate**	**Engineer**	**GIS/ Support**	**Hours**	**Cost**
FP2	Fair Share Analysis	2	4	30		36	$5,200
						Total Optional Task Cost	**$5,200**

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and Fehr & Peers ("CONSULTANT")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code 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 shall maintain limits of liability of not less than:

1. General Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability:

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

3. Employer's Liability:

   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

   $1,000,000 per claim/occurrence
   $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).

Deductibles and Self-Insured Retentions

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, 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

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.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

3. CONSULTANT'S insurance coverage shall be primary and no contribution shall be required of CITY.

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 "Retro 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 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

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 hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. 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 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

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.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

[Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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: See attached Exhibit C-1

☐ Additional page(s) attached.

Signature

October 15, 2012
Date

Marion Donnelly
(name)

Fehr + Peers
(company)

100 Pringle Ave, #600
(address)

Walnut Creek, CA 94596
(city state zip)

Exhibit C-1

Fehr & Peers currently has 1,186 active projects with numerous clients. While we are not familiar with all their business relationship, Fehr & Peers is a sub-consultant to consultants on the following City of Fresno projects: Fulton Corridor Plan, Fresno General Plan MEIR, Fresno GP & Development Code, and Veterans Boulevard.

This page intentionally left blank.

AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the 25th day of October, 2012, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Historic Resources Group, LLC, a California Limited Liability Company (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional historic preservation consulting services for completion of the Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a historic preservation and architectural planning firm 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 Development and Resource Management Director (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises 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 ("Effective Date") and shall continue in full force and effect through June 30, 2014, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 not to exceed $47,860, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not

be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(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 Administrator'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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 the Administrator. 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, 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 writings and 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. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(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** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

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

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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) 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.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of 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.

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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(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 Administrator 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

By:_____
Mark Scott, City Manager

ATTEST:
REBECCA E. KLISCH
City Clerk

By:_____
Deputy

No signature of City Attorney required. Standard Document #ALL 2.1 has been used without modification, as certified by the undersigned.

By:_____
Wilma Quan
Urban Planning Specialist

Historic Resources Group, LLC,
a California Limited Liability Company

By: Peyton Hall

Name: Peyton Hall

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

By: Andrea Humberger

Name: Andrea Humberger

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

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

Addresses:

CITY:
City of Fresno
Attention: Wilma Quan, Urban Planning Specialist
2600 Fresno Street, Room 2156-02
Fresno, CA 93721
Phone: (559) 621-8371
FAX: (559) 457-1504

CONSULTANT:
Historic Resources Group, LLC
Attention: Christy McAvoy, Founding Principal
12 South Fair Oaks Avenue, Suite 200
Pasadena, CA 91105
Phone: 626-793-2400
FAX: 626-793-2401

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 Historic Resources Group, LLC ("Consultant")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
PROJECT TITLE

Task 1.0: Preparation of up to 300 DPR 523 A and B forms; historic context statement; and preservation planning activities associated with the DNCP and FCSP.

For work that the CONSULTANT performed in good faith and completed to the satisfaction of the CITY under the Elizabeth Moule & Stefanos Polyzoides, Architects and Urbanists contract.

Task 1.1: CEQA Technical Report Revision

CONSULTANT will review the revised Downtown Neighborhoods Community Plan and Fulton Corridor Specific Plan to note any changes in policy regarding historic resources and clarify the role of historic preservation in plan implementation. CONSULTANT will also review the revised Downtown Development Code and note any changes in the processes and procedures regarding historic resources and the level of protection the Downtown Development Code provides. CONSULTANT will then revise the historic resources technical report based on the revised plans and code as well as previous CITY feedback. CONSULTANT will submit the revised technical report to the CITY for review. CONSULTANT will discuss the technical report findings, potential impacts and mitigations with the CONSULTANT via phone conference to ensure a common understanding and agree on appropriate language. Based on that conversation, CONSULTANT will make final revisions and submit the final technical report.

Task 1.2: NEPA Consultation

CONSULTANT will be available for up to a total of 16 hours for consultation with CITY or CITY's environmental consultant on matters pertaining to the environmental documentation required under NEPA regarding the Fulton Mall.

Task 1.3: Response to Comments

CONSULTANT will prepare written responses to comments on the Cultural Resources (Historical Resources) section of the Draft Environmental Impact Report (DEIR) for inclusion in the Final EIR. CONSULTANT has budgeted up to 48 hours to respond to comments on the DEIR.

Task 1.4: Public Meetings and Meetings

CONSULTANT will attend up to five public meetings including Historic Presevation Commission, Planning Commission or City Council meetings as requested by CITY to discuss the project and environmental document, including attendance at the plan adoption hearing. CONSULTANT has budgeted up to 40 hours for public meetings and meetings with CITY.

SCHEDULE OF FEES AND EXPENSES

See attached

This page intentionally left blank.

HISTORIC RESOURCES GROUP, LLC

EXHIBIT A

Date: 10/23/12

Project: **Fresno Downtown Planning Completion**

Client: City of Fresno
2600 Fresno Street
Fresno, California

Attn: Wilma Quan

	TASK DESCRIPTION	Managing Principal $250	Senior Planner $150	Hours by Task	Fees by Task	Subtotals by Task
	CEQA Tech Report and Review Documents					
1.0	Preparation of up to 300 DPR 523 A and B forms; historic context statement; preservation planning activities associated with the DNCP and FCSP.	25	75	99	$17,360	
1.1	CEQA Technical Report Revision	8	62	70	$11,300	
1.2	NEPA Consultation	8	8	16	$3,200	
1.3	Responses to comments	8	40	48	$8,000	
1.4	Upt to 5 Public Meetings	20	20	40	$8,000	
	Total					$47,860.00
GRAND TOTAL						**$47,860**

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and Historic Resources Group, LLC ("CONSULTANT")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code 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 shall maintain limits of liability of not less than:

1. General Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability:

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

3. Employer's Liability:

   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

   $1,000,000 per claim/occurrence
   $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).

Deductibles and Self-Insured Retentions

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, 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

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.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

3. CONSULTANT'S insurance coverage shall be primary and no contribution shall be required of CITY.

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 "Retro 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 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

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 hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. 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 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

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.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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: We are currently under contract to Impact Sciences, ~~to~~ Working on Fresno BRT environmental studies for the Fresno Department of Transportation.

☐ Additional page(s) attached.

Andrea Humberger
Signature

10/15/12
Date

Andrea Humberger
(name)

Historic Resources Group, LLC
(company)

12 S. Fair Oaks Av., Suite 200
(address)

Pasadena, CA 91105
(city state zip)

AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the 25th day of October, 2012, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Sherwood Design Engineers, Ltd., a California S-Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional wet utility consulting services for completion of the Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a civil engineering firm 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 Development and Resource Management Director (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises 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 ("Effective Date") and shall continue in full force and effect through June 30, 2014, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 not to exceed $13,068, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with

applicable copies of representative and identifiable receipts or records substantiating such expense.

(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 Administrator'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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 the Administrator. 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, 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 writings and 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. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(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** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

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

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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) 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.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of 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.

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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(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 Administrator 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

By:_____
Mark Scott, City Manager

ATTEST:
REBECCA E. KLISCH
City Clerk

By:_____
Deputy

No signature of City Attorney required. Standard Document #ALL 2.1 has been used without modification, as certified by the undersigned.

By:_____
Wilma Quan
Urban Planning Specialist

Sherwood Design Engineers, Ltd.,
a California S-Corporation

By: _____

Name: S. Bry Sarté

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

By: _____

Name: JOHN LEYS

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

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

Addresses:

CITY:
City of Fresno
Attention: Wilma Quan, Urban Planning Specialist
2600 Fresno Street, Room 2156-02
Fresno, CA 93721
Phone: (559) 621-8371
FAX: (559) 457-1504

CONSULTANT:
Sherwood Design Engineers, Ltd.
Attention: John Leys, Principal
58 Maiden Lane, 3rd Floor
San Francisco, CA 94108
Phone: 415-677-7300
FAX: 415-691-4896

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 Sherwood Design Engineers, Ltd. ("Consultant")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
PROJECT TITLE

See attached

SCHEDULE OF FEES AND EXPENSES

See attached

This page intentionally left blank.

SHERWOOD
DESIGN ENGINEERS

58 MAIDEN LANE, 3RD FLOOR, SAN FRANCISCO, CA 94108
(415) 677-7300 WWW.SHERWOODENGINEERS.COM

SCOPE OF WORK

CONSULTANT understands the scope of work to include completion of the Infrastructure Technical Report for the project. Please see below for the detailed scope elements:

Infrastructure Analysis: Infrastructure analysis to be completed as part of the Fulton Corridor Specific Plan and will identify sewer and water system impacts based on current and future needs pertaining to the Plan Area. Specific impacts shall include and are not limited to: type of facility, age of facility, size of the main(s), current sewer capacity, future sewer capacity needs, domestic water supply, ground water conditions, water conservation measures and fire suppression. As such, the scope is as follows:

1. Task E15: Public Hearing Draft
   a. Based on the input received throughout the environmental review process, CONSULTANT will make minor revisions to the Infrastructure Chapters of the Fulton Corridor Specific Plan and Downtown Neighborhood Community Plan. Provide updates to CITY in text format and/or updated exhibits. CONSULTANT assumes CITY provides all work in InDesign (final document formatting and editing).
   b. Estimated Hours and Fee: $812.50
      i. Senior Engineer: 4 hours @ $175/hr
      ii. Principal: 0.5 hour @ $225/hr

2. Task E16: Final Documents
   a. Based on input and direction received during the public hearing process CONSULTANT will make minor revisions to the Infrastructure Chapter of the Fulton Corridor Specific Plan and Downtown Neighborhood Community Plan. Provide updates to CITY in text format and/or updated exhibits. CONSULTANT assumes CITY provides all work in InDesign (final document formatting and editing).
   b. Estimated Hours and Fee: $812.50
      i. Senior Engineer: 4 hours @ $175/hr
      ii. Principal: 0.5 hour @ $225/hr

3. Task F6: Technical Report Preparation
   a. Conference calls with Design Team and CITY.
   b. Coordination with CITY representatives and CITY staff on incorporation of previous comments into the report. Responses to and incorporation of new comments that have not been previously brought up will constitute an additional service.
   c. Coordination with CITY utilities staff on wastewater generation rates and further discussion within the report as to variance from domestic water demand projections. CONSULTANT assumes that wastewater generation rates will not be updated, updates will constitute additional services.
   d. Update Technical Report as per Environmental Impact Report (EIR) Consultant's comments on report reorganization to enhance "defensibility" and review proposed updates with City Attorney and EIR Consultant.
   e. Submit one digital copy of the Final EIR Technical Report.
   f. Estimated Hours and Fee: $5,800
      i. Senior Engineer: 28 hours @ $175/hr

ii. Principal: 4 hours @ $225/hr

4. Task F9: Public Draft EIR
   a. The Technical Report will be revised in response to CITY comments to prepare the document for distribution to the public for the required public review.
   b. Estimated Hours and Fee: $1,625
      i. Senior Engineer: 8 hours @ $175/hr
      ii. Principal: 1 hour @ $225/hr

5. Task F14: Final EIR
   a. After completion of the responses to comments, the Final Technical Report document will be prepared.
   b. Estimated Hours and Fee: $1,162.50
      i. Senior Engineer: 6 hours @ $175/hr
      ii. Principal: 0.5 hour @ $225/hr

6. Task S1: Develop technical memorandum for use in the environmental documentation required under NEPA pertaining to the Fulton Mall. This will cover a description of existing wet utilities, qualitative discussion of demands, and qualitative discussion of the adequacy of the existing utilities to service the anticipated future demands.
   a. Estimated Hours:
      i. Senior Engineer: 10 hours @ $175/hr
      ii. Engineer: 8 hours @ $110/hr
      iii. Principal: 1 hour @ $225/hr
   b. Total Fee Estimate: $2,855

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and Sherwood Design Engineers, Ltd. ("CONSULTANT")
Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code 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 shall maintain limits of liability of not less than:

1. General Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability:

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

3. Employer's Liability:

   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

   $1,000,000 per claim/occurrence
   $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).

Deductibles and Self-Insured Retentions

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, 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

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.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

3. CONSULTANT'S insurance coverage shall be primary and no contribution shall be required of CITY.

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 "Retro 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 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

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 hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. 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 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

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.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Downtown Neighborhoods Community Plan, Fulton Corridor Specific Plan, and Downtown Development Code
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

10/17/12
Date

JOHN LEYS
(name)

SHERWOOD DESIGN ENGINEERS
(company)

58 MAIDEN LN
(address)

SAN FRANCISCO CA 94108
(city state zip)

This page intentionally left blank.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 24TH AMENDMENT TO THE ANNUAL APPROPRIATIONS RESOLUTION NO. 2012-125 APPROPRIATING $70,000 TO COMPLETE WORK ON THE DOWNTOWN PLANS AND CODE PROJECT

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO:

THAT PART III of the Annual Appropriation Resolution No. 2012-125 be and is hereby amended as follows:

	Increase/(Decrease)
TO: DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT	
Meas C-Transit (TOD) Programs	$ 70,000

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

Meas C-Transit (TOD) Programs		
Revenues:		
Account: **31302** Measure "C" Revenue	$ 70,000	
Fund: **22512**		
Org Unit: **409901**		
Total Revenues		$ 70,000
Appropriations:		
Account: **53302** Prof Svcs/Consulting - Outside	$ 70,000	
Fund: **22512**		
Org Unit: **409901**		
Total Appropriations		$ 70,000

THAT the purpose is to appropriate $70,000 to complete work on the Downtown Plans and Code Project.

Date Adopted:
Date Approved:
Effective Date:

CLERK'S CERTIFICATION

STATE OF CALIFORNIA }
COUNTY OF FRESNO } ss.
CITY OF FRESNO }

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the _____ Day of _____, 2012

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2012
Mayor Approval/No Return: _____, 2012
Mayor Veto: _____, 2012
Council Override Veto: _____, 2012

_____
YVONNE SPENCE, CMC
City Clerk

Date Adopted:
Date Approved:
Effective Date: