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

AGENDA ITEM NO.	2 C
COUNCIL MEETING	02/07/13
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

February 7, 2013

FROM: PATRICK N. WIEMILLER, Public Works Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department

MICHAEL W. HOLLY, PE, Project Manager
Public Works Department, Capital Management Division

SUBJECT: APPROVE AN AGREEMENT WITH BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS, INC. IN THE AMOUNT OF $254,800, WITH A CONTINGENCY AMOUNT OF $40,000, FOR THE DESIGN OF PLANS AND GENERAL CONSTRUCTION CONTRACT DOCUMENTS FOR THE WIDENING OF PEACH AVENUE FROM TWO TO FOUR LANES BETWEEN JENSEN AND BUTLER AVENUES AND AUTHORIZE THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY (COUNCIL DISTRICT 5)

RECOMMENDATION

Approve an agreement with Blair, Church & Flynn Consulting Engineers, Inc. of Clovis, in the amount of $254,800 with a contingency amount of $40,000 for the design of plans and general construction contract documents for the widening of Peach Avenue from two to four lanes between Jensen and Butler Avenues; and authorize the Public Works Director or his designee to execute the agreement on behalf of the City.

EXECUTIVE SUMMARY

The City of Fresno has been approved for Measure "C" Tier 1 funding to design the widening of Peach Avenue between Jensen and Butler Avenues. This project will widen Peach Avenue to a four-lane divided arterial between Jensen and Butler Avenues, as called for in the City of Fresno 2025 General Plan. This agreement will allow the City to retain the design services of Blair, Church & Flynn Consulting Engineers, Inc. to prepare necessary construction plans, construction contract documents and to provide oversight during construction. At this time, the construction schedule is uncertain due to the slowdown in private development and the associated development impact fee revenue that will ultimately fund a substantial portion of the street construction. Measure "C" funding has been prioritized for Peach Avenue between Kings Canyon Road and the 180 Freeway which is going into the construction phase this year. Although this southern Peach Avenue project construction schedule remains uncertain, the completion of the plans will position the project to move into construction quickly in the event that outside funding sources become available.

BACKGROUND

Funding for the preliminary engineering phase of the Peach Avenue Widening from Jensen Avenue to Butler Avenue was approved in the 2009 Measure "C" Regional Spending Plan. With the construction of Peach Avenue widening between State Route 180 and Butler Avenue scheduled for spring of 2013, Peach Avenue from Butler Avenue to Jensen Avenue will be the remaining section that needs to be widened. Currently $386,000 of Measure "C" Tier 1 funds have been identified to complete the environmental assessment and final engineering design, including plans and specifications for construction. A substantial portion of the project cost will likely be borne by impact fees from new development, which have remained relatively low for the past few years. Staff will be working diligently to identify other funding sources to construct Peach Avenue from Butler Avenue to Jensen Avenue, with completion of shelf-ready construction plans enhancing the funding possibilities significantly. The project scope consists of widening the street from the existing two lanes to four lanes with a landscaped median, upgrading the existing railroad crossing at the California Avenue alignment with new railroad crossing arms and concrete planking and installation of sidewalk to complete existing gaps in the pedestrian path of travel. These improvements will accommodate existing and future traffic volumes along Peach Avenue.

Per Administrative Order 6-19, Public Works staff mailed out and posted on the City's website, a notice requesting a statement of qualifications from consultants. Based on the statement of qualifications, staff selected Blair, Church & Flynn Consulting Engineers, Inc., to provide professional engineering services to prepare construction plans and general construction contract documents and to provide oversight during construction.

Staff negotiated a fee of $254,800 for professional services to complete the design phases of the project, bid support, and construction support. The agreement also includes an additional $40,000 contingency to be used for any additional work outside of the existing scope of services, and contingent on the director's approval as set forth in the executed agreement. Eighty percent of the costs of this agreement are reimbursable by Measure "C" Tier 1, with the remaining twenty percent local match being funded through the City's New Growth Area Major Street Impact Fee revenues. Design will begin in February 2013 and will require approximately nine months to complete,

FISCAL IMPACT

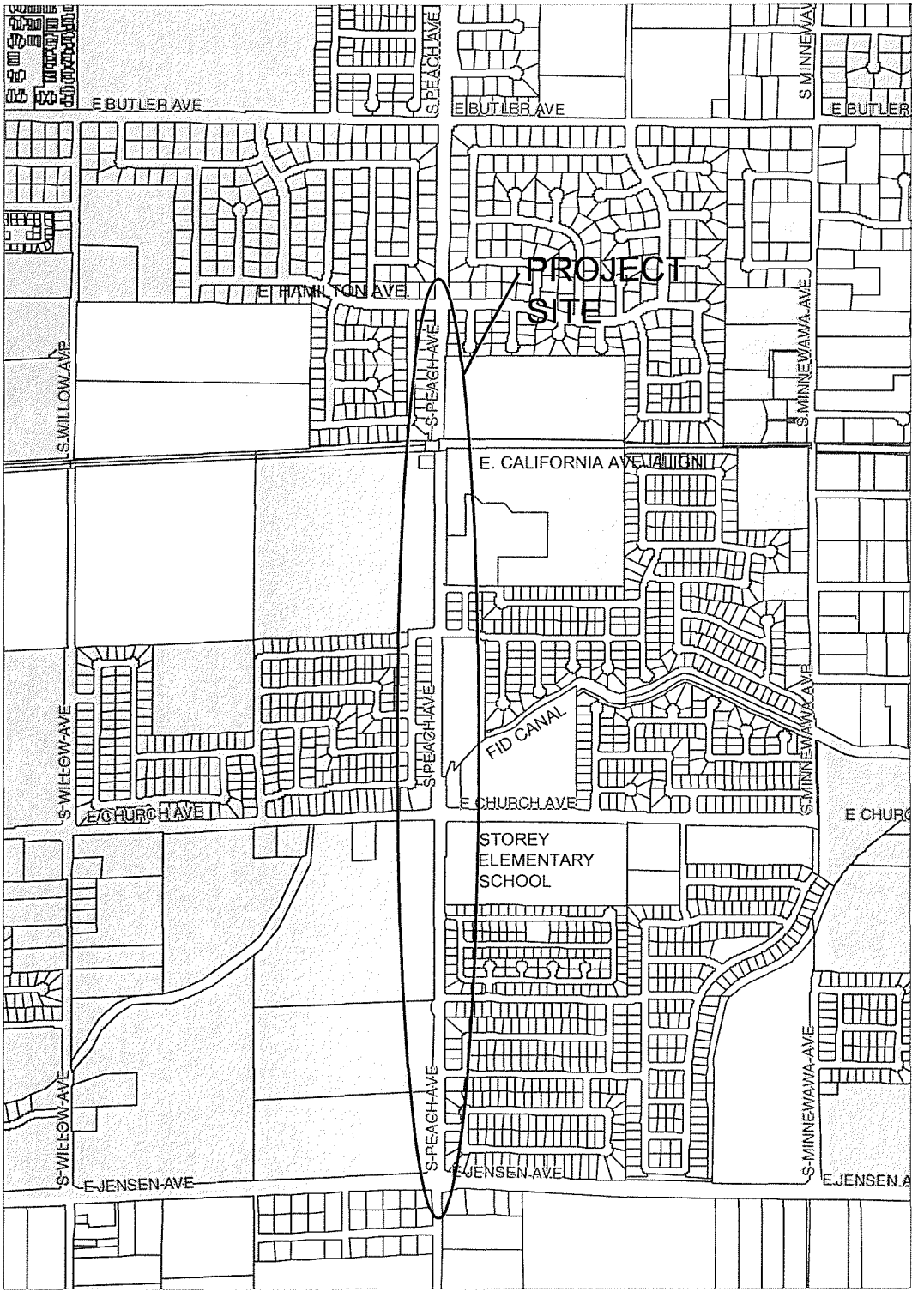
Project funding will consist of $386,000 of Measure "C" Tier 1 funds for the design of the roadway and a local match of $96,500 coming from the City's New Growth Area Major Street Impact Fee revenues. This project will have no impact to the City's General Fund.

File: PW00534_Peach Widening – Jensen to Butler_BCF Consultant Agreement_010213

Attachments:
-Project Vicinity Map
-Fiscal Impact Statement
-Agreement with Blair, Church & Flynn Consulting Engineers

PEACH AVENUE WIDENING
BETWEEN JENSEN AND HAMILTON AVENUES

PROJECT VICINITY MAP



NORTH
NTS

CITY OF FRESNO LIMITS

COUNTY OF FRESNO LIMITS

FISCAL IMPACT STATEMENT

PROGRAM: PW00534/22504/189901, Peach Ave. Widening, Between Jensen and Hamilton Aves.

RECOMMENDATION	TOTAL OR CURRENT	ANNUALIZED COST
Direct Cost	$294,800	
Indirect Cost	40,000	
TOTAL COST	334,800	
Additional Revenue or Savings Generated	0	
Net City Cost	0	
Amount Budgeted (If none budgeted, identify source)	$334,800	

Indirect costs consist of the following:

Project Management	$	22,000
Plan Review Fees		15,000
Printing, etc.		3,000
Total	$	40,000

AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the [Day of the Month e.g., 1st] day of , 2013, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Blair, Church & Flynn, Consulting Engineers, Inc., a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional engineering services for the design of plans and general construction contract documents for Peach Avenue Widening Between Jensen and Butler Avenues, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a professional engineer and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Public Works Department Director (hereinafter referred to as "Director") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform the services described herein and in **Exhibit A** to complete the Project more fully described in **Exhibit A**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**. The services of CONSULTANT shall consist of five Parts as described below. A separate Notice to Proceed will be issued for each of the aforementioned Parts. By entry into this Agreement and upon CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in Part One. CONSULTANT shall not perform any other Part of the Agreement, and this Agreement shall not be a contract for any other Part, until further performance is authorized by CITY'S issuance of a written "Notice to Proceed." It shall, however, remain CONSULTANT'S offer to perform all remaining parts described herein. In the event CONSULTANT performs services without CITY'S prior written authorization, CONSULTANT will not be entitled to compensation for such services.

(a) Part One. Schematic Design Phase.

(1) CONSULTANT shall review the description of the Project set forth in **Exhibit A** and consult with designated representatives of CITY to ascertain the requirements of the Project.

(2) CONSULTANT shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible CITY department/division that is available in CITY'S records and

is required by CONSULTANT in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions and easements. CONSULTANT shall notify CITY if a topographic survey is required.

(3) CONSULTANT shall provide a preliminary evaluation of the Project taking into consideration CITY'S estimate of the cost of construction ("Construction Budget") of $5,100,000, including alternative approaches to design and construction of the Project.

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

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

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

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

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 60 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(b) Part Two. Design Development Phase. After review and acceptance of the schematic design phase and issuance of a written Notice to Proceed with this Part Two:

(1) Based upon the accepted schematic design documents and the Construction Budget, including authorized revisions thereto, CONSULTANT shall prepare for review and acceptance by CITY the design development documents

consisting of drawings and other documents to fix and describe the size and character of the Project as necessary to show treatment of significant details. In addition, CONSULTANT shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents and specifications shall be subject to review and acceptance by CITY.

(2) CONSULTANT shall submit a revised estimate of construction cost for review and acceptance by CITY. The revised estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated bid basis, and any furnishings, equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget, including authorized revisions thereto.

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part 1 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the revised estimate and CONSULTANT shall, at no additional cost to CITY, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by CITY. CITY shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in CONSULTANT'S compensation.

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

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 45 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(c) Part Three. Construction Document Phase. After review and acceptance of the design development phase and issuance of a written Notice to Proceed with this Part Three:

(1) CONSULTANT shall prepare from the accepted design development documents, detailed plans and specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. CONSULTANT shall also prepare necessary bidding information, general and special conditions of the general construction contract, technical specifications of the general construction contract, and the bid proposal and general construction contract forms. Such documents shall be subject to the review and

acceptance by CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. CITY'S Standard Specifications must be used by CONSULTANT where possible. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by CITY shall be used by CONSULTANT unless the Director determines they would be impractical for this Project. CONSULTANT shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

(2) Upon request of CITY, CONSULTANT shall provide the calculations used to determine the general construction contract quantities; and structural calculations for the purpose of obtaining any building permits.

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

(4) CONSULTANT shall provide CITY with 6 sets of completed plans and 2 sets of completed specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

(5) After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one set of accepted reproducible tracings and bid documents for the Project. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: AutoCAD 2012 and Microsoft Office Word 2007.

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

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part 2 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the final estimate. If CITY elects to reject the final estimate, CONSULTANT shall at no additional cost to CITY, make such design changes as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by CITY.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 45 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(d) Part Four. Bidding Phase. After review and acceptance of the construction document phase and if CITY elects to proceed to bid, which shall constitute a written Notice to Proceed with this Part Four:

(1) CONSULTANT shall assist CITY in obtaining bids. CONSULTANT shall not communicate with potential bidders regarding this Project without the express prior written authorization of CITY'S Purchasing Manager.

(2) CONSULTANT shall, within 7 calendar days of any request by CITY, expeditiously draft and promptly provide addendum as determined by CITY to be reasonable or necessary for the bidding process.

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by CITY, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, CONSULTANT shall, within 14 calendar days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, at no additional cost to CITY provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. CONSULTANT shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to CONSULTANT from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more that 10%.

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

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

(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. The period for CONSULTANT

review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor.

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

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

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

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

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

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

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

(10) CONSULTANT shall prepare Record Drawings by updating the accepted general construction documents in Part 3 to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the CITY, (iii) CONSULTANT provided Request for Information responses, and (iv) any CONSULTANT bulletins, amendments or clarifications. CONSULTANT shall provide CITY with one set of vellum Record Drawings for the Project within 14 calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Director. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of Record Drawings in the following format: AutoCAD 2012.

2. CITY'S responsibilities. CITY will:

(a) Provide, upon request and cooperation of CONSULTANT, access to, and make all provisions necessary to, enter upon public or private lands as required for CONSULTANT to perform such services and inspections as are required in development of the Project; provided, however, if CITY is unable to obtain access to enter upon public or private lands, CONSULTANT shall not be relieved from performing its services as to those public and private lands that are accessible. If CONSULTANT notifies CITY that a topographic survey is required by CONSULTANT in connection with the consulting services, then CITY will be responsible for conducting the topographic survey.

(b) Manage and be responsible for all negotiations with owners in connection with land or easement acquisition and provide all required title reports and appraisals.

(c) With the exception of preparing correspondence required for design, hold all required special meetings, serve all public and private notices, receive and act upon all protests, and perform all services customarily performed by owners as are necessary for the orderly progress of the work and the successful completion of the Project, and pay all costs incidental thereto.

(d) Select the testing laboratory and pay the cost of borings, samplings, and other work involved in soils testing during construction.

(e) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release CONSULTANT from its responsibility to make periodic site visits under Section 1(e) for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to CITY.

(f) Prepare all change orders during construction in cooperation with CONSULTANT.

(g) Prepare all Progress Payment Estimates in cooperation with CONSULTANT following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon CONSULTANT'S best knowledge, information and belief.

(h) Pay, or cause to be paid, plan check fees, conditional use permit fees and site plan review fees.

(i) Arrange for and pay, or cause to be paid, any fees associated with Environmental Impact Reports or Statements.

(j) Give reasonably prompt consideration to all matters submitted by CONSULTANT for acceptance to the end that there will be no substantial delays in CONSULTANT'S program of work. For an acceptance, approval, authorization, a request or any direction to CONSULTANT to be binding upon CITY under the terms of this Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by CITY and signed on behalf of CITY by the Director.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of $254,800.00, and a contingency amount not to exceed $40,000.00 for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by CONSULTANT in performance of such services.

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

(c) For purposes of determining the division of the total compensation to CONSULTANT as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by CITY as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of CONSULTANT'S performance as follows: Part 1 – 45.64%, Part 2 – 29.32%, Part 3 – 17.54%, Part 4 – 1.61% and Part 5 - 5.89%. Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to CONSULTANT.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

4. Termination, Remedies, Force Majeure, and Consolidation of Disputes.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon the request of the Director or his/her designee, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify the Director or his/her designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or his/her designee of the cessation of such occurrence.

(g) CONSULTANT agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at CITY'S option, be joined and consolidated with any other dispute or disputes arising from or relating to the Project so that all disputes arising from or relating to the Project may be resolved in a single proceeding. CONSULTANT hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

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

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

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

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

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

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such

services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** 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.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

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

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

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the

provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

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

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

(i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

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

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

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

(d) CONSULTANT'S services pursuant to this Agreement shall be provided under the supervision of David A. Mowry, P.E., and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

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.

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

CITY OF FRESNO,
a California municipal corporation

By: _____
Scott L. Mozier,
Assistant Director
Public Works Department

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

No signature of City Attorney required. Standard Document #DPW 29.1 has been used without modification, as certified by the undersigned.

By: Michael W. Holly
Michael W. Holly, P.E.
Project Manager
Public Works Department

REVIEWED BY:
_____
Steven C. Son, P.E., Public Works Manager
Public Works Department

Blair, Church & Flynn, Consulting Engineers, Inc.,
a California Corporation

By: _____

Name: David A. Mowry

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

By: _____

Name: Adam K. Holt

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

Any Applicable Professional License:
Number: C54414
Name: David A. Mowry
Date of Issuance: 14 Jul 1995

Addresses:
CITY:
City of Fresno
Attention: Michael W. Holly, P.E.,
Project Manager
2600 Fresno Street, Room 4016
Fresno, CA 93721-3615
Phone: (559) 621-8701
FAX: (559) 488-1045

CONSULTANT:
Blair, Church & Flynn, Consulting Engineers, Inc.
Attention: David A. Mowry, P.E.,
Principal
451 Clovis Avenue, Suite 200
Clovis, CA 93612
Phone: (559) 326-1400
FAX: (559) 326-1500

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 Blair, Church & Flynn Consulting Engineers, Inc. ("Consultant")

Peach Avenue Widening Between Jensen and Butler Avenues
PROJECT TITLE

Approach to the Work

This Project Work Plan is intended to provide for the design of the proposed improvements, including preparation of construction documents, and bidding and construction support.

Blair, Church & Flynn will provide the necessary engineering services for the design of the Peach Avenue Widening between Jensen and Butler Avenues through a design process consisting of a Schematic Design Phase (35% design completion), a Design Development Phase (65% design completion), and a Construction Document Phase (95% and 100% design completion). Blair, Church & Flynn will also provide engineering services in support of the City's bidding, award, and construction management efforts.

The Schematic Design Phase will culminate in the submittal of a Schematic Design Report (SDR), along with full-size Geometric Approval Drawings (GADs). The GADs will incorporate City-supplied topography and right-of-way information. Geotechnical investigations will be performed and a related report prepared to aid in design of the pavement structural section (using a City-supplied Traffic Index). The SDR will include recommendations for the design features to be implemented in the subsequent Design Development and Construction Document phases, and will identify any potential construction conflicts with existing improvements and potential schedule conflicts, along with related recommendations. The SDR will also include copies of all correspondence to utilities, agencies, and special districts along with their responses; a copy of the geotechnical report; and a construction cost estimate.

Continued design efforts, through the Design Development Phase and the Construction Document Phase, will provide for the submittal of plans, specifications, and estimates (PS&E) at approximately 65% complete, approximately 95% complete, and 100% complete levels of design completion. Each project submittal will include the incorporation of review comments resulting from City review of the previous project submittal. After approval of the 100% PS&E, final documents will be submitted for bidding.

Engineering Services Tasks

Blair, Church & Flynn will perform the tasks described in the following Engineering Services Task Outline.

ENGINEERING SERVICES TASK OUTLINE

PART 1SCHEMATIC DESIGN PHASE

A. PROJECT ADMINISTRATION

1. Prepare Project Management Plan, Including:
    a. Project Team Contact Information for City and BCF
    b. Emergency Contact Information
    c. Project Communications and Filing Policies
2. Prepare and Maintain Project Design and Construction Schedule

B. SCHEMATIC DESIGN REPORT

1. Conduct Coordination Meeting with City Staff
    a. Present and Distribute Project Management Plan
    b. Review Project Design Approach
        1) Design Deliverable Content for Various Completion Stages

2) Design Deliverable Review Processes
c. Present Project Schedule, Key Milestones and Critical Path Tasks

2. Obtain and Process Topographic Survey Data Provided by City
   a. Prepare and Incorporate Topographic Mapping

3. Obtain Aerial Photography Provided by City
   a. Stock Photographic Coverage Dated 2008

4. Research and Obtain Right-of-Way Record Information
   a. Assessor's Parcel Maps
   b. Parcel Maps
   c. Subdivision Tract Maps
   d. Records of Survey
   e. Right-of-Way Maps
   f. Grant Deeds
   g. Easement Documents

5. Conduct Detailed Site Investigations
   a. Compile Photo Documentation Database for All Project Frontages and Existing Improvements

6. Research and Obtain Utility Information from Utility Companies and Agencies
   a. Prepare and Distribute Utility Notification Letters Requesting Facility Location Records from all Affected Utility Companies and Agencies
   b. Prepare Utility Research Database
      1) Include Field Investigation Observations
      2) Include Information Obtained from Utility Companies and Agencies

7. Perform Geotechnical Investigation and Prepare Geotechnical Report

8. Provide Traffic Signal Recommendations and Prepare Technical Report
   a. Obtain Base Plans and As-Built Plans for All Intersections Included in the Project Area. Site Investigation Will Verify Existing Pole Types, Types of Lighting Poles, Pedestrian and Bicycle Facilities, Existing Ramp Conditions, etc.
   b. Traffic Technical Report, Including Segment Analysis of Peach Avenue between Hamilton Avenue and Church Avenue, and Church Avenue and Jensen Avenue

9. Prepare Geometric Approval Drawings (GADs), 35% Design Completion
   a. Incorporate Topographic Mapping
   b. Incorporate Right-of-Way Information
   c. Incorporate Aerial Photography
   d. Incorporate Utility Information

10. Prepare Itemized Opinion of Probable Construction Cost

11. Identify Potential Utility Conflicts

12. Prepare Schematic Design Report

13. Submit Schematic Design Report

C. ENVIRONMENTAL ANALYSIS AND CEQA DOCUMENTATION

1. Prepare and Distribute a Request for Consultation for the Initial Study

2. Prepare Supporting Environmental Studies
   a. Air Quality Impact Assessment
   b. Greenhouse Gas Impact Assessment
   c. Noise Impact Assessment
   d. Biological Impact Assessment
   e. Archeological Survey
   f. Historical Survey

3. Prepare an Administrative Draft Initial Study for Review by the City
4. Complete the Initial Study Taking Into Consideration Any Comments Received from the City on the Document
5. Prepare a Draft Mitigated Negative Declaration for the Project if the Initial Study Identifies Potentially Significant Effects, but the City has Revised the Project to Avoid the Effects or Mitigate the Effects to a Point Where Clearly No Significant Effects Would Occur
6. Prepare and Distribute to Organizations and Persons for Public Review a Notice that the City Intends to Adopt a Mitigated Negative Declaration for the Project
7. Prepare for Review by the City Responses to Any Comments Received from Organizations or Persons on the Proposed Mitigated Negative Declaration
8. Prepare a Resolution that the City Can Use to Adopt the Mitigated Negative Declaration
9. Prepare a Staff Report that Documents the Reasons the Adoption of a Mitigated Negative Declaration is Appropriate
10. Attend Public Meetings and Hearings on the Project for Consideration of the CEQA Documents
11. Prepare and File a Notice of Determination for the Project
12. Attend Up to Two Meetings with City Staff During the Initial Study Preparation Process

D. SCHEMATIC DESIGN PHASE DELIVERABLES

1. Schematic Design Report, Incorporating:
   a. City-supplied Topographic Mapping and Aerial Photography
   b. Full- and half-size GADs, 35% Design Completion
   c. Itemized Opinion of Probable Construction Cost
   d. Geotechnical Report
   e. Available Environmental Documents

PART 2DESIGN DEVELOPMENT PHASE

A. PRELIMINARY (65%) PLANS, SPECIFICATIONS, AND ESTIMATE

1. Meet with City Staff, as Necessary, for Review of the Schematic (35%) Submittal
2. Incorporate Schematic Design Report Review Comments from City
3. Prepare Preliminary Plans
   a. Cover Sheet
   b. Legend and Index Sheets
   c. Typical Sections
   d. Construction Details
   e. Plan and Profile Sheets
   f. Utility Relocation and New Utility Plans
      1) City Water and Sewer
      2) FMFCD Facilities
      3) FID Facilities
   g. Traffic Signal Modification Plans
   h. Pavement Marking and Signing Plans
   i. Landscape and Irrigation Plans
   j. Cross Section Plans (100' Maximum Spacing)
4. Prepare Preliminary Specifications
5. Prepare Itemized Opinion of Probable Construction Cost
6. Submit Preliminary Plans, Specifications, and Estimate (65% Design Completion)
   a. Include Check Set from 35% Review

B. UTILITY COORDINATION

1. Submit Preliminary Plans to Affected Utility Companies, Agencies, & Districts
2. Incorporate Information and Comments Received from Utility Companies and Agencies in Construction Plans
3. Identify Utility Conflicts
4. Include Necessary Water, Sewer, Storm Drain and Irrigation Facility Relocations as Part of Project Design
   a. For Facilities Owned by City, FMFCD and FID
   b. Incorporate Relocations in Project Construction Documents
   c. Relocation to be Done as Part of Project Construction
5. Coordinate with Utility Owners to Secure Relocation of Private "Dry" Utilities
   a. For Private Electric, Gas and Communications Facilities
   b. Provide Construction Plan Information and Applications as Necessary for Relocation of Overhead Utilities
   c. Relocation to be Done Prior to Project Construction by Respective Utility Owners
   d. Show Relocated Utilities on Construction Plans

C. RAILROAD CROSSING COORDINATION

1. California Public Utilities Commission
   a. Initiate Contact with CPUC Field Engineer
   b. Arrange and Attend a Field Meeting with CPUC Field Engineer, UPRR Representative, and any Other Interested Parties
   c. Develop Consensus as to Scope of Proposed Crossing Improvements
      1) Obtain City Approval
   d. Prepare Preliminary Design for Proposed Crossing Improvements
      1) Include Warning Lights and Crossing Arms
      2) Incorporate all Applicable UPRR, CPUC and City Standards
   e. Prepare GO 88-B Authorization Request Form and Submit to City for Review and Approval
   f. Submit City-approved GO 88-B Authorization Request Form to CPUC
   g. Coordinate with CPUC as Necessary During Processing Period
      1) Typical Processing Period is 45 days if no Objections, per CPUC
   h. Obtain CPUC Authorization for Proposed Crossing Improvements
2. Union Pacific Railroad
   a. Prepare and Submit Permit Applications for Work Within UPRR Right-of-Way
      1) Utility Crossings
      2) FID Pipeline Parallel to Railroad
      3) Proposed Street Crossing Improvements
   b. Coordinate with UPRR as Necessary During Permit Application Processing Period
   c. Obtain UPRR Permits

D. RIGHT-OF-WAY ACQUISITION SUPPORT

1. Coordinate with City to Identify and Confirm Necessary Acquisitions
2. Obtain Preliminary Title Report for Each Acquisition
3. Prepare Legal Description for Each Acquisition Using Record Information and City-Supplied Land Surveying Data
4. Prepare Exhibit for Each Acquisition
5. Provide Support and Assistance to City for Public Outreach Meetings, and Attend a Maximum of Two Public Outreach Meetings
   a. Prepare Required Exhibits for Use During Public Meetings
6. Provide Support and Assistance to City for Eminent Domain Proceedings if Necessary

E. DESIGN DEVELOPMENT PHASE DELIVERABLES

1. Preliminary Plans (65% Design Completion)
2. Preliminary Specifications
3. Itemized Opinion of Probable Construction Cost
4. CPUC GO 88-B Authorization Request Form
5. CPUC GO 88-B Authorization
6. UPRR Permit Applications
7. UPRR Permits
8. Preliminary Title Reports
9. Right-of-Way Acquisition Legal Descriptions and Exhibits

PART 3CONSTRUCTION DOCUMENT PHASE

A. DRAFT FINAL (95%) DESIGN

1. Meet with City Staff, as Necessary, for Review of the Preliminary (65%) Submittal
2. Address Design Development Phase Review Comments
3. Prepare Draft Final Plans
   a. Cover Sheet
   b. Legend and Index Sheets
   c. Typical Sections
   d. Construction Details
   e. Plan and Profile Sheets
   f. Utility Relocation and New Utility Plans
      1) City Water and Sewer
      2) FMFCD Facilities
      3) FID Facilities
   g. Traffic Signal Modification Plans
   h. Pavement Marking and Signing Plans
   i. Landscape and Irrigation Plans
   j. Cross Section Plans
4. Prepare Draft Final Technical Specifications
5. Update Itemized Opinion of Probable Construction Cost
6. Submit Draft Final PS&E (95% Design Completion)
   a. Include Check Set from 65% Review

B. FINAL PLANS, SPECIFICATIONS AND ESTIMATES

1. Prepare Final Plans
2. Prepare Final Specifications
3. Update Itemized Opinion of Probable Construction Cost
4. Address Draft Final PS&E Review Comments from City and Caltrans
5. Submit Final PS&E for Approval (100% Design Completion)
   a. Include Check Set from 95% Review
6. Obtain Approval Signatures

C. CONSTRUCTION DOCUMENT PHASE DELIVERABLES

1. Draft Final (95%) Plans, Specifications, and Estimate

2. Final (100%) Plans, Specifications and Estimate
3. Printed Final Plans, Specifications and Estimate for Bidding
4. Digital Final Plans, Specifications, and Estimate

PART 4BIDDING PHASE

A. BIDDING PHASE SERVICES

1. Attend Pre-Bid Conference
2. Prepare Addenda and Clarifications
3. Attend Bid Opening and Evaluate Bid Proposals

PART 5CONSTRUCTION PHASE

A. CONSTRUCTION PHASE TASKS

1. Attend Pre-Construction Conference
2. Provide Digital Files as Requested for City Use in Construction Staking
3. Review Shop Drawings and other Contractor Submittals
4. Provide Clarification and Explanation of Construction Documents During Construction
5. Provide General Consultation and Advice
   a. Respond to Requests for Information (RFIs)
6. Review Construction Contract Change Order Requests
   a. Provide Related Technical Information to City as Necessary
7. Provide Periodic Construction Site Observation
   a. Minimum of Two Construction Site Visits
8. Review Progress Payments as Requested
9. Prepare and Submit Record Drawings
   a. Incorporate Construction Contractor Red-Lined Plans
   b. Incorporate City-Provided Information
   c. Incorporate Responses to RFIs
   d. Incorporate Any Other Bulletins, Amendments, or Clarifications

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY)
and Blair, Church & Flynn Consulting Engineers, Inc. ("CONSULTANT")
Peach Avenue Widening Between Jensen and Butler Avenues
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 retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.

2. Insurance must be maintained and evidence of insurance must be provided for at least 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.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT must purchase extended reporting coverage for a minimum of 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

Peach Avenue Widening Between Jensen and Butler Avenues
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:

Item 3: Blair, Church & Flynn Consulting Engineers has a number of clients that could potentially do business with the City of Fresno including: the City of Clovis, the County of Fresno, Fresno Irrigation District, Fresno Metropolitan Flood Control District, Clovis USD, Fresno USD and Central USD.

Item 5: Efren Banuelos, Jr. is currently employed by Blair, Church & Flynn Consulting Engineers as a Project Engineer. His father, Efren Banuelos, Sr. is employed by the City of Fresno in the Public Works Department.

Efren Banuelos, Jr. is typically not assigned to City of Fresno projects. He will not be assigned to the **Peach Avenue Widening Between Jensen and Butler Avenues** project.

Signature

January 18, 2013
Date

Adam K. Holt
(name)

Blair, Church & Flynn
(company)

451 Clovis Ave, Suite 200
(address)

Clovis, CA 93612
(city state zip)