AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

This Agreement (Agreement) is made and entered into effective 5/31/23, by and between the CITY OF FRESNO, a California municipal corporation (City), and Blair, Church & Flynn Consulting Engineers Inc., a California corporation (Consultant).

RECITALS

WHEREAS, the City desires to obtain professional engineering services for the Water Main Replacements in the area bound by Clinton, Teilman, University and West Avenues (Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a Civil 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, the Consultant acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 619; and

WHEREAS, this Agreement will be administered for the City by its Director of Public Utilities (Director) or 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. The Consultant shall perform to the satisfaction of the City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or December 31, 2024, subject to any earlier termination in accordance with this Agreement. The services of the Consultant as described in **Exhibit A** are to commence upon the City's issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within 458 (Four Hundred Fifty-Eight) consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) The 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 $187,894.00 (One Hundred Eighty-Seven Thousand, Eight Hundred Ninty-Four Dollars), paid on a time and materials basis in accordance with the schedule of fees contained in **Exhibit A**, and a contingency amount not to exceed $18,789.00 (Eighteen Thousand, Seven Hundred Eighty-Nine Dollars) for any additional work rendered

pursuant to Subsection (c) below and authorized in writing by the Director.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of City business. The 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 the 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. The 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 the City to the Consultant upon the earlier of: (i) the Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days prior written notice with or without cause by the City to the Consultant; (iii) the 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, the Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The 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 the Consultant to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.

(d) Upon any breach of this Agreement by the Consultant, the 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 the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) The Consultant shall provide the City with adequate written assurances of future performance, upon Director's request, in the event the Consultant

fails to comply with any terms or conditions of this Agreement.

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

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

(a) Any reports, information, or other data prepared or assembled by the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the 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 the 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 the 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 the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Consultant. The Consultant grants the City a copyright license to use such drawings and writings. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the 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 the Consultant will be at the City's sole risk and without liability or legal exposure to the Consultant. The Consultant may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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 the Consultant represents to the City that the 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, the City relies upon the skill of the Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law including California Civil Code section 2782.8, the Consultant shall indemnify, hold harmless and defend the 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, litigation expenses, and costs to enforce this agreement) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Consultant, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor to indemnify, hold harmless and defend the 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, the Consultant shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than “A-VII” in the Best’s Insurance Rating Guide, or (ii) as may be authorized in writing by the City’s Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Consultant shall be withheld until notice is received by the 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 the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by the 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 the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the 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 the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Consultant and the City prior to the commencement of any services by the subcontractor. The Consultant and any subcontractor/sub-consultant shall establish additional insured status for the City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to the City's execution of this Agreement, the 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, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.

(b) The 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 the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The 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, the Consultant shall immediately notify the City of these facts in writing.

(c) In performing the work or services to be provided hereunder, the

Consultant shall not employ or retain the services of any person while such person either is employed by the 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) The 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 the Consultant, nor any of the 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. The 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 the Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the 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 the 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, the Consultant at its sole cost and expense shall:

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

(b) Immediately contact the 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.

(c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) above and the ongoing maintenance thereof.

11. General Terms.

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

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the 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 the

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 the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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 the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the 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, the 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, the Consultant agrees as follows:

(a) The 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) The 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. The 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 the 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) The Consultant will, in all solicitations or advertisements for

employees placed by or on behalf of the 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) The 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 the 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 the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the 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 the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, the Consultant and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. The 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, the Consultant shall be solely responsible**,** indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of the 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 the City employment benefits, entitlements, programs and/or funds offered employees of the 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, the Consultant may be providing services to others unrelated to the 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 the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by the Consultant, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) The Consultant hereby agrees not to assign the payment of any monies due the Consultant from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Consultant directly to the Consultant.

17. Compliance With Law. In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, the State of California and the 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 the City and the Consultant.

29. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[Signatures follow on the next page.]

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: DocuSigned by: 850A517DB3DD42F... 5/31/2023
Brock D. Buche, PE, PLS,
Director
Department of Public Utilities

ATTEST:
TODD STERMER, CMC, MMC
City Clerk

By: DocuSigned by: 2F1BC57F778C4E1... 5/31/2023
Tina M Your
Deputy

No signature of City Attorney required. Standard Document **#DPU-S Eng. CSA, Short Form T&M - Contingency (01-2023)** has been used without modification, as certified by the undersigned.

By: DocuSigned by: 6F152AE3BEBC4DC... 4/4/2023
Robert A. Diaz
Supervising Engineering Technician
Department of Public Utilities

REVIEWED: DocuSigned by: 5CEFC3A5B6E6499... 4/13/2023
Jesus A. Gonzalez, PE
Assistant Director
Department of Public Utilities

Addresses:

CITY:
City of Fresno
Attention: Robert A. Diaz
Supervising Engineering Technician
1626 E Street
Fresno, CA 93706
Phone: (559) 621-1623
E-mail: Robert.Diaz@fresno.gov

Blair, Church & Flynn, Consultant Engineers, Inc,
a California Corporation

By: DocuSigned by: 580FFB544F26423... 4/10/2023

Name: David Mowry

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

By: DocuSigned by: 883B9098F2654D9... 4/11/2023

Name: Adam K Holt

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

Any Applicable Professional License:
Number: 54414
Name: David Mowry
Date of Issuance: July 1995

CONSULTANT:
Blair, Church & Flynn Consulting Engineers, Inc.
Attention: Luis Gonzalez, PE
Project Manager
451 Clovis Avenue
Clovis, CA 93612
Phone: (559) 326-1400
Facsimile" (559) 326-1500
E-mail LGonzalez@bcf-engr.com

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 (Consultant)

Water Main Replacements in the area bound by Clinton, Teilman, University and West Avenues

PART 1 SCHEMATIC DESIGN PHASE

A. PROJECT MANAGEMENT AND ADMINISTRATION
1. Prepare and Maintain Design and Construction Schedule
2. Prepare Project Management Plan
3. Prepare Monthly Schedule and Billing Updates
4. Prepare Meeting Agendas and Minutes
5. Schedule and Conduct Project Kick-off Meeting
6. Coordinate with Affected Agencies, Districts and Stakeholders

B. UTILITY COORDINATION
1. Conduct Office and Field Investigations
2. Submit Schematic Design Plans to Affected Companies and Agencies
3. Submit 60% Plans to Affected Companies, Agencies & Districts
4. Submit 90% Plans to Affected Companies, Agencies & Districts as Necessary
5. Submit 100% Plans to Affected Companies, Agencies, & Districts as Necessary

C. SURVEYS

1. Complete Control Survey
2. Complete Topographic Survey
   a. Survey Existing Property Lines and Easements
   b. Survey Existing Utility Features Accessible from Ground Surface (Water, Sewer, Storm Drain, Telephone, Fiber, Gas, Irrigation, etc.)
   c. Survey Existing Man-Made Features (Curbs, Gutters, Edge Of Pavement, Street Centerlines, Fences, Structures, Landscaping, etc.)
   d. Survey Existing Topographic Features (Berms, Swales, Drainage Ditches, Grade Breaks, etc.)

D. ALIGNMENT STUDY
1. Conduct Site Investigations
2. Obtain and Incorporate Record Information
3. Incorporate Survey Data
4. Conduct Right-of-Way & Property Line Research
5. Prepare Base Mapping
6. Develop Water Main Alignment Alternatives

E. SCHEMATIC DESIGN PLANS
1. Incorporate Alignment Study

2. Verify and Incorporate Applicable Regulatory Agency Requirements
3. Prepare Schematic (30%) Plans
4. Prepare Outline Specifications
5. Prepare Itemized Estimates of Quantities and Cost
6. Submit Schematic Design Plans, Outline Specifications, and Cost Estimate to City for Review
   a. Submit One (1) Hardcopy and One (1) PDF of the Schematic Design Plans, One (1) Hardcopy, One (1) PDF, and One (1) Microsoft Word File of the Outline Specifications, and One (1) Hardcopy, One (1) PDF, and One (1) Microsoft Excel File of the 30% Construction Cost Estimate
   b. Schedule and Conduct Workshop Review Meeting
   c. Re-Submit as Necessary to Obtain City Acceptance Within Seven (7) Calendar Days of Receipt of City's Comments

PART 2 DESIGN DEVELOPMENT PHASE

A. 60% PLANS, SPECIFICATIONS AND ESTIMATE
1. Prepare 60% Cover and Index Sheets
2. Prepare 60% Plan and Profile Drawings
3. Prepare 60% Construction Detail Drawings
4. Prepare 60% Technical Specifications
5. Initiate Preparation of City Boilerplate Front-End Bid Documents
6. Incorporate Schematic Design Review Comments
7. Prepare Itemized Estimate of Quantities and Cost
8. Submit 60% Plans, Specifications and Estimate (PS&E)
   a. Submit Four (4) Hardcopies and One (1) PDF of the 60% Plans, Two (2) Hardcopies, One
      (1) PDF, and One (1) Microsoft Word File of the 60% Specifications, and Two (2) Hardcopies, One (1) PDF, and One (1) Microsoft Excel File of the 60% Construction Cost Estimate.
   b. Schedule and Conduct Workshop Review Meeting
   c. Re-Submit as Necessary to Obtain City's Acceptance Within Seven (7) Calendar Days of Receipt of City's Comments

PART 3 CONSTRUCTION DOCUMENT PHASE

A. 90% PLANS, SPECIFICATIONS AND ESTIMATE
1. Prepare 90% Cover and Index Sheets
2. Prepare 90% Plan and Profile Drawings
3. Prepare 90% Construction Detail Drawings
4. Prepare 90% Technical Specifications
5. Address 60% PS&E Review Comments
6. Prepare Itemized Estimate of Quantities and Cost
7. Submit 90% PS&E
   a. Submit Five (5) Hardcopies and One (1) PDF of the 90% Plans, Five (5) Hardcopies, One
      (1) PDF, and One (1) Microsoft Word File of the 90% Specifications, and Five

(5) Hardcopies, One (1) PDF, and One (1) Microsoft Excel File of the 90% Construction Cost Estimate.

b. Schedule and Conduct Workshop Review Meeting
c. Re-Submit as Necessary to Obtain City's Acceptance Within Seven (7) Calendar Days of Receipt of City's Comments

B. 100% PLANS, SPECIFICATIONS AND ESTIMATE

1. Prepare 100% Cover and Index Sheets
2. Prepare 100% Plan and Profile Drawings
3. Prepare 100% Construction Detail Drawings
4. Prepare 100% Technical Specifications
5. Finalize Preparation of City's Boilerplate Front-End Bidding Documents
6. Address 90% PS&E Review Comments
7. Prepare Itemized Estimate of Quantities and Cost
8. Submit 100% PS&E
   a. Submit Five (5) Hardcopies and One (1) PDF of the 100% Plans, Five (5) Hardcopies, One (1) PDF, and One (1) Microsoft Word File of the 100% Specifications, and Five (5) Hardcopies, One (1) PDF, and One (1) Microsoft Excel File of the 100% Construction Cost Estimate.
   b. Schedule and Conduct Workshop Review Meeting
   c. Re-Submit as Necessary to Obtain City's Acceptance Within Seven (7) Calendar Days of Receipt of City's Comments
9. Submit One (1) Vellum Set of Approved Final Plans for Signature, One (1) AutoCAD and PDF File of Final Plans, Specifications and Estimate.

PART 4 BIDDING PHASE

A. BID SERVICES

1. Attend Pre-Bid Conference and/or Job Walk
2. Prepare Response to RFIs and Addenda (Assumed 3 Addenda)
3. Assist City with Evaluation of Bid

PART 5 CONSTRUCTION PHASE AND GENERAL CONSTRUCTION CONTRACT ADMINISTRATION

A. CONSTRUCTION SERVICES

1. Attend Pre-Construction Conference
2. Attend Field Meetings, as Necessary to Resolve Construction Matters
3. Review Shop Drawings and other Contractor Submittals
4. Provide General Consultation and Advice
   a. Respond to Requests for Information (RFIs)
5. Assist City with Preparation of Requests for Proposal to the Contractor Resulting From Unforeseen of Field Change Conditions
6. Review Progress Payments as Requested
7. Conduct Startup/Commissioning Services
8. Prepare and Submit Record Drawings

SPECIFIC EXCLUSIONS

A. Those items listed under City's Responsibilities in agreement
B. Determination of underground utility locations by Ground Penetrating Radar (GPR)
C. Determination of underground utility locations by "pothole" excavation methods
D. Geotechnical investigations
E. R-value testing of soils for pavement replacement design
F. Construction inspection or testing services
G. Preparation of traffic control plans
H. Preparation of a Stormwater Pollution Prevention Plan (SWPPP), which will be required of the Contractor by the project specifications
I. Acquisition of building permits
J. Attendance at public meetings, public outreach, or any other coordination beyond those described above
K. Design services related to the relocation of franchise utilities
L. Construction staking
M. Payment of fees
N. Acquisition of title information

SCHEDULE OF FEES

GENERAL CONSULTING FEE SCHEDULE
PREVAILING WAGE PROJECTS

CLASSIFICATION	RATE
Principal	$170.00/Hour
Program Manager	$165.00/Hour
Professional Engineer 3	$160.00/Hour
Professional Engineer 2	$155.00/Hour
Professional Engineer 1	$145.00/Hour
Assistant Engineer 3	$125.00/Hour
Assistant Engineer 2	$110.00/Hour
Assistant Engineer 1	$105.00/Hour
Professional Land Surveyor 2	$155.00/Hour
Professional Land Surveyor 1	$140.00/Hour
Assistant Surveyor	$110.00/Hour
Land Services Technician	$95.00/Hour
Professional Landscape Architect.	$127.00/Hour
Landscape Designer	$105.00/Hour
Design Technician	$110.00/Hour
CAD Technician 3	$98.00/Hour
CAD Technician 2	$88.00/Hour
CAD Technician 1	$78.00/Hour
Environmental Consultant	$120.00/Hour
Construction Manager	$120.00/Hour
Construction Inspector**	$100.00/Hour
Construction Administrator	$85.00/Hour
Analyst.	$90.00/Hour
Coordinator	$80.00/Hour
Administrative Assistant	$65.00/Hour
Aide	$58.00/Hour
Survey Party Mobilization	$80.00/Hour
1-Man Survey Party**	$190.00/Hour
2-Man Survey Party**	$360.00/Hour
LiDAR Scanner	$200.00/Hour
Equipment Rental and Associated Expense	Cost x 1.10
Materials, Printing, Subconsultant Procurement	Cost x 1.10
Mileage	@ Current IRS Rate

**Maybe subject to change based upon revisions to the State of California Prevailing Wage Determinations

EXHIBIT B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno (City) and Blair, Church & Flynn, Consultant Engineers (Consultant)
Water Main Replacements in the area bound by Clinton, Teilman, University and West Avenues

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to the Consultant's profession.

MINIMUM LIMITS OF INSURANCE

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

1. COMMERCIAL GENERAL LIABILITY:

(i) $1,000,000 per occurrence for bodily injury and property damage;
(ii) $1,000,000 per occurrence for personal and advertising injury;
(iii) $2,000,000 aggregate for products and completed operations; and,
(iv) $2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**:

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

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

4. **EMPLOYER'S LIABILITY**:

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

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

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

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

The Consultant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the Consultant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, agents, and volunteers; or
(ii) The Consultant shall provide a financial guarantee, satisfactory to the City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. The Consultant shall establish additional insured status for the City and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad

as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

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

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

The *Workers' Compensation insurance policy* is to contain, or be endorsed to contain, the following provision: the Consultant and its insurer shall waive any right of subrogation against the 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 the Consultant.

2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five-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 the Consultant, the Consultant must purchase "extended reporting" coverage for a minimum of five years completion of the Agreement work or termination of the Agreement, whichever occurs first.

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

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

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days' written notice by certified mail, return receipt requested, has been given to the City. The Consultant is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the Consultant shall

furnish the 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 the City, the Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.

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

SUBCONTRACTORS - If the Consultant subcontracts any or all of the services to be performed under this Agreement, the Consultant shall require, at the discretion of the City's Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by the City Risk Manager or designee. If no Side Agreement is required, the Consultant will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

VERIFICATION OF COVERAGE

The Consultant shall furnish the 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 its designee prior to the City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the City, the Consultant shall immediately furnish the City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

EXHIBIT C

DISCLOSURE OF CONFLICT OF INTEREST

Water Main Replacements in the area bound by Clinton, Teilman, University and West Avenues

		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: none

☐ Additional page(s) attached.

DocuSigned by: David Mowry 580FFB544F26423...

Signature

4/10/2023

Date

David Mowry

(Name)

Blair, Church and Flynn, a California Corporation

(Company)

Blair, Church and Flynn

(Address)

451 Clovis Avenue Suite 200 Clovis CA 93612

(City, State Zip)

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ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS OF
BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS,
A California Corporation

In accordance with Section 9 of Article III of the Bylaws of the Corporation and Section 307(b) of the California Corporations Code, the Board of Directors of BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS, a California corporation (the "Corporation"), hereby take the following actions and adopt the following recitals and resolutions by unanimous written consent of the Board of Directors of the Corporation:

RESOLUTION REGARDING EXECUTION OF CONTRACTS

WHEREAS, in order to conduct the business of the Corporation, it will be necessary for the officers of the Corporation, acting on behalf of the Corporation, to enter into and execute numerous contracts in the ordinary course and conduct of the business of the Corporation;

WHEREAS, in order to confirm the authority and power of such officers to enter into and execute such contracts, the Board of Directors of the Corporation adopts the following resolutions;

NOW, THEREFORE, BE IT RESOLVED, that, David A. Mowry, the President/Chief Executive Officer of the Corporation, Jeffrey D. Brians, the Vice President of the Corporation, Karl E. Kienow, the Vice President of the Corporation, and Adam K. Holt, the Secretary and the Chief Financial Officer of the Corporation, each acting alone or in concert with any of the others, are authorized to enter into and execute any contract, agreement or instrument in the name of or on behalf of the Corporation, and this authority shall be construed to be general in application, covering all agreements, contracts or other instruments necessary and proper with respect to the ordinary course of the business of the Corporation.

RESOLVED FURTHER, that all prior resolutions of this Board of Directors relating to the contracting authority of officers of the Corporation are hereby rescinded and shall be of no further force or effect.

This Action By Unanimous Written Consent of the Board of Directors of BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS, a California Corporation, is hereby taken

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by the undersigned, constituting all the members of the Board of Directors of the Corporation, this 19 day of July, 2012.

ADAM K. HOLT

DAVID A. MOWRY

JEFFREY D. BRIANS

KARL E. KIENOW