

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and RRM Design Group, a California Corporation, whose address of record is 32332 Camino Capistrano, Suite 205, San Juan Capistrano, California 92675 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to assess and recommend safety upgrades at various highway-railroad grade crossings, identify possible funding for the safety upgrades at various highway-railroad grade crossings and conduct a Quiet Zone Feasibility Study with implementation assistance; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide assessment and implementation services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the professional services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the City Engineer or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Forty-Nine Thousand Nine Hundred Sixty-Five Dollars (\$49,965.00).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is

based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kelly Finner 10-11-18
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
RRM DESIGN GROUP,
A California Corporation

BY: M. Sherrod
(Signature)

MIKE SHERROD
(Typed Name)

Its: PRINCIPAL
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. 95-2923783

ADDRESS: 32332 Camino Capistrano
Suite 205
San Juan Capistrano, CA
92675

TELEPHONE: (949) 361-7950
FAX: (949) 361-7955
E-MAIL: MSSherrod@rrmdesign.com

City of Merced Quiet Zone Study and Establishment Fee Schedule

July 13, 2018 Revised for Seven crossings BNSF Only

PHASE I		FEE TYPE	
A.01	Activity 1 - Site Investigation and Existing Conditions Analysis	FF	\$ 16,100
A.02	Activity 2 - Stakeholder Coordination	FF	\$ 16,195
A.03	Activity 3 - Quiet Zone Analysis	FF	\$ 3,930
Phase I Value:			\$ 38,225

PHASE II		FEE TYPE	
B.01	Activity 4 - Notice of Intent	FF	\$ 4,980
B.02	Activity 5 - Notice of Establishment	FF	\$ 4,160
Phase II Value:			\$ 9,140

Subtotal	\$ 47,365
Reimbursable Expenses (NTE)	\$ 2,600
Estimated Project Total	\$ 49,965

EXCLUSIONS:

Activity I:

- Sound study will be done for one crossing at a location that is determined by the city at 500, 1000, and 1,500 feet
- City to provide current project information within 200 feet of the crossing
- Traffic Counts will be collected if the current count is more than 5 years old (GO 88 B requirement)

Note:

- Submittal of GO 88 B to CPUC and stakeholder may require more detailed exhibits, traffic signal design modification plan and an advance preemption calculation as a part of the submittal.
- Activity 4 and 5 will be performed during design and construction process of the project

Activity 2:

- The following cost are unknown and are not included as a part of GO 88 B:
- Design of a pre-signal or queue cutter traffic signal for the crossings
 - Advance preemption calculation for crossing (using LADOT format)
 - All exhibits will utilize Google map for each location

Activity 3:

- No funding available for the Quiet Zone
- Environmental review is not required for diagnostic meeting or GO 88 B application

RRM	RRM	RRM	RRM	RRM	RRM	RRM	RRM
Principal in Charge	Project Manager/ Traffic Engineer	Civil Engineer/ QA/QC	CPUC Compliance Specialist	Engineering Support Staff	Transportation Planning Support Staff		
205 \$ per hour	210 \$ per hour	180 \$ per hour	100 \$ per hour	130 \$ per hour	145 \$ per hour		
4	\$820 40	\$9,400 0	\$0 48	\$4,800 16	\$2,080 0	\$0	\$0
3	\$615 54	\$11,340 0	\$0 52	\$5,200 8	\$1,040 0	\$0	\$0
2	\$410 8	\$1,680 0	\$0 8	\$800 8	\$1,040 0	\$0	\$0

0	\$0 18	\$3,780 0	\$0 12	\$1,200	\$0	\$0	\$0
0	\$0 16	\$3,360	\$0 8	\$800	\$0	\$0	\$0

Fee Footnotes

A. Fixed Fee(FF) tasks will be billed as the work progresses until the task is completed and the total amount stated in the contract for the task is invoiced.

Reimbursable Expenses

Incidental expenses incurred by RRM Design Group are reimbursed by the client at actual cost plus 10% to cover its overhead and administrative expenses.

Adjustment to Hourly Billing Rates

RRM reserves the right to adjust hourly rates on an annual basis.

COMPREHENSIVE WORK PLAN

Building upon our site investigations, document research, discussions with CPUC and City staff, we have developed a detailed work plan to deliver the quiet zones eastern to Merced's residents. Our work plan incorporates the scope items presented in the RFP with some slight modifications based on our experience processing quiet zones on BNSF and UPRR lines. The work plan task details can be found on the following pages.

PHASE I: QUIET ZONE FEASIBILITY STUDY

In this phase, RRM will assess the site, regulatory setting, and range of engineering possibilities. Ultimately, this phase will conclude with a complete set of proposed quiet zone improvement exhibits and signed GO 88-B permits for each crossing. The following scope of services will walk you through each step we will take to deliver the feasibility study.

ACTIVITY A.01: SITE INVESTIGATION AND EXISTING CONDITIONS ANALYSIS

The site investigation and existing conditions analysis work will include the following components:

- **Existing Conditions Analysis**

Utilizing existing aerial photography as the project's base map, RRM will conduct field investigations of each crossing to document existing conditions for items such as pavement width, number of lanes in each direction, nearby driveways, surrounding land uses, current or planned construction activities occurring on or near the crossing itself, and safety or other improvements planned for each crossing. All information will be recorded on the aerial maps, which will become the base for all subsequent GO 88-B exhibits.

- **Traffic Counts and Sound Study**

RRM will collect existing traffic, pedestrian, and train counts for each crossing to determine which data sets meet current criteria and which need updating. RRM will then perform the necessary traffic, pedestrian, and train counts to fill in the data gaps. Sound studies will be conducted at each crossing to determined warrants for Quiet Zone applications.

- **Potential Safety Improvements**

Based on field observations, existing conditions analysis, transit mode counts, and the sound study, RRM will identify potential issues at each crossing and then recommend appropriate safety improvements based on the associated risk index.

DELIVERABLES:

- Eight (8) existing conditions analysis exhibits
- Updated traffic, pedestrian, and train counts
- Sound study
- Eight (8) recommended safety improvement exhibits

ACTIVITY A.02: STAKEHOLDER COORDINATION

Based on the City's review of the work in Activity A.01, and direction on recommend safety improvements, RRM will assume the lead role in coordinating all stakeholder groups to approve the GO 88-B. Work in this activity includes the following:

- Communication and coordination with City, CPUC, and BNSF staff (stakeholder group)
- Preparation of 8 GO 88-B exhibits for distribution to stakeholder groups prior to the Field Diagnostic
- Scheduling and facilitation of the Field Diagnostic meeting (Assume two (2) consecutive days to complete)
- Preparation of Field Diagnostic meeting notes and distribution to stakeholder groups for approval
- Preparation of the GO 88-B application and all associated plan and exhibits
- Coordination with CPUC staff to gain approvals.

DELIVERABLES:

- Schedule and conduct Field Diagnostic meeting(s) with stakeholder groups
- Agenda and meeting notes for distribution to stakeholder groups
- Eight (8) GO 88-B application packages

ACTIVITY A.03: QUIET ZONE ANALYSIS

Building on the work completed in Activity A.01, RRM will examine a range of safety measures, including quiet zones for each crossing and the work effort will include the following components:

- **Safety Measure Evaluation**

RRM will explore potential safety measures to determine the applicability of each safety measure for a particular crossing, and evaluate its effectiveness. RRM will further analyze the crossings in terms of quiet zone improvements to provide a measurement of Quiet Zone Risk Index (QZRI) figures for each crossing, based on implementation of the various supplemental safety measures (SSM). Upon completion of the safety analysis, RRM will recommend necessary and appropriate SSM's or ASM's and estimate implantation costs for each crossing.

- **Funding Source Research**

RRM will research potential funding sources to implement the safety measures. This may include traditional funding sources such as Federal, State, and local transportation agencies, as well as nontraditional sources such as public/private grant initiatives. The funding sources will be consolidated into a funding matrix identifying the funding source, requirements, and timing.

- **Environmental Review**

Due the limited nature of typical quiet zone improvements, the project is anticipated to qualify for a Categorical Exemption (Class 3) under the California Environmental Quality Act (CEQA). Similarly, if federal funding requires National Environmental Policy Act (NEPA) compliance, an Environmental Assessment and corresponding Finding of No Significant Impact may be warranted. In the event significant environmental impacts are identified during the project process, additional environmental analysis may be required. This scope of services assumes environmental compliance documentation and notices will be prepared and distributed by City staff.

- **Feasibility Study**

Based on the culmination of all work efforts, RRM will prepare one (1) admin draft for City staff's review, and one (1) final feasibility report for consideration by the City Council. As par to this task, RRM will work with City staff to prepare for and present the final feasibility report to City Council. RRM will

develop a PowerPoint and/or other presentation support media/graphics as determined appropriate by the City/RRM team for the presentation.

DELIVERABLES:

- Safety measure evaluation with recommended SSM's and/or ASM's for 8 crossings
- Quiet Zone calculations for 8 crossings
- Required safety improvement exhibits for 8 crossings
- Potential funding source matrix
- Prepare for and present the final feasibility report to City Council for approval
- Support media/graphics

PHASE II: QUIET ZONE ESTABLISHMENT

In this phase, RRM will work with the City and FRA to establish the quiet zones. The following scope of services describe the tasks need to complete the establishment process.

ACTIVITY B.01: NOTICE OF INTENT

Following City Council approval of the quiet zone measures presented in the feasibility study, RRM will start work on the Notice of Intent including the following activities:

- Preparation of 8 exhibits for each crossing that includes detailed improvements such as median islands, additional gates, and complete calculations.
- Preparation and submittal of the required Notice of Intent (NOI) to create a new 24-hour quiet zone in accordance with FRA guidelines.
- Preparation and submittal of any requests for alternate safety measures (if proposed) to the FRA for approval.
- Review and revise the required improvements at each crossing corridor qualifying as a quiet zone based on comments received following the 60-day NOI comment period.

DELIVERABLES:

- 8 crossing improvement exhibits with calculations
- Notice of Intent submittal package
- Updated crossing improvement exhibits based on NOI comments

ACTIVITY B.02: PLANS, SPECIFICATION AND ESTIMATES FOR IMPROVEMENTS (POTENTIAL FUTURE TASK)

If requested by the City, RRM will perform a topographic survey and prepare engineered construction bid documents, and cost estimates for the implementation of the quiet zone improvements. Plans would be submitted for review at the 30%, 60%, 90%, and 100% levels.

DELIVERABLES:

- 30%, 60%, 90%, and 100% construction documents
- Construction cost estimates
- Coordination and permitting with railroads

ACTIVITY B.03: NOTICE OF ESTABLISHMENT

Upon installation of the required safety improvements required at each crossing, RRM will prepare and submit the Notice of Establishment (NOE) for the quiet zone to the required entities.

DELIVERABLES:

- NOE and the Effective Date to all agencies that were notified for NOI

ASSUMPTIONS

- Field Diagnostic meeting may result in need for additional scope such as modification of traffic signals (Pre-Signal) and or queue cutter signals, and advanced preemption calculations
- CPUC approval of GO 88 B may take up to 45 days after submittal
- UPRR and BNSF review may take up to 90 to 180 days
- Work plan is based on historical work efforts needed to process GO 88-B's with BNSF and UPRR, and may require additional effort if either or both rail companies adopt a new approval process.

LIMITATION OF SCOPE

Please note that the tasks to be performed by RRM's team are limited to those outlined above. This scope of services excludes the following:

- Independent verification of the accuracy of City provided information.
- Utility videotaping
- Environmental studies (CEQA/NEPA
- Payment of fees (permit, processing, noticing, etc.)

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July 13, 2018 Revised for Seven crossings BNSF Only

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