

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective on _____, 20____, by and between the CITY OF FRESNO, a California municipal corporation (CITY), and UNIVERSAL FIELD SERVICES, INC. (CONSULTANT).

RECITALS

WHEREAS, the CITY desires to obtain professional On-Call Right of Way Project Management Services Consultant; and

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

WHEREAS, the CITY has conducted a qualification-based selection process to obtain multiple professional Right of Way Consultants to be contracted on an on-call basis for services, as defined by this Agreement, that are to be awarded on a competitive basis per the selection criteria defined herein and solicited to the pre-qualified Consultants; and

WHEREAS, the 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 the CITY by its Public Works Director (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 three (3) years from the effective date, 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." A separate Notice to Proceed will be issued for each of the awarded Task Orders, following the Consultants successful submission of a Proposal, which shall be awarded based on the competitive criteria defined herein. CITY may, at its discretion, issue concurrent Notices to Proceed, allowing CONSULTANT to perform concurrent Task Orders. By entry into this Agreement and upon CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in the specific Task Order.

CONSULTANT shall not perform any other Task Order work of the Agreement, and this Agreement shall not be a contract for any other Task Order, 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 services described herein. In the event CONSULTANT performs services without CITY'S prior written authorization, CONSULTANT will not be entitled to compensation for such services. Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within the agreed upon duration for each individual Task Order from such authorization to proceed.

3. Compensation.

- (a) The CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal as described in **Exhibit A, Schedule of Fees**. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement. The CONSULTANT will be reimbursed within thirty days upon receipt by the CITY's Contract Administrator of itemized invoices in duplicate.
- (b) In addition, the CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.
- (c) Specific projects will be awarded to the CONSULTANT through issuance of Task Orders.
- (d) After a project to be performed under this Agreement is identified by the CITY, the CITY will prepare an Request for Proposal (RFP) for the specific Task Order. An RFP will identify the scope of services, expected results, project deliverables and will designate a CITY Coordinator. The RFP will be solicited to the prequalified Consultants for review. The Consultants shall return a Cost Proposal and draft Task Order within ten calendar days, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. The CITY will review and evaluate the Cost Proposals and draft Task Order based on the selection criteria listed below and award to the lowest responsive Consultant. Upon determination of the successful Proposal, the finalized Task Order shall be signed by both the CITY and the selected CONSULTANT.

Selection Criteria – Each Cost Proposal and draft Task Order shall be evaluated based on the weighted criteria listed below. The lowest cost and shortest proposed schedule duration will receive the higher evaluation ranking in comparison to other respective Proposals.

- 50% Total Cost
- 50% Proposed Schedule

- (e) Reimbursement for transportation and subsistence costs shall not exceed State rates.
- (f) Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- (g) The CONSULTANT shall not commence performance of work or services until this Agreement has been approved by the CITY and notification to proceed has been issued by the CITY's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- (h) A Task Order is of no force or effect until returned to the CITY and signed by an authorized representative of the CITY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by the CITY and a written Notice to Proceed is issued.
- (i) The selected CONSULTANT will be reimbursed within thirty days upon receipt by the CITY's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty calendar days after the performance of work for which the selected CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due the CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by the CONSULTANT prior to the expiration or termination of this Agreement. Invoices shall be mailed to the CITY's Contract Administrator at the following address:

CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS
CONTRACT ADMINISTRATOR
R. SCOTT BEYELIA, SUPERVISING REAL ESTATE AGENT
2600 FRESNO STREET, ROOM 3016
FRESNO, CA 93721

- (j) The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- (k) The total amount payable by the CITY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- (l) If the CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

- (m) Task Orders may not be used to amend the language (or the terms) of this Agreement or exceed the scope of work under this Agreement.
- (n) The total amount payable by the CITY for all Task Orders resulting from under this Agreement shall not exceed \$500,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

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 Consultants 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.
- (g) Any notice of termination sent to CONSULTANT shall include the reason(s) for such termination or state that it is without cause.

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.
 - i. Permission granted to the CONSULTANT to disclose information on one occasion shall not authorize the CONSULTANT to further disclose such information or any other information or disseminate the same on any other occasion.
 - ii. The CONSULTANT shall not comment publicly to the press or any other media regarding the Agreement or the CITY's actions on the same, except to the CITY's personnel or the CONSULTANT's personnel involved in the performance of this Agreement at public hearings or in response to questions from a Legislative committee.
 - iii. The CONSULTANT shall not issue any news releases or any public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the

contents thereof by the CITY and receipt of the CITY's written permission.

- (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, in any form whatsoever, 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.
 - i. In the event of the copyright of any reports or other products prepared under this Agreement by the CONSULTANT or any subcontractor, the Federal Highway Administration (FHWA) shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.
 - (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, 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 and litigation expenses) 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 10 01 and CG 20 37 10 01 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, 23 U.S.C. § 112, FHWA regulations applicable to design and engineering consulting contracts found at 23 C.F.R. 172.1 *et seq.*, 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, lawful or unlawful, contingent or otherwise, direct or indirect, to any party to solicit or procure this Agreement or any rights/benefits hereunder. The CITY shall have the right, in its discretion, to deduct from any payment to the CONSULTANT under this Agreement, or otherwise recover the full amount of, any rebate, kickback or other consideration paid by the CONSULTANT in violation of any representation or warranty under this section.
- (e) Neither the CONSULTANT, nor any firm affiliated with 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 with the exception of any subcontractor whose services are limited to providing surveying or materials testing information. 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. An affiliated firm is one which is subject to the control of the same person(s) through joint-ownership or otherwise.
- (f) The CONSULTANT shall disclose any financial, business, or other relationship with the CITY that may have an impact upon the outcome of this Agreement or any ensuing the CITY construction project. The CONSULTANT shall also disclose any current clients who may have a financial interest in the outcome of this Agreement or any ensuing the CITY construction project, which will follow.
- (g) The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- (h) 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.

- (i) 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 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 (i) above and the ongoing maintenance thereof.
11. General Terms, Federal and State Assurances and Requirements.
- (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. The CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. The CONSULTANT and its subcontractors shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for three years, or longer if required by law, from the date of final payment under the Agreement. CITY, the State, the State Auditor, FHWA or any duly authorized representative of the federal government shall have access to any books, records, papers, accounting records and other documents of the CONSULTANT and its subcontractors that are pertinent to the Agreement for audit, examinations, excerpts, and transcriptions. Copies thereof shall be furnished by the CONSULTANT, if requested. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of the three-year time period, all records shall be retained and made available 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 section and in the event a subcontract is entered into for an amount in excess of \$25,000, the subcontract shall include this

paragraph in its entirety. 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.
 - (d) The CONSULTANT's services pursuant to this Agreement shall be provided under the supervision of Leslie Finnigan, Vice President, Western Region, and he/she shall not assign another to supervise the CONSULTANT's performance of this Agreement without the prior written approval of the Director.
 - (e) The CITY will carry out applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, the CONSULTANT agrees to comply with all applicable federal and state assurances and requirements identified in **Exhibit D along with its Appendix A** and require that each subcontract include the same assurances by each of its subcontractors.
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 the 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. RFQ Document. Any Request for Qualifications and documents issued therewith (collectively RFQ) by the CITY that resulted in selection of the CONSULTANT for entry into this Agreement are hereby incorporated into and made a part of this Agreement. In the event of a conflict between the RFQ and this Agreement (including any Exhibit hereto), this Agreement (including any exhibit hereto) shall take precedence.
30. Disadvantaged Business Enterprise (DBE) Participation. This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal. The goal for DBE participation for this AGREEMENT is zero percent (0%). Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in the CONSULTANT's Exhibit 10-O2: CONSULTANT Contract DBE Commitment.

The CONSULTANT shall comply with Title 49 of the Code of Federal Regulations (CFR), Part 26.37(c). To comply with 49 CFR 26.37(c), the CONSULTANT must complete the Exhibit 9-F: Disadvantaged Business Enterprise (DBE) Running Tally of Payments from the execution of the contract until all DBE sub consulting activity on the entire project is completed. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the CONSULTANT shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy also sent to the City of Fresno at PublicWorksCIP@fresno.gov.

[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: _____
Scott Mozier, PE
Director
Public Works Department

APPROVED AS TO FORM
Douglas T. Sloan

By: Pauline Brickey 10/14/21
Pauline Brickey Date
Deputy City Attorney

ATTEST:
BRIANA PARRA, CCM
Interim City Clerk

By: _____
Deputy

CITY OF FRESNO

Attn: R. Scott Beyelia,
Contract Administrator
Supervising Real Estate Agent
2600 Fresno Street, Suite 4016
Fresno, CA 93721
Phone: (559) 621-8696
Scott.beyelia@fresno.gov

UNIVERSAL FIELD SERVICES, INC

By: Leslie Finnigan
Name: Leslie Finnigan, SR/WA

Title: Vice President, Western Region

By: Veda Hester

Name: Veda Hester

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

Any Applicable Professional License:

Number: 12731

Name: CPA State of Oklahoma

Date of Issuance: 8-1-1994

UNIVERSAL FIELD SERVICES, INC

Attn: Leslie Finnigan, SR/WA,
Vice President, Western Region
2560 W. Shaw Lane, Suite 104
Fresno, CA 93711
Phone: (559) 453-2962
Lfinnigan@ufsrw.com

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form
4. Exhibit D - Federal and State Assurances
5. Appendix A to Exhibit D

EXHIBIT A

SCOPE OF SERVICES

Consultant Service Agreement between City of Fresno (CITY) and Universal Field Services (CONSULTANT) On-Call Right of Way Project Management Services Consultant

On-Call Right of Way Project Management Services ("ROW Services") may include all or a portion of the following services: Appraisal, Appraisal Review, Right of Way Acquisition, Residential Relocation Assistance, Business Relocation Assistance, and Business Acquisition. Funding for these Projects is through multiple sources, including federal-aid projects. ROW Services will be awarded based upon a Project Task Order Request for Proposal ("PTO-RFP"), on a project-by-project basis. PTO-RFPs may include all or a portion of the services listed above. Upon issuance of a PTO-RFP the PTO-RFP will indicate if the Project is a federally funded.

SCOPE OF WORK:

The scope of services of this Agreement related to Appraisal, Appraisal Review, Right of Way Acquisition, Residential Relocation Assistance, Business Relocation Assistance, and Business Acquisition are detailed in Federal, State, and Local publications available in the public domain, and are generally referenced as follows:

PART ONE-COMPLIANCE WITH CODE OF FEDERAL REGULATIONS

Appraisal, Appraisal Review, Right of Way Acquisition, Residential Relocation Assistance, Business Relocation Assistance, and Business Acquisition Services for Projects receiving federally funding in whole or in part, shall comply with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and the Federal Department of Transportation regulations (49 CFR Part 24) governing the implementation of said Uniform Act. In addition, ROW Services for Projects receiving federal funding, in whole or in part, shall be conducted in accordance with the Local Assistance Procedures Manual (LAPM) issued in January of each year, and updated through Local Assistance Procedures (LPPs), and to comply with all provisions of the California Department of Transportation (Caltrans) Right of Way Manual and existing procedural handbooks of the State of California, Department of Transportation and to uphold the following assurances made by City to Caltrans Division of Local Assistance;

"As a part of our (City) certification and in accordance with 49 CFR, Part 24, Section 24.4 (a), we offer the following assurances as to all subsequent federally assisted programs or projects: The City of Fresno will comply with all provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and the Federal Department of Transportation regulations (49 CFR Part 24) governing the implementation of said Uniform Act. The City of Fresno will continue to comply with all provisions of the existing procedural handbooks of the State of California, Department of Transportation, related to the Uniform Act until essential revisions to existing procedures have been reviewed and approved by your office."

PART TWO-COMPLIANCE WITH STATE OF CALIFORNIA LAW

All Services, including, but not limited to Appraisal, Appraisal Review, Right of Way Acquisition, Residential Relocation Assistance, Business Relocation Assistance, and Business Acquisition, regardless of funding source, shall be conducted in accordance with all applicable State of California laws, rules, codes, regulations, and administrative orders, including but not limited to State Uniform Relocation and Real Property Acquisition Policy Acts and Article 1, Section 19, of the California Constitution.

PART THREE-COMPLIANCE WITH LOCAL LAW AND MUNICIPAL CODES

All Services, including, but not limited to Appraisal, Appraisal Review, Right of Way Acquisition, Residential Relocation Assistance, Business Relocation Assistance, and Business Acquisition, regardless of funding source shall be conducted in accordance with all applicable laws, codes, and ordinances, including but not limited to the City Municipal Code, City Administrative Orders, and City Council Resolutions.

PART FOUR-LICENSING AND EXPERIENCE

Consultant shall ensure all employees, sub-consultants/sub-contractors have the current, applicable, and appropriate license, and the necessary experience to perform all duties assigned to them.

PART FIVE – GENERAL ACTIVITIES OF CONSULTANT

1) APPRIASALS

- a) Upon receiving a written Notice to Proceed by Contract Manager, Consultant will be provided a Project Description, a list of partial and/or full property acquisitions necessary to facilitate the subject project; Preliminary Title Reports, Grants of Easement, and/or Temporary Construction Permits including legal descriptions, prepared for owner(s) signature; and an approved Purchase and Sales Agreement (PSA) template in Word format for use in preparing a PSA for each acquisition necessary to facilitate the project.
- b) Consultant will make a diligent effort to provide City with an appraisal report within sixty (60) calendar days from receiving the Notice to Proceed and legal descriptions (Exhibit A) and depiction of legal descriptions (Exhibit B) for each property acquisition for the project.
- c) All owners of property to be appraised or their designated representative must be offered the opportunity to accompany Appraiser Consultant during the inspection of their property. Appraiser Consultant shall comply with this requirement and include a statement in the appraisal report that the owner(s) or their designated representative was given this opportunity, and if they accepted, declined, or were unresponsive.

2) APPRAISAL REVIEWS

- a) The completed Appraisal Report must be reviewed by a licensed qualified review appraiser.
- b) The Review Appraiser must provide City a report of the review appraisal containing a Review Appraiser Certificate.

3) ACQUISITION

- a) Consultant will make a diligent effort to send all owners impacted by the project written notice of the proposed project and ask the owner(s) to contact the Acquisition Agent at their earliest convenience within four (4) calendar days of receiving the APN or address of the property. The written notice should be sent to the address from the County Tax Assessor's most recent Rolls unless Consultant has a more reliable address.
- b) Consultant will make a diligent effort to contact owner(s) by phone, email, or in person within three (3) calendar days of receiving a written determination of just compensation from City based upon the final reviewed appraisal.
- c) Consultant will make a diligent effort to upon first contact with owner(s)/tenants to obtain all reasonable contact information for any member of the household over the age of 18 years-old and document this information in the diary/log.
- d) Consultant will make a diligent effort to meet property owner(s) in person within three (3) calendar days of City staff's review and approval of Consultant's first written offer package, including all necessary documents to present the first written offer.
- e) Consultant must maintain a current written diary/log of all pertinent information related to the first written offer and ongoing negotiations related to each subject project parcel
- f) Consultant will make a diligent effort to contact owner(s) at least two (2) times per week to continue negotiations and reach a mutually satisfactory agreement between City and owner(s) without exceeding the compensation authorized by the City Contract Administrator.
- g) In the event the Consultant is unable to reach an agreement with owner(s) after three months of regular and frequent contact with owner(s). Consultant will provide owner with a written letter of impasse and return complete file to City with a written summary of the negotiations to date, unless additional time to continue negotiations is authorized by the City Contract Administrator.

4) RESIDENTIAL RELOCATION

- a) Consultant must initiate a relocation assistance program and plan, if applicable, that will involve providing each affected displacee with financial and advisory assistance. The needs of each displacee will be carefully analyzed to determine what specific benefits and services are obligated.
- b) Consultant must prepare Relocation Plans ("Plan"), if applicable, that conform to all requirements of State Housing Community Development (HCD) Guidelines California Code of Regulations, Title 25, and the Federal Uniform Act, if applicable, as well as Regulations for Implementation of the California Relocation Assistance Law and Property Acquisition Procedures.
- c) Consultant must comply with all applicable federal and state laws, rules and regulations relating to relocation assistance
- d) Consultant must provide advisory assistance on an on-going basis, including referrals to and coordination with social service agencies, housing authorities, and any other services, which may be required
- e) Consultant must prepare notices and personally deliver required notices, which may include Informational Statements, Notices of Displacement, 90-Day Notices to Vacate, and other notices. Consultant must provide displacee, in writing, with

referrals to comparable replacement housing. Determine eligibility of each displacee and amount of relocation benefits.

- f) Consultant must provide displacee, in writing, with referrals to comparable replacement housing. Determine eligibility of each displacee and amount of relocation benefits, and prepare Entitlement Letter to each displacee
- g) Consultant must conduct "decent, safe and sanitary" inspections of comparable replacement dwellings and advise displacee of findings.
- h) Consultant must prepare all necessary claim forms, secure displacee's signatures on claim forms, and submit claim forms to City for processing. When checks are available, personally deliver checks to displacee, whenever possible.
- i) Consultant must obtain moving cost estimates, as needed, and monitor the move, as necessary.
- j) Consultant must maintain files on each displacee and submit completed files to City when displacee has received final payment.
- k) Consultant must provide City with bi-weekly status reports, or as required, and a written report in a form pre-approved by City staff summarizing the status of the relocation for each displacee bi-monthly.
- l) Consultant must provide project management services to coordinate and meet with City to discuss progress and schedule as needed.

5) BUSINESS RELOCATION

- a) Consultant will initiate a relocation assistance program and plan that will involve providing each affected displacee with financial and advisory assistance. The needs of each displacee will be carefully analyzed to determine what specific benefits and services are obligate.
- b) Consultant will interview prospective displacees to ascertain relocation needs and inform displacees of available relocation assistance services and benefits and explain the relocation process.
- c) Consultant will prepare notices and deliver required notices, which may include Informational Statements, Notices of Displacement, 90-Day Notices to Vacate, and other notices, as required.
- d) Consultant will provide displacee, in writing, with referrals to comparable business locations and assist in any planning and/or permitting issues.
- e) Consultant will advise business owners of potential claim for loss of goodwill.
- f) Consultant will negotiate with business owner for fixtures and equipment (F&E), as may be required. City will reimburse Consultant for appraisals for such F & E. Itemize this cost separately.
- g) Consultant will facilitate the Notice of Bulk Transfer, fees for same to be paid by City, and provide on-going advisory assistance to business owners.
- h) Consultant will prepare specifications for the move and inventory of personal property, coordinating with acquisition agent to assure that there is no dispute with property owner, if owner is not business owner.
- i) Consultant will obtain a minimum of two bids from movers that are suited to the type of business being relocated.
- j) Consultant will monitor the actual move to replacement site and re-establishment activities, as necessary.

- k) Consultant will determine eligibility of each business and the proposed amount of relocation benefits, including actual and reasonable moving payments, re-establishment payments, or the "in-lieu" payment and deliver Entitlement Letter.
- l) Consultant will prepare all necessary claim forms, secure claimant's signatures on claim forms, and submit claim forms to City for processing and payment. When checks are available, personally deliver checks to displacee, whenever possible.
- m) Consultant will maintain files on each displacee, provide City with bi-weekly status reports, or as required, and submit completed files to City when displacee has received final payment.

6) PURPOSE OF "SCOPE OF SERVICES."

- a) The purpose of the preceding "SCOPE OF SERVICES" is to provide a general outline of the roles of the City and Consultant under this Agreement.
- b) Nothing in this "SCOPE OF SERVICES" is intended to supersede, eliminate, or limit the Federal, State, and Local Laws, Codes, Rules, Regulations or any other licensing body, oversight body or agency authority. At all times, Consultant shall conduct all professional duties in accordance with the authoritative source, should any information, statements, or requirements conflict with those authoritative sources.

SCHEDULE OF FEES

Standard Hourly Labor Rates	10-01-21	10-01-22	10-01-23	10-01-24
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Designation/Position				
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Project Manager	\$135.00	\$139.05	\$143.22	\$147.52
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Assistant Project Manager	\$110.00	\$113.30	\$116.70	\$120.20
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Sr. ROW Agent	\$105.00	\$108.15	\$111.40	\$114.74
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Right of Way Agent	\$ 90.00	\$ 92.70	\$95.48	\$ 98.35
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Sr. Administrative Assistant	\$ 65.00	\$ 66.95	\$ 68.96	\$ 71.03
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Exhibit B

INSURANCE REQUIREMENTS

**Consultant Service Agreement between City of Fresno (CITY)
And Universal Field Services, Inc. (CONSULTANT)
On-Call Right of Way Project Management Services Consultant**

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 ISO *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 CONSULTANT'S profession.

MINIMUM LIMITS OF INSURANCE

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 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 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

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and 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 to CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or 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/ENDORSEMENTS

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. CONSULTANT shall establish additional insured status for the CITY 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: CG 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 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, 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 CONSULTANT'S insurance and shall not contribute with it. 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: 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 five (5) 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 (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 five (5) 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 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 (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. 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, 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 fifteen (15) 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 policies will be twice the above stated limits.

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 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.

SUBCONTRACTORS - If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY 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 CITY Risk Manager or designee. If no Side Agreement is required, 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

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 designee prior to 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 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.

EXHIBIT C

DISCLOSURE OF CONFLICT OF INTEREST

On-Call Right of Way Project Management Services Consultant

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☒
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	☐	☒
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☒
4	Are you or any of your principals, managers, or professionals, owners or investors in a business, which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	☐	☒
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	☐	☒
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	☐	☒
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.

Leslie Finnigan
Signature

9/27/2021
Date

Leslie Finnigan
(Name)

Universal Field Services
(Company)

1617 West Shaw, Suite C
(Address)

Fresno, CA 93711
(City State Zip)

EXHIBIT D
FEDERAL AND STATE ASSURANCES
Consultant Service Agreement between City of Fresno (CITY)
and Universal Field Services, Inc. (CONSULTANT)
On-Call Right of Way Project Management Services Consultant

1. The CONSULTANT shall comply with and require its Subcontractors to comply with the following:
 - a. 23 USC §112 regarding Highways and the letting of contracts to Architects and Engineers;
 - b. The provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900(a-f), set forth in Chapter of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Give a written notice of their obligations under this clause to any labor organizations with which they have a collective bargaining or any other agreements as appropriate. **INCLUDE THIS ENTIRE CLAUSE IN ANY AND ALL SUBCONTRACTS.**
 - c. **Appendix A** attached hereto and incorporated herein.
2. Cost Principles
 - a. The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1 Part 31.000 et seq., shall be used to determine the allowability of cost for individual items.
 - b. The CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - c. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by the CONSULTANT to the CITY.
3. Subcontracting
 - a. the CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the CITY's Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
 - b. Any subcontract in excess of \$25,000 shall contain ALL the provisions stipulated in this Agreement to be applicable to subcontractors.

- c. Any substitution of subconsultants/subcontractors must be approved in writing by the CITY's Contract Manager.

4. Equipment Purchase

- a. Prior authorization in writing, by the CITY's Contract Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or the Consultant services. The CONSULTANT shall provide a written request which includes an evaluation of the necessity or desirability of incurring such costs, three competitive quotations obtained in the manner prescribed in the CITY's Municipal Code Section 4-101(d) or 4-102 as applicable or a sole source justification as provided in the CITY's Administrative Order No. 3-3.
- b. Any equipment purchased as a result of this Agreement is subject to the following: the CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the CITY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, the CONSULTANT may either keep the equipment and credit the CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established the CITY procedures; and credit the CITY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to the CITY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the CITY. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- c. The above provisions shall be included in all subcontracts in excess of \$25,000.

5. PROHIBITION OF EXPENDING CITY STATE OR FEDERAL FUNDS FOR LOBBYING

This section only applies to contracts where federal funding will exceed \$100,000.

A. The CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or CITY appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the

entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

6. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, the CONSULTANT and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. The CONSULTANT and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The CONSULTANT and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

The CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

APPENDIX A TO EXHIBIT D
Consultant Service Agreement between City of Fresno (CITY)
and Universal Field Services, Inc. (CONSULTANT)
On-Call Right of Way Project Management Services Consultant

(1) The CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this Agreement.

(2) The CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the Agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) The CONSULTANT shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to the CONSULTANT's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the State of California (STATE) or the FHWA as appropriate, and shall set forth what efforts the CONSULTANT has made to obtain the information.

(5) In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the CITY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-agreement or procurement

as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, the CONSULTANT may request STATE enter into such litigation to protect the interests of STATE, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

(7) The CONSULTANT shall execute the following CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

I HEREBY CERTIFY that I am Vice President, Western Region and duly authorized representative of the firm of Universal Field Services whose address is 1617 West Shaw, Suite C, Fresno, CA 93711, and that, except as hereby expressly stated, neither I nor the above firm that I represent have

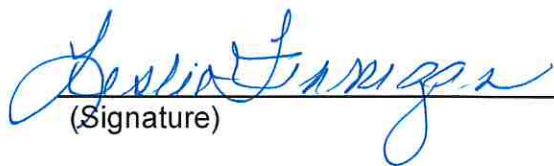
(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement; nor

(b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

9/27/2021
(Date)


(Signature)