

AGREEMENT
Plan Review and Construction Management Services
City of Fresno

THIS AGREEMENT for Plan Review and Construction Management Services ("AGREEMENT") is entered into and is effective the date last written below (the "EFFECTIVE DATE"), by and between the City of Fresno, a municipal corporation ("CITY"), and Tutor Perini/Zachary/Parsons, as a Joint Venture, "CONTRACTOR"). CITY and CONTRACTOR are sometimes hereinafter referred to individually as a "PARTY" and collectively as the "PARTIES."

1. RECITALS.

WHEREAS, CONTRACTOR has been hired by the California High-Speed Rail Authority (the "AUTHORITY") to design and build Construction Package 1 ("CP1") of the High-Speed Rail Project (the "PROJECT"); and

WHEREAS, CP1 is a 29-mile segment of new high-speed rail located between Avenue 17 in Madera County to East American Avenue in Fresno County, and includes a large portion within the City of Fresno; and

WHEREAS, construction of the PROJECT will require the relocation, realignment, and reconstruction of utilities and facilities (including roadways, water and sewer utilities, and other miscellaneous infrastructure) owned and operated by the CITY (hereinafter "CITY INFRASTRUCTURE"); and

WHEREAS, as with any project, plan review and construction inspection related to the PROJECT must be performed to ensure that those portions of the PROJECT affecting CITY INFRASTRUCTURE meet the operation, maintenance, and public health and safety standards of the CITY; and

WHEREAS, Pursuant to its agreement with the AUTHORITY, CONTRACTOR is required to perform certain day-to-day inspection services, in accordance with CITY guidance, and CITY has agreed to perform oversight inspections; and

WHEREAS, CITY customarily charges plan check and inspection fees according to the CITY'S Master Fee Schedule on a per project segment basis; and

WHEREAS, CONTRACTOR believes the CITY must be reimbursed for its actual and reasonable costs associated with providing plan check and construction inspection services related to the PROJECT; and

WHEREAS, notwithstanding the immediately preceding paragraph, CONTRACTOR believes that the Master Fee Schedule should not apply to scope of services herein; and

WHEREAS, CITY has agreed to allow CONTRACTOR to pay a negotiated lump-sum fee upfront for all PROJECT-related plan checks and inspections during the term of this

AGREEMENT, with the understanding that the fee may be adjusted from time to time such that ultimately CONTRACTOR shall pay not less than the CITY's actual and reasonable costs for providing services; and

WHEREAS, CONTACTOR has agreed to renegotiate the lump-sum compensation, should it fail to adequately compensate CITY for the actual and reasonable costs of the services contemplated herein; and

WHEREAS, CITY has agreed to hire one additional full-time staff who will be assigned for the plan review; and

NOW, THEREFORE, inconsideration of the mutual promises hereinafter enumerated, the PARTIES agree as follows:

2. DEFINITIONS. As used in this AGREEMENT, the following terms have the following meanings:

2.1 AUTHORITY.

"AUTHORITY" means the California High-Speed Rail Authority and its authorized representatives.

2.2 CITY.

"CITY" means the City of Fresno, a municipal corporation.

2.3 CITY INFRASTRUCTURE.

"CITY INFRASTRUCTURE" refers to all roadways, sewer and water utilities, and all other miscellaneous infrastructure owned and operated by the CITY.

2.4 CONTRACTOR.

"CONTRACTOR" means the Joint Venture of Tutor Perini/Zachary/Parsons.

2.5 CONSTRUCTION MANAGEMENT SERVICES.

"CONSTRUCTION MANAGEMENT SERVICES" or "CM SERVICES" means the CITY shall make CITY supervisory level inspection staff available to CONTRACTOR, throughout the duration of the PROJECT to troubleshoot construction issues related to CITY INFRASTRUCTURE.

CITY supervisory level inspection staff shall retain the right to audit inspection services performed by CONTRACTOR to confirm CONTRACTOR's day-to-day construction inspections meet the City of Fresno inspection requirements as detailed in the City of Fresno Inspection Checklist for High Speed Rail Project attached hereto as Exhibit A (the "HSR CHECKLIST"). CONTRACTOR shall remain responsible for passing oversight inspections conducted by CITY to ensure that it is meeting the City of Fresno inspection requirements and

documenting such compliance by completing the HSR CHECKLIST for each CONSTRUCTION PACKAGE.

2.6 CONSTRUCTION PACKAGE.

“CONSTRUCTION PACKAGE” or “PACKAGES” refers to a set of plan sheets and specifications for a specifically defined subcomponent of the PROJECT, related to CITY INFRASTRUCTURE, which CONTRACTOR intends to construct as part of the PROJECT. PACKAGES shall be prepared and submitted for review by CONTACTOR.

2.7 DAY-TO-DAY INSPECTION SERVICES.

“DAY-TO-DAY INSPECTION SERVICES” means CONTRACTOR shall provide day-to-day construction inspections, day-to-day quality control, and quality assurance inspections as specified in the HSR CHECKLIST.

CONTRACTOR shall timely complete, and provide to CITY, the HSR CHECKLIST for each CONSTRUCTION PACKAGE.

2.8 PARTY.

“PARTY” refers to the CONTRACTOR or the CITY, as the context may require and “PARTIES” refers to the CONTRACTOR and CITY, collectively.

2.9 PLAN CHECK AND CM SERVICES.

“PLAN CHECK AND CM SERVICES” refers to the collective scope of services to be provided by CITY under this AGREEMENT and individually defined as “PLAN REVIEW SERVICES” and “CONSTRUCTION MANAGEMENT SERVICES.”

2.10 PLAN REVIEW SERVICES.

“PLAN REVIEW SERVICES” means the CITY performs a review of the construction plans and specifications for compliance with CITY Standards and Specifications and operations, maintenance, and public health and safety requirements established by local, state, and federal agencies.

2.11 PROJECT.

“PROJECT” refers to CONSTRUCTION PACKAGE 1 (CP1) of the High-Speed Rail Project. CP1 is a 29-mile segment of new High-Speed Rail located between Avenue 17 in Madera County to East American Avenue in Fresno County and includes a large portion within the City of Fresno.

2.12 SUBMITTAL.

“SUBMITTAL” is defined as an individual transmittal of a CONSTRUCTION

PACKAGE from CONTRACTOR to CITY for the purpose of PLAN REVIEW SERVICES. "SUBMITTAL" shall also refer to any meeting between the PARTIES, called at CONTRACTOR's request, wherein PLAN REVIEW SERVICES are provided by CITY.

3. SCOPE OF CITY SERVICES. CITY shall provide PLAN CHECK AND CM SERVICES for each CONSTRUCTION PACKAGE. CONTRACTOR shall be responsible for DAY-TO-DAY CONSTRUCTION INSPECTIONS for each CONSTRUCTION PACKAGE (as provided in Sections 2.7 and 3.3 of this AGREEMENT), PROJECT STATUS REPORTS (as provided in Section 5.5), inspection of Traffic Control Plan Implementation (as provided in Section 6.4), compliance with Exhibits A and B, and the performance of any tasks enumerated hereunder, and not otherwise assigned to CITY.

3.1 CONSTRUCTION PACKAGES.

CONTRACTOR shall submit each CONSTRUCTION PACKAGE to CITY for CITY to provide PLAN CHECK AND CM SERVICES.

CITY shall provide PLAN CHECK AND CM SERVICES for CITY FACILITIES permitted by CONTRACTOR.

3.2 PLAN CHECK AND CM SERVICES.

PLAN CHECK AND CM SERVICES shall consist of the following:

3.2.1 PLAN REVIEW SERVICES. PLAN REVIEW SERVICES shall be performed by CITY for each CONSTRUCTION PACKAGE.

CONTRACTOR agrees that CITY'S agreement to accept the LUMP SUM COMPENSATION is based upon the expectation that CITY shall provide PLAN REVIEW SERVICES based on an average of two (2) SUBMITTALS for each CONSTRUCTION PACKAGE. SUBMITTALS shall be documented by both PARTIES and CITY'S reasonable and actual costs for PLAN REVIEW shall be evaluated during the quarterly review process specified in Section 5.1 herein.

The PARTIES acknowledge that CONTRACTOR has provided SUBMITTALS for PLAN CHECK AND CM SERVICES prior to the EFFECTIVE DATE of this AGREEMENT. All such SUBMITTALS are covered under this AGREEMENT.

3.2.2 CONSTRUCTION MANAGEMENT SERVICES. CITY shall perform oversight and audit inspections to ensure CONTRACTOR'S compliance with CITY Standards in accordance with Exhibits A and B and make supervisory level inspection staff available to CONTRACTOR, throughout the duration of the PROJECT to troubleshoot construction issues related to CITY INFRASTRUCTURE.

CITY shall retain the right to audit inspection services performed by CONTRACTOR to confirm CONTRACTOR's day-to-day construction inspections meet the CITY Standards.

3.2.2.1 CITY OVERSIGHT AND AUDITS INSPECTIONS. CITY will perform regular audits of the HSR CHECKLISTs for each CONSTRUCTION PACKAGE to confirm that CONTRACTOR'S day-to-day construction inspections meet CITY inspection requirements. CITY may provide audit inspections to confirm that approved CONSTRUCTION PACKAGES: (a) are constructed, installed, and tested in accordance with the approved plans and CITY Standards and Specifications; and (b) comply with the operations, maintenance, and public health and safety requirements established by local, state, and federal agencies. CITY staff will be based in CITY offices and can attend daily job meetings at CONTRACTOR'S office as needed. In the absence of ongoing PROJECT construction, CITY will reassign the inspection staff to other CITY construction management duties.

CITY will provide inspection, testing and programming for specialized equipment on traffic signal, street light and ITS CITY INFRASTRUCTURE, as described in Exhibit A hereto.

3.2.2.2 NOTICE OF COMPLETION. Upon completion of the construction of each approved CONSTRUCTION PACKAGE to the satisfaction of CITY, including the completion of all items on any related CITY punch list, CITY shall issue a Notice of Completion.

A Notice of Completion will not be issued and CITY INFRASTRUCTURE will not be accepted by CITY until all CITY punch list items have been corrected.

3.2.2.3 FAILURE TO CORRECT PUNCH LIST ITEMS. The PARTIES agree that CITY shall have the right to rectify any outstanding punch list items not addressed by CONTRACTOR within twenty (20) calendar days of the issuance of a punch list. Such remedial action shall be paid for by CONTRACTOR, and subject to approval.

3.3 INSPECTION SERVICES BY CONTRACTOR.

3.3.1 DAY-TO-DAY CONSTRUCTION INSPECTION. CONTRACTOR shall provide day-to-day construction inspections, day-to-day quality control, and quality assurance inspections as specified in the HSR CHECKLIST. CONTRACTOR shall timely complete and provide to CITY the HSR CHECKLIST for each CONSTRUCTION PACKAGE.

3.3.2 FAILURE TO MEET DAY-TO-DAY CONSTRUCTION

INSPECTION REQUIREMENTS. In providing day-to-day construction, quality control, and quality assurance inspection services, CONTRACTOR shall adhere to the CITY inspection requirements as defined in the HSR CHECKLIST, provided in Exhibit A hereto and the Special Inspection Conditions set forth in Exhibit B hereto.

In providing oversight inspections, CITY shall issue a correction notice, when applicable, if CONTRACTOR'S inspection deviates from City Standards and the HSR CHECKLIST. CONTRACTOR shall bring inspections back in compliance with City Standards and the HSR CHECKLIST within a reasonable time.

4. TERM. This AGREEMENT shall remain in full force and effect from the EFFECTIVE DATE until June 29, 2019.

If the CONTRACTOR's design-build activities within the City of Fresno related to the PROJECT extend beyond the TERM of this AGREEMENT, the PARTIES shall negotiate additional compensation for any PLAN CHECK AND CM SERVICES to be provided by CITY, via an Amendment to this AGREEMENT.

5. COMPENSATION. CONTRACTOR shall compensate CITY for its actual and reasonable costs associated with providing PLAN CHECK AND CM SERVICES. The value of CITY's actual and reasonable PROJECT costs shall be a function of CITY time expended hereunder and CITY costs.

5.1 LUMP SUM COMPENSATION.

Based upon CONTRACTOR's estimates, the PARTIES have agreed that CONTRACTOR shall pay the CITY One Million Nine Hundred Thousand Dollars (\$1,900,000) (the "LUMP SUM COMPENSATION") for PLAN CHECK AND CM SERVICES.

The LUMP SUM COMPENSATION shall be paid in one payment within Thirty (30) days of the EFFECTIVE DATE of this AGREEMENT.

The PARTIES acknowledge that prior to the EFFECTIVE DATE, CONTRACTOR has paid plan review and inspection fees pursuant to the CITY'S Master Fee Schedule. All such sums paid shall be deducted from the LUMP SUM COMPENSATION due hereunder.

5.2 EVALUATION AND AMENDMENT OF LUMP SUM COMPENSATION.

CITY shall continuously monitor total PROJECT costs in relation to the LUMP SUM COMPENSATION and shall prepare quarterly updates on or about the last business day of March, June, September, and December, detailing actual and reasonable costs incurred in relation to the LUMP SUM COMPENSATION provided herein ("QUARTERLY UPDATES"). Such updates shall be provided to CONTRACTOR.

Within Thirty (30) calendar days of receiving each QUARTERLY UPDATE, CONTRACTOR shall provide CITY with an updated Project Status Report ("STATUS REPORT"). The STATUS REPORT shall include: (1) a complete PROJECT schedule that includes the percent complete of each CONSTRUCTION PACKAGE for both the design and construction phases: and (2) an updated CONSTRUCTION PACKAGE listing. Upon review and acceptance of the STATUS REPORT, the CITY shall determine if additional compensation may be required to compensate CITY for actual and reasonable costs. If the CITY deems that additional compensation, if any, is due, the PARTIES shall, within 90 days, negotiate in good faith a mutually agreeable amendment to this AGREEMENT increasing the LUMP SUM COMPENSATION.

This agreement shall terminate upon the inability of the PARTIES to reach an agreement within 90 days.

Notwithstanding any other provision to the contrary, this Agreement shall terminate upon the full expenditure of the LUMP SUM COMPENSATION.

5.3 SERVICES BEYOND EXPIRATION OF ORIGINAL TERM.

The LUMP SUM COMPENSATION does not compensate CITY for services provided upon the expiration of the TERM.

5.4 SERVICES OUTSIDE THE SCOPE OF THIS AGREEMENT.

The PARTIES agree that for charges which are not expressly covered by the SCOPE OF SERVICES herein ("ADDITIONAL SERVICES"), CITY shall provide CONTRACTOR with a quote for the ADDITIONAL SERVICES prior to commencing such work. CONTRACTOR's approval is required prior to commencing such work.

Before said ADDITIONAL SERVICES are provided, CONTRACTOR shall agree to pay CITY the quoted fees via an Amendment to this AGREEMENT, which amendment shall include the compensation amount owed to CITY, on an actual and reasonable basis. Compensation for ADDITIONAL SERVICES shall be paid in one payment within Thirty (30) days of the execution of an Amendment.

Any change in the TERM or SCOPE OF SERVICES hereunder shall constitute ADDITIONAL SERVICES.

5.5 EXCLUDED SERVICES.

Services excluded from the LUMP SUM COMPENSATION include, but are not limited to the following: Water Service Connection Charges; Wet-Tie Services; Traffic Control Plan Review and Inspection.

5.5.1 Traffic Control Plan Review and Inspection. Traffic Control Plan Review and Inspection services are not included in the Basic Scope of

Services. The CITY requires that a Traffic Control Plan be submitted and approved prior to doing any work within CITY right-of-way. CONTRACTOR is responsible for inspection of Traffic Control Plan Implementation and shall indemnify CITY for liability related thereto.

6. GENERAL TERMS.

6.1 INDEMNIFICATION.

To the furthest extent allowed by law, CONTRACTOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONTRACTOR or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this AGREEMENT. CONTRACTORS obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the sole negligence or willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers, except when such officers, officials, employees, agents or volunteers are under the direct supervision and control of CONTRACTOR.

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

This section shall survive termination or expiration of this AGREEMENT.

6.2 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.

6.3 BINDING.

Subject to Section 6.3 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 PARTY'S respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

6.4 ASSIGNMENT.

This AGREEMENT is personal to CONTRACTOR and there shall be no assignment by CONTRACTOR of its rights or obligations under this AGREEMENT without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONTRACTOR, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

6.5 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.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

6.10 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.

6.11 EXHIBITS.

Each Exhibit and attachment referenced in this AGREEMENT is, by the reference, incorporated into and made a part of this AGREEMENT.

6.12 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.

6.13 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.

6.14 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.

6.15 EXTENT OF AGREEMENT.

Each PARTY acknowledges that they have read and fully understand the contents of this AGREEMENT. This AGREEMENT represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be modified only by written instrument duly authorized and executed by both CITY and CONTRACTOR.

* * * * *

[SIGNATURES ON FOLLOWING PAGE]

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

Addresses:

CITY:
City of Fresno
Attention: Randall Morrison, PE, MCE,
Deputy City Engineer
2600 Fresno Street, 4th Floor
Fresno, CA. 93721-3623
Phone: (559) 621-8703
FAX: (559) 457-1277

CITY OF FRESNO,
a California municipal corporation

By: _____
Bruce Rudd, City Manager

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: _____
Raj Singh Badhesha
Deputy City Attorney

REVIEWED BY:

By: _____
Randall Morrison, PE,
Deputy City Engineer
Department of Public Works

Attachments:

- Exhibit A – City of Fresno Inspection Checklist for High Speed Rail Project
- Exhibit B – Special Inspection Conditions

Addresses:

CONTRACTOR:
TPZP
Attention: Ghassan Ariqat
1404 Fulton Street
Fresno, CA 93721
Phone: (559) 385-7025

TUTOR PERINI, ZACHARY, and
PARSONS, a Joint Venture

By: _____

Name: _____

Title: _____

Exhibit A

City of Fresno Inspection Checklist for High Speed Rail Project

Exhibit B
Special Inspection Conditions

1. CONTRACTOR must provide authorized CITY staff access to all worksites where CITY INFRASTRUCTURE is subject to relocation, realignment, and reconstruction.
2. No work in the public right-of-way shall be initiated by the CONTRACTOR prior to the CITY approving the CONTRACTOR's traffic control plan and issuing a permit.
3. No work on the public water and sewer system may be initiated prior to the CITY approving the CONTRACTOR's plan for providing temporary water and sewer services for those properties that will have service disrupted to accommodate the relocation, realignment, and reconstruction of the new water and sewer facilities.
4. No deviations (materials, horizontal or vertical alignment, workmanship, etc.) from the Approved Plans, Specifications, and CITY Standards may be initiated by the CONTRACTOR without prior written approval and authorization from the CITY.
5. At all times the CITY reserves the right to issue a Notice of Non-Compliance to the CONTRACTOR, if during the course of the CITY's oversight inspections the CITY observes and records workmanship or material defects that compromise the CITY's operations, maintenance, and public health and safety requirements.
6. As per state regulations, only the CITY may remove a public water main from service, and once the water main is isolated and secured, the CITY will release the water main to the CONTRACTOR to complete their required work.
7. The CONTRACTOR shall at all times maintain a current and accurate set of record drawings showing all CITY approved and authorized changes to the approved plans and specifications. The CITY's oversight inspections will include periodic review of the record drawings for completeness and accuracy.
8. The CITY reserves the right to add or modify these conditions at any time during the course of the construction, with proper advanced notice to the CONTRACTOR, to ensure that the CITY's operations, maintenance, and public health and safety requirements are protected.