



**Request for Proposal (RFP)**

**for**

**Fixed-Route Scheduling and Training Services**

**Issued February 3, 2015**

**Proposals Due at FAX by 3:00 p.m. (PST) February 26, 2015**

**Contact:** John Downs, [john.downs@fresno.gov](mailto:john.downs@fresno.gov)

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	(1) The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of California. In the event of litigation between the two parties, proper venue shall be laid in a court of competent jurisdiction in the County of Fresno, State of California. ....	6
	(2) Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City's Maintenance Manager. This decision shall be final and conclusive unless with ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Maintenance Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The	

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decision of the Maintenance Manager shall be binding upon the contractor and the Contractor shall abide by the decision. ....	6
(3) Pending final resolution of a dispute her under, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the City’s decision. ....	6
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The Consultant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:.....	6
(l) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. ....	6
(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 undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. ....	6
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.....	6
The prospective participant also agrees by submitting his or her bid or proposal 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 subrecipients shall certify and disclose accordingly. ....	7
Clean Air.....	7
(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.....	7
(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA. ....	7
Clean Water.....	7
(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. ....	7
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- A – Project Specifications
- B – Proposal Evaluation Method and Criteria
- C - Model Consultant Agreement

**ATTACHMENTS**

- 1. Proposal Form

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## 1.1 Introduction/Purpose

The City of Fresno Department of Transportation (FAX) requests written proposals for Fixed-Route Bus Transit Scheduling Services at our facility located at 2223 G. Street Fresno, CA 93706. Proposals are to include all labor, material, tools, equipment and incidentals to perform the work, as described in this solicitation.

This project is financed in part with Federal funds and requires compliance with applicable laws and regulations as specified in applicable Federal terms, conditions and provisions incorporated herein.

Whether this solicitation is an Invitation for Bids (IFB) or Request for Proposals (RFP), as well as in the resultant contract, we may interchangeably use the terms “bid,” “offer” or “proposal” to mean your response to this solicitation. Also, we may interchangeably use the terms “offeror,” “offeror” or “proposer” meaning you as the responder to this solicitation. In addition, the terms “successful offeror,” “successful offeror,” “successful proposer,” “supplier,” “vendor” and “contractor” have the same meaning as the party to which a contract is awarded.

## 1.2 Non-Mandatory Pre-Bid Conference.

N/A

## 1.3 Background

FAX is a department of the City of Fresno and is governed by the Fresno City Council. FAX is the largest provider of transit services in the region, with 14.3 million annual boardings and an operating budget of approximately \$39 million per year. A highly efficient operation for its size, FAX service consists of 16 fixed routes in the City of Fresno with three major hubs: the downtown transit mall, the Manchester transit station along Blackstone Avenue north of downtown, and a transfer point at the River Park shopping center in north Fresno.

FAX has a fleet of 125 buses, with 85 buses being used in peak service. The Consultant shall perform on-call fixed-route bus transit scheduling services for the duration of the Contract.

## 1.4 Action Dates.

Milestone	Date(s)
Issue RFP	2/03/15
Pre-Bid Conference	None
Deadline for Offeror’s Questions	2/12/15
FAX Response to Questions	2/20/15
Proposal Due Date	2/26/15
Contract Award	4/16/15
Kick-off Meeting	Within 10 days ARO
Provide Bonds and Proof of Insurance	10 days after award

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Commence Performance	TBD
Complete Performance	TBD

The awarded contractor will not commence work until a meeting between representatives of the contractor and FAX is held. The meeting shall be held at FAX's facility at a date and time to be established.

### 1.5 Questions regarding RFP

All questions concerning the RFP may be directed to John Downs, Project Manager.

Questions must reference the appropriate page and section number, and must be submitted by the deadline set forth in Section 1.4 above. FAX will not respond to questions received after the deadline. FAX's responses to offeror's questions will be posted on FAX's website. FAX reserves the right to amend answers prior to the offeror's submission deadline.

Respondents must notify FAX of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the RFP by the deadline for submitting questions and comments. If a respondent fails to notify FAX of these issues, it will submit an offer at its own risk, and if awarded a contract: (1) shall have waived any claim of error or ambiguity in the RFP or resulting contract, (2) shall not contest FAX's interpretation of such provision(s), and (3) shall not be entitled to additional compensation, relief or time by reason of the ambiguity, error or its later correction.

## SECTION II – INSTRUCTION TO OFFERORS

### 2.1 Submittal Deadline

Completed proposals, including any applicable addendums, should be sealed and clearly marked: **REQUEST FOR PROPOSAL FOR FIXED-ROUTE SCHEDULING AND TRAINING SERVICES**, and must be delivered no later than **3:00 p.m. on February 26, 2015** to:

Fresno Area Express  
2223 G. Street  
Fresno CA 93706  
Attn: John Downs

The Offeror's company name and address shall appear in the upper left corner of the package.

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## **2.2 Conditions, Exceptions, Reservations or Understandings**

Proposers are cautioned to limit exceptions, conditions and limitations to the provisions of this RFP, as they may be determined to be so fundamental as to cause rejection of the Proposal for not responding to the requirements of the RFP.

Any and all Deviations must be explicitly, fully and separately stated in the Proposal by completing Form for Proposal Deviation, setting forth at a minimum the specific reasons for each Deviation so that it can be fully considered and, if appropriate, evaluated by the Agency. All Deviations shall be evaluated in accordance with the appropriate evaluation criteria and procedures and may result in the Proposer receiving a less favorable evaluation than without the Deviation.

Form for Proposal Deviation shall be included in the Technical package.

## **2.3 Proposal Response**

Offerors are allowed to submit more than one proposal with different methods of meeting the RFP requirements. When Offeror submits more than one proposal, one proposal shall be marked "Base Proposal" and the others shall be marked "Alternate Proposal 1", "Alternate Proposal 2", etc. Each base proposal and each alternate proposal shall be submitted in accordance with the terms and conditions of the RFP. FAX will not furnish additional packages; Offeror may reproduce the RFP to submit alternate proposals.

Offerors are responsible for making certain their proposals are received by FAX on or before the Proposal Submittal Deadline. The receiving time in FAX (address above) will be the governing time for acceptability of proposals. No oral, telegraphic, electronic, facsimile, or telephone proposals or modifications will be considered.

The attached Proposal Form must be properly executed, with all blank spaces filled in, signatures in longhand, and without line-outs, alteration, or erasure. Each proposal must give the full business address of the Offeror and be signed by him/her with his/her usual signature. Offers by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Offers by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing will also be typed or printed on the form. An offer by a person who affixes to his signature the word "President", "Secretary", "Agent" or other designation, without disclosing his principal, may be held to the bid of the individual signing. When requested by FAX, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.



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Any proposal conditioned in whole or in part on the revision or omission of any requirement or provision in the solicitation or on the inclusion of an escalation clause or any other requirement or provision not contained in the solicitation will be rejected unless this procurement is negotiated.

Each proposal will be received with the understanding that acceptance by FAX of the bid to provide the goods and services described herein shall constitute a contract between the Offeror and FAX which shall bind the Offeror on its part to furnish and deliver at the prices given and in accordance with conditions of said accepted bid and specifications.

A proposal may be withdrawn by written request received from the Offeror prior to the time set for opening of bids/closing of proposals. The Offeror may not withdraw its bid for a period of 90 calendar days after the date set for the opening of bids/closing of proposals. If award is delayed in whole or part beyond that period, such award shall be conditioned on the Offeror's acceptance.

## **2.4 Proposal Content/Format**

Proposals shall be submitted in four separately sealed packages identified below. Each package shall be marked as specified below and shall contain all of the Proposal documents for which the package is required to be marked and shall include no other documents. These same requirements shall apply to any best and final offers (BAFOs) that may be requested.

Proposers shall submit one original (marked clearly as such), six hard copies, and one storage media device or CD, each containing an electronic PDF copy of the Proposal to the Agency. In case of any discrepancies, the original will be considered by the Agency in evaluating the Proposal, and the electronic version is provided for the Agency's administrative convenience only.

The hard-copy Proposals shall be prepared double-sided on 8½ × 11 in. paper in at least 11-point font. The hard copies shall be contained in three-ring binders, the contents of which are identified on the outside. Use of 11 × 17 in. foldout sheets for large tables, charts or diagrams is permissible but should be limited. Elaborate formatting is not necessary. Do not provide promotional or advertising information, unless this information is requested and/or is necessary to support the technical submittal.

## **Proposal Requirements**

1. Letter of Transmittal – Proposer shall summarize their experience, provide information about their company, indicate whether the business has any special classification such as DBE status, and provide contact information in the letter of transmittal.
2. Technical Proposal – Provide information in sufficient detail about the history of the company, the key personnel with resume's, similar projects, and any other relevant data that the firm would like the City to consider.

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3. Acknowledgement of Addenda
  4. Contractor Service and Parts Support Data
  5. Form for Proposal (including price information)
  6. At least three References with contact information
  7. Detailed work plan indication how the proposer will approach satisfying the work requirements including a detailed schedule.
  8. All federal certifications: Lobbying Certification

The Proposer is required to complete and execute the Agency's Pricing Schedule, contained as part of the Proposal documents, and provide same in the Price Proposal. The Contractor shall be liable for payment of all local taxes applicable to the work.

## **Proprietary/Confidential Information Package Requirements**

The Proposer is advised that the Agency is public and as such may be subject to certain state and/or local Public Records Act provisions regarding the release of information concerning this RFP. If a request is received by the Agency for the release of Proposer's propriety/confidential information, subject request will be referred to the Proposer for review and consideration. If Proposer chooses to declare the information proprietary/confidential and withhold it from release, it shall defend and hold harmless the Agency from any legal action arising from such a declaration.

### **2.5 Modification of Proposals**

Any Offeror who wishes to make modifications to a proposal already received by FAX must withdraw its proposal in order to make the modifications. All modifications must be made in ink, properly initialed by Offeror's authorized representative, executed, and submitted in accordance with the terms and conditions of this solicitation. It is the responsibility of the Offeror to ensure that modified proposals are resubmitted before the Submittal Deadline.

Offerors may withdraw their proposals at any time prior to the due date and time by submitting notification of withdrawal signed by the Offeror's authorized agent.

Proposals cannot be changed or modified after the date and time designated for receipt.

### **2.6 Opening of Proposals**

Proposals will not be opened publicly, but a list of the names of companies submitting proposals will be available within a reasonable time after the Submittal Deadline. Proposals (excluding proprietary information) will be made public and may be inspected at the time of award.

### **2.7 Examination of the Request for Proposal**

Offerors should carefully examine the entire RFP, any addenda thereto, and all related materials and data referenced herein or otherwise available to Offeror.

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Offeror shall be presumed to be familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve Offerors from any obligation with respect to this proposal.

## **2.8 Proposal Validity**

Proposals submitted hereunder shall be firm for 90 calendar days from the due date unless otherwise qualified.

## **2.9 Required Proposal Contents.**

The applicable documents, forms and certifications required in an adequate bid for this solicitation are located in Section III. Offerors should submit their offers to include the elements specified in Section III.

## **2.10 Changes to this Solicitation.**

Any interpretation or correction of this solicitation including its descriptions and specifications will only be made by written addenda. Any addenda or bulletins issued during the time of bidding shall be considered in the bid and be made part of the contract. Receipt of such addenda, if any, shall be acknowledged by the Offeror in the space provided on the Proposal Form.

## **2.11 Proof of Responsibility**

An offeror, if requested, must be prepared to present evidence of experience, ability, service facilities and financial standing necessary to satisfactorily meet the requirements set forth or implied in the IFB/RFP

## **2.12 Failure to Respond.**

FAX may remove from mailing lists for future IFBs/RFPs, for an undetermined period of time, the name of any Offeror for failure to accept a contract, failure to respond to two (2) consecutive IFBs/RFPs and/or unsatisfactory performance. Please note that a "No Bid" is considered a response.

## **2.13 Protest Procedures.**

All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and title. Protests shall specify in detail the grounds of the protest and the facts supporting the protest.

Copies of the Agency's protest procedures and the protest provisions of FTA Circular 4220.1F or its successor may be obtained from Purchasing Manager. Proposals will be opened and a Notice of Award will be issued by the Agency in accordance with the Agency's protest procedures and the protest provisions of FTA Circular 4220.1F or its successor.

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- a. Pre-Proposal Protests. Pre-Proposal protests are protests based upon the content of the solicitation documents. Three copies of Pre-Proposal protests must be received by the Agency's office no later than eight (8) calendar days prior to the Due Date. Protests will be considered and either denied or sustained in part or in whole, in writing, in a manner that provides verification of receipt, prior to the Due Date for Proposals. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the Due Date for Proposals in a manner than provides verification of receipt prior to the Due Date for Proposals. If the protest is sustained, the Proposal Due Date may be postponed and an addendum issued to the solicitation documents or, at the sole discretion of the Agency, the solicitation may be canceled. If the protest is denied, Proposals will be received and opened on the scheduled date unless a protest is filed with FTA. See "FTA Review," below.
  - b. Protests on the Recommended Award. All proposers will be notified of the recommended award. This notice will be transmitted to each proposer at the address contained in its Proposal form in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the recommended award on any ground not specified in "Pre-Proposal Protests," above. Three (3) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the Agency at the appropriate address in "Address," above, no later than eight (8) calendar days after the date such notification is received. Prior to the issuing of the Notice of Award, a written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the proposer recommended for award in a manner that provides verification of receipt.
  - c. FTA Review. After such administrative remedies have been exhausted, an interested party may file a protest with the Federal Transit Administration of the U.S. Department of Transportation pursuant to the procedures provided in the FTA C 4220.1F or its successor. FTA review is limited to the alleged failure of the Agency to have written protest procedures, the alleged failure of the Agency to follow those procedures, the alleged failure of the Agency to review a protest or the alleged violation of federal law or regulation.

#### **2.14 Pre-Contractual Expenses.**

Expenses incurred by the Offeror to prepare a proposal, submit it, conduct negotiations and other expenses incurred in proposal preparation are the Offeror's liability and shall not be included as part of the proposal.

#### **2.15 Permits and Inspection Costs.**

The Contractor shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each

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such public agency relating to construction operations under the jurisdiction of such agency. FAX shall reimburse the Contractor for actual cost of applicable permits based on Contractor submission of a proper invoice to which shall be attached copies of the actual paid receipts for permit expenses.

**2.16 Post Proposal Interview.**

Offerors may be invited to attend on-site interview with FAX personnel to review questions concerning their proposal. At least five (5) working days notice will be given.

**2.17 Additional Information.**

If during the evaluation process, FAX is unable to determine an offeror's ability to perform, FAX has the option of requesting any additional information which FAX deems necessary to determine the offeror's ability. The offeror will be notified and permitted five (5) working days to comply with any such request.

**2.18 Financial Capability.**

Financial stability is required for consideration as a responsible offeror. Offeror shall submit information indicative of its ability to perform by providing credit and client references as indicated in Section 2.8.

**2.19 Reservation of Rights.**

FAX reserves the following rights if using them will be more advantageous to FAX:

- a. Accept or reject any and all bids, or any item or part thereof.
- b. Waive any informalities or irregularities in bids.
- c. Withdraw this IFB/RFP at any time without prior notice.
- d. Not award a contract to any offeror responding to this IFB/RFP.

**2.20 Taxes.**

FAX is exempt from payment of Federal Excise and Transportation Taxes. Sales tax is not applicable to services.

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## SECTION III – REQUIREMENTS

### 3.1 General Description/Specifications.

This procurement is for Planning Services at FAX's facility located at 2223 G. Street Fresno, CA 93706. Proposals are to include all labor, materials, tools, equipment and incidentals to satisfy the work requirements, in accordance with Appendix A-Specifications, attached.

### 3.2 Delivery.

Time is of the essence for this project. The Contractor shall be ready to begin services after award of contract or notice to proceed. The Contractor shall give FAX not less than 48 hours advance notice of the start of any work. If FAX requests any construction schedules, the Contractor shall provide them within five (5) calendar days after the request is made. Failure to complete assigned project with the time allowed may result in the cancellation of the purchase order. Offeror shall indicate on Proposal Form (Attachment 1) anticipated commencement days after award and number of days estimated for completion of project.

### 3.3 Disadvantaged Business Enterprise (DBE) Requirements.

No DBE goal is established for this procurement.

### 3.4 Subcontracts.

The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials, which will become an integral part of the construction, is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

### 3.5 Workers' Compensation.

Section 3700 of the California Labor Code requires the securing of compensation by all non-state employers. By submission of its Bid, the Offeror attests to understanding the Code requirement and shall comply with it.

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### **3.6 Hold Harmless and Indemnity.**

Contractor shall indemnify, defend and hold harmless FAX, its officers, directors, employees and agents from and against any and all claims (including Attorney's fees and reasonable expenses for litigation or settlement) for any loss, or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct of Contractor, its officers, directors, employees, agents, subcontractors or suppliers, in connection with or arising out of the performance of this Agreement.

### **3.7 Additional Requirements for Contract Completion.**

The following shall be provided by the Contractor prior to contract completion.

- a. Certified Payrolls, Final Labor Summary and Final Certificate. In accordance with the provision in Section 3.7 entitled "Prevailing Wages," the Contractor shall submit payroll copies, a final labor summary and final certificate.
- b. Warranties. In accordance with the provision in Section 3.19 entitled "Warranty and Guaranty Requirements," the Contractor shall provide FAX copies of all warranties.

### **3.8 Progress Payments.**

Progress payments are authorized on a monthly basis. The Contractor may submit one invoice at the end of each calendar month during the period of performance for an amount equal to work completed to date. The monthly amount will be paid net 10<sup>th</sup> of the following month. Invoices should be submitted to the attention of Accounts Payable, City of Fresno, Department of Transportation, 2223 G. Street, Fresno, CA 93706.

### **3.9 Federal, State and Local Laws.**

Contractor warrants that in the performance of this Agreement it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated there under. If this contract is funded with federal funds, the contractor shall also comply with applicable Federal Transit Administration (FTA) directives. Since laws, regulations, directives, etc. may be modified from time-to-time, the contractor shall be responsible for compliance as modifications are implemented. The Contractor's failure to comply shall constitute a material breach of this contract.

### **3.10 ADA Requirements.**

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

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**3.11 Forms, Certifications and Information to be Submitted with Proposal.**

The below forms, certifications and information requirements are to be included in the Offeror's proposal. Unless otherwise stated, they should be completed, signed and returned in the number of copies specified.

- a. Proposal Form. See **Attachment 1**. Provide original and one copy.

**3.12 Post-Award Submission Requirements.**

Failure to provide within ten (10) calendar days after award of contract the following completed and signed forms and certificates will result in cancellation of award:

- a. Certificate of Insurance as explained in the provision entitled "Insurance" in Section 3.7.



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## SECTION IV - GENERAL PROVISIONS

The following provisions apply to the solicitation to which this section is attached and to any contract that results from the solicitation:

### 4.1 City of Fresno Transit Designee.

The Director of FAX, or designee, shall have the authority to act for and exercise any of the rights of FAX as set forth in this Agreement, subsequent to and in accordance with the authority granted by FAX's City Council.

### 4.2 FAX Project Manager.

The FAX Project Manager is John Downs. His phone number is (559-621-1502).

### 4.3 Interest of Members of Congress.

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.

### 4.4 Changes.

By written notice, FAX may from time to time order work suspension or make any change in the general scope of this Agreement including, but not limited to changes, as applicable, in the drawings, specifications, delivery schedules or any other particular of the description, statement of work or provisions of this Agreement. If any such change causes an increase or decrease in the cost or time required for performance of any part of the work under this Agreement, the Contractor shall promptly notify FAX thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made and the agreement modified accordingly. However, nothing in this clause shall excuse the Contractor from proceeding immediately with the agreement as changed. No claim by the Contractor for equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

### 4.5 Model Agreement

The proposer agrees to the terms contained in the Fresno model agreement, **APPENDIX C**, attached hereto including all exhibits thereto. Any exceptions to the terms should be clearly included in the proposal; however, said exception may be cause for a proposal to be excluded from consideration.

### 4.6 Not To Exceed Amount

The Contractor exceeds the Not To Exceed amount at his or her own risk and expense.

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## APPENDIX A

### PROJECT SPECIFICATIONS

This following describes the nature of the work being requested.

#### Route Building:

- Create or amend new or existing bus routes, as required, by mapping the path of the route on a map that is accurate to the geography of the area, will provide correct distances between points, and is compatible with the current GPS/AVL system. If a new route, name the route and determine directions. Once the route is built, it will be necessary to determine distances between all points.
- Create bus stops along the route at intervals determined by the department. This consists of creating both short names and long names for the stop, assigning a stop number, determining which stops are to be designated as time points to allow for bus separation and route flow, determining the geo-code location of the stop with latitude and longitude, and determining if the stop is a relief point.
- Create patterns on the map, by direction, as needed for multiple starting points, ending points or route deviation.

#### Trip Building:

- Build a timetable for the route using the hours of operation and frequency/headway required by the department. The timetable should provide for a smooth transition to full service along the route at the beginning of the day, and a smooth transition from full service to reduced service, and finally end service at the end of the day. Recovery time should be built at times and locations determined by the department.
- Determine travel time between all points. The distance and travel time between points are necessary for trip planning software.

#### Blocking:

- It will be necessary to create blocks of work from all the trips on a line.
- Deadheads will need to be created from the Garage to a starting location, and an ending location to the Garage. Deadhead travel time, deadhead distances and pull in/pull out instructions will need to be created.
- All blocks will need to be garaged.

#### Runcutting:

- It will be necessary to cut all blocks of work into runs that conform to the department requirements, driver MOU requirements, and DMV requirements.
- The runs should be rostered, and available on a report (a run guide) that lists all information required by the department (run number, block, start time, start location, end location, end time, platform time, work time, overtime, pay time, days off, & holiday work). This report will also be used by the drivers for bidding work.

#### Reports:

- Provide an FX data integrity report to demonstrate that the data to be imported is free of any conflicts which may corrupt the merge to Transit Master

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- In addition to the run guide, provide reports for line headway by direction, a report for time and miles by line and time and miles by block and block paddles.

#### Computer data:

- Provide the necessary data files to update the department route manager/GPS/AVL systems and trip planning software (both Google Transit and the departments).
- The vendor will provide a stored procedure to extract data or SQL script.
- Send data back in a Trapeze Blockbuster and FX formats.
- The FAX Information Technology (IT) department will discuss extracting and inputting data into Trapeze FX and Blockbuster once IT determines how the process works.
- All completed work must be forwarded to the department no later than 30 days from the date of the effective date of the sign up period.

#### Date Flow:

- Vendor completes signup and send file to FAX to be uploaded.
- Vendor to Create reports.
  - User Reports as specified by FAX.
  - System Check Reports (can be one of the user reports).
- Load new sign up into FAX's FX/Blockbuster application.
- Run FX/Blockbuster check report(s).
- Compare the two check reports for consistency.
  - Can use run cut or block paddle report, open for discussion.
- Run File Merge in the FX/Blockbuster application (Data Merge Wizard).
  - Check for merge errors.
    - If errors, contact vendor for corrections then re-upload signup file.
- Load Trapeze ITS Master Route Manage for Geo Coding.
- Geo Code Stops Distances.
  - Geo Code new stops.
  - Geo Code moved/deleted stops.
- Load Geo Coded data back to Route Manager Trapeze ITS.
- Finalize the signup in FX.
- Import signup file into TMPlanner.

#### Items of Concern:

- Getting the initial FAX schedule data to the Scheduler.
- How will new stop(s) information be passed to the Scheduler.
- Loading the final signup data back into FAX's FX/Blockbuster application.
- Validating the loaded data.

#### Scenarios:

- There may be special requests for scenarios that will be outside of the regularly scheduled sign up periods.

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FAX Schedule Review:

- Perform a full schedule review to assess FAX's current scheduling practices, procedures and functionality.
- Review schedule statistics and evaluate current performance.
- Review the current collective bargaining agreement with FAX operators.
- Develop recommendations for improving and updating the scheduling process.

FAX Scheduler Training:

- Assist FAX in screening prospective candidates for training as a FAX fixed-route scheduler.
- Train the selected candidate(s) in the use of Trapeze scheduling software.
- Scheduler training to include: route building; trip building; blocking; run cutting and rostering.

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## APPENDIX B

### PROPOSAL EVALUATION METHOD AND CRITERIA

#### EVALUATION METHOD

An evaluation committee consisting of FAX staff will review submissions based on the criteria outlined below. FAX plans to review submissions and may call references and conduct interviews with selected submitters it determines can best meet the project requirements.

#### EVALUATION CRITERIA

The selection of the successful Offeror will be based on the following criteria in relative order of importance:

##### 1. Technical Qualifications and Experience of Firm

- Experience in performing work similar in nature and/or related to the work described in Requirements, Section III of this Request for Proposal; experience working with transit agencies, strength and stability of the firm; appropriateness of personnel to their assigned work tasks; logic of project organization; adequacy of labor commitment.

##### 2. Record of Past Performance

- Proven track record of completed work, specifically related to transit operations scheduling and planning.
- Work experience with regulatory agencies and in regulatory compliance on transit, transportation and wage orders when scheduling.
- Satisfaction of key references.

##### 3. Qualifications and Experience of Key Personnel

- Qualifications and previous experience of personnel; key personnel's level of involvement in performing related work cited in "*Key Personnel*" Section 2.3c of this RFP) and ability to meet FAX's needs in terms of performance and scheduling.

##### 4. Cost

- Competitive and reasonable

**ATTACHMENT 1**  
**PROPOSAL FORM**

PROPSEER'S NAME: \_\_\_\_\_  
(Submit with Bid Proposal)

The undersigned hereby shall perform all work for which a contract may be awarded and to furnish any and all labor, services, material, tools, equipment, supplies, transportation, utilities, and all other items and facilities necessary therefore as required in Fresno Area Express (FAX) **Request for Proposal (RFP) for Fixed-Route Scheduling and Training Services**, and to do everything required therein; and further, if this offer is accepted, will contract in the form and manner stipulated to perform all the work in strict conformity therewith within the time limits set forth therein, and will accept as full payment therefore, the below total price which is broken down by the following general descriptions of work category:

Total Estimated Hours: 1200

Item No.	Title of Proposed Staff	Proposed Hours	Rate	Cost
1				
2				
3				
4				
5				
6				
		<b>TOTAL COST</b>		

Work may commence \_\_\_\_\_ days after award and be completed in \_\_\_\_\_ days.

Offeror hereby certifies that it (check one):  IS  IS NOT an eligible Disadvantaged Business Enterprise (DBE) as defined in provision 28 of the IFB/RFP. If "IS" is checked, attach copy of document that certifies Offeror's status as a DBE.

Offeror hereby certifies that it (*check one*):  IS  IS NOT a Small Business as defined by U.S. Department of Transportation's Small Business definition located at:  
<http://osdbu.dot.gov/about/customers.cfm>

I hereby certify the above information is true and correct to the best of my knowledge and belief.

Signature \_\_\_\_\_ Title \_\_\_\_\_

Name (Print/Type) \_\_\_\_\_ Date \_\_\_\_\_

Acknowledgement of Addenda if any: Addendum Number      Date Received

(If none received, write "NONE")

_____	_____	_____
_____	_____	_____
_____	_____	_____

## APPENDIX C

### AGREEMENT CITY OF FRESNO, CALIFORNIA CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the Day [e.g. '1st'], day of , [Year], by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and [Consultant Name], [Legal Identity] (hereinafter referred to as "CONSULTANT").

CITY desires to obtain professional services and CONSULTANT is capable, legally qualified and willing to furnish said services.

#### **THE PARTIES THEREFORE AGREE** as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the Scope of 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 [Completion Date], subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a professional and expeditious manner.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed [Fee Amount] payable on such terms and in such amounts as set forth in the Schedule of Fees in **EXHIBIT A**. Such fees include all expenses incurred by CONSULTANT in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be in compliance with all Federal Transit Administration ("FTA") procurement guidelines, and be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

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4. Termination, Remedies and Force Majeure.

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

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

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

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

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

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify 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) CONSULTANT agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at CITY'S option, be joined and consolidated with any other dispute or disputes arising from or relating to the services provided hereunder so that all disputes arising from or relating to the services provided hereunder may be resolved in a single proceeding. CONSULTANT hereby specifically waives any objection it



may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

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

(i) FTA Protest Notification: CONSULTANT is hereby notified that this contract is funded in whole or in part by the Federal Department of Transportation, the Federal Transit Administration (FTA) may entertain a protest that alleges that the CITY failed to have or follow written protest procedures. CONSULTANT must file a protest with the FTA not later than five (5) days after the CITY renders a final decision or five (5) days after the CONSULTANT knows or has reason to know that the CITY has failed to render a final decision. Protests to the FTA must be filed in accordance with FTA Circular 4220.1F (as periodically updated). If a protest has been filed with the FTA, the CITY will not make an award of contract unless the CITY determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will otherwise cause undue harm to the CITY or the Federal Government.

#### 5. Confidential Information.

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

- i. Permission granted to CONSULTANT to disclose information on one occasion shall not authorize CONSULTANT to further disclose such information or any other information or disseminate the same on any other occasion.
- ii. CONSULTANT shall not comment publicly to the press or any other media regarding the Agreement or CITY'S actions on the same, except to CITY'S personnel or CONSULTANT'S personnel involved in the performance of this Agreement at public hearings or in response to questions from a Legislative committee.
- iii. 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 CITY and receipt of CITY'S written permission.

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

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

6. Licenses. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its employees and subcontractors, if any, are skilled and properly licensed by the State of California to perform in accordance with the standards necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONSULTANT 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. CONSULTANT's 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 CONSULTANT.

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, 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 CITY'S Risk Manager or his/her designee at any time and in his/her 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 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, 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 CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, 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 CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for 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 CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, lawful or unlawful, contingent or otherwise, direct or indirect, to any

party to solicit or procure this Agreement or any rights/benefits hereunder. CITY shall have the right, in its discretion, to deduct from any payment to CONSULTANT under this Agreement, or otherwise recover the full amount of, any rebate, kickback or other consideration paid by CONSULTANT in violation of any representation or warranty under this section.

(e) Neither CONSULTANT, nor any firm affiliated with CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services provided hereunder, 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 Agreement with the exception of any subcontractor whose services are limited to providing surveying or materials testing information. 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 Agreement 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) CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this Agreement or any ensuing CITY project or agreement. CONSULTANT shall also disclose any current clients who may have a financial interest in the outcome of this Agreement or any ensuing CITY project or agreement, which will follow.

(g) 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 CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

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

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

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

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

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

11. General Terms, Federal and State Assurances and Requirements.

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

(b) Records of CONSULTANT'S expenses pertaining to the services provided under this Agreement shall be kept on a generally recognized accounting basis. 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. 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 3 years, or longer if required by law, from the date of final payment under the Agreement. CITY, the State, the State Auditor, FTA or any duly authorized representative of the federal government shall have access to any books, records, papers, accounting records and other documents of CONSULTANT and its subcontractors that are pertinent to the Agreement for audit, examinations, excerpts, and transcriptions. Copies thereof shall be furnished by CONSULTANT, if requested.

If any litigation, claim, negotiations, audit or other action is commenced before the expiration of the 3-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 CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this section 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 CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

(d) CONSULTANT'S services pursuant to this Agreement shall be provided under the supervision of [Consultant's Supervisor Name], and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

(e) CITY will carry out any applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, CONSULTANT agrees to comply with and give precedence to all applicable federal and state assurances and requirements, if any, identified in **Exhibit D along with any attachments it may have** and require that each subcontract include the same assurances by and requirements of each of its subcontractors.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 12.

### 13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and

benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

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

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

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding,

however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

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

29. RFQ or RFP Document. Any Request for Qualifications, Request for Proposal, or Request for Qualifications and Proposal, and documents issued therewith (collectively referred to herein as "RFQ") by CITY that resulted in selection of 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.

///



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

CITY OF FRESNO,  
a California municipal corporation

[Consultant Name],  
[Legal Identity]

By: \_\_\_\_\_  
[Name],  
[Title]  
Fresno Area Express/  
Transportation Department

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
(if corporation or LLC, Board  
Chair, Pres. or Vice Pres.)

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
(if corporation or LLC, CFO,  
Treasurer, Secretary or Assistant  
Secretary)

By: \_\_\_\_\_  
Deputy

No signature of City Attorney required.  
Standard Document "FAX-S +100K  
CONSULT FED" has been used without  
modification, as certified by the  
undersigned.

Any Applicable Professional License:  
Number: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date of Issuance: \_\_\_\_\_

By: \_\_\_\_\_  
[City Certifier Name] Date  
[City Certifier Title]  
Fresno Area Express/  
Transportation Department

REVIEWED BY:

CONSULTANT:  
[Consultant Name]  
Attention: [Name],  
[Title]  
[Street Address]  
[City, State Zip]  
Phone: [area code and #]  
FAX: [area code and #]

\_\_\_\_\_  
[Name], [Title]  
Fresno Area Express/ Transportation  
Department

Addresses:  
CITY:  
City of Fresno  
Attention: [Name],  
[Title]  
[Street Address]  
Fresno, CA [Zip]  
Phone: (559) [#]  
FAX: (559) [#]

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form
4. Exhibit D - Federal Requirements

Exhibit A

**SCOPE OF SERVICES**  
**Consultant Service Agreement between City of Fresno (“City”)**  
**and [Consultant Name] (“Consultant”)**

**Fixed-Route Scheduling and Training Services**

The City of Fresno Department of Transportation (FAX) requests written proposals for Fixed-Route Bus Transit Scheduling Services at our facility located at 2223 G. Street Fresno, CA 93706. Proposals are to include all labor, material, tools, equipment and incidentals to perform the work, as described in this solicitation.

Exhibit B

**INSURANCE REQUIREMENTS**  
**Consultant Service Agreement between City of Fresno ("CITY")**  
**and [Consultant Name] ("Consultant")**

**Fixed-Route Scheduling and Training Services**

**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). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
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. Architect's and engineer's coverage is to be endorsed to include contractual liability.

**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.

OR\*

**PERSONAL AUTOMOBILE LIABILITY** insurance with limits of liability not less than:

- (i) \$100,000 per person;
- (ii) \$300,000 per accident for bodily injury; and,
- (iii) \$50,000 per accident for property damage.

3. **WORKER'S 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 on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

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

## **OTHER INSURANCE PROVISIONS/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 and for all ongoing and completed operations by use of 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 insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
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 related 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 after 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.

#### **VERIFICATION OF COVERAGE**

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. 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**

**Fixed-Route Scheduling and Training Services**

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
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 Agreement?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Date  
 \_\_\_\_\_  
 (name)  
 \_\_\_\_\_  
 (company)  
 \_\_\_\_\_  
 (address)  
 \_\_\_\_\_  
 (city state zip)

Additional page(s) attached.

## Exhibit D

### FEDERAL REQUIREMENTS Consultant Service Agreement between City of Fresno And [Consultant Name]

This contract is subject to a financial assistance contract between the City of Fresno (CITY) and the Federal Transit Administration (FTA), including American Recovery and Reinvestment Act (ARRA) funding, which requires that this contract contain the following clauses:

#### **No Government Obligations to Third Parties**

The CITY and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the CITY, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **Program Fraud and False or Fraudulent Statements or Related Acts**

(1) The CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies, "49 CFR Part 31, apply to its actions pertaining to the services provided under this Agreement. Upon execution of the underlying contract, the CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate.

(2) The CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the CONSULTANT, to the extent the Federal Government deems appropriate.

(3) The CONSULTANT agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **Access to Records and Reports**

(1) Where the CITY is a local government and is the FTA Recipient in accordance with 49 CFR 18.36(i), the CONSULTANT agrees to provide the CITY, the FTA Administrator, the Comptroller



General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C.5307, 5309 or 5311.

(2) Where the CITY is an FTA Recipient, CONSULTANT agrees to provide the CITY, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the CONSULTANT's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

(3) Where the CITY enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, CONSULTANT agrees to provide the CITY, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the CONSULTANT which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(4) Where the CITY, which is the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other competitive bidding, the CONSULTANT shall make available records related to the contract to the CITY, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(5) The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(6) The CONSULTANT agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case CONSULTANT agrees to maintain same until the CITY, the FTA Administrator, the Comptroller General, or any of their duly authorized representative, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

(7) FTA does not require the inclusion of these requirements in subcontracts.

### **Federal Changes**

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between The CITY and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONSULTANT's failure to so comply shall constitute a material breach of this contract.

### **Termination**

**Termination for Convenience:** The CITY, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination

Termination for Default: If the CONSULTANT fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the CONSULTANT fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the CONSULTANT a Notice of Termination specifying the nature of the default. The CONSULTANT will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the CONSULTANT was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CITY.

The CITY in its sole discretion may, in the case of a termination for breach or default, allow the Consultant thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Consultant fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Consultant of written notice from City setting forth the nature of said breach or default, City shall have the right to terminate the Contract without further obligation to Consultant. Any such termination for default shall not in any way operate to preclude City from also pursuing all available remedies against Consultant and its sureties for said breach or default.

### **Civil Rights**

(1) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 20000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, the CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract.

(a) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulation, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of performing under this Agreement. The CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, 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. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, the CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "regulations to Implement the Equal employment Provisions of the Americans with Disabilities Act, "29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

(3) The CONSULTANT also agrees to include these requirements in each subcontract financed whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **Disadvantaged Business Enterprise (DBE)**

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **1.5%**. A separate contract goal

Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City deems appropriate. Each subcontract the Consultant signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The CONSULTANT is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the Consultant's receipt of payment for that work from City. In addition, the Consultant may not hold retainage from its subcontractors.

The CONSULTANT must promptly notify City whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The CONSULTANT may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of CITY.

### **Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as most recently updated, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any City of Fresno request, which would cause the CITY to be in violation of the FTA terms and conditions.

Flow Down – The incorporation of FTA terms has unlimited flow down.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency (31 U.S.C. Chapter 61).

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Resolution of Disputes, Breaches, or other Litigation**

(1) The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of California. In the event of litigation between the two parties, proper venue shall be laid in a court of competent jurisdiction in the County of Fresno, State of California.

(2) Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City's Maintenance Manager. This decision shall be final and conclusive unless with ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Maintenance Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Maintenance Manager shall be binding upon the contractor and the Contractor shall abide by the decision.

(3) Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the City's decision.

**Lobbying**

The Consultant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

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.

The prospective participant also agrees by submitting his or her bid or proposal 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 subrecipients shall certify and disclose accordingly.

### **Clean Air**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **Clean Water**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **Energy Conservation**

The CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Flow Down – The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and sub-recipients and their sub-agreements at every tier.

### **FTA Protest Notification**

Bidders are hereby notified that, if this contract is funded in whole or in part by the Federal Department of Transportation, the Federal Transit Administration (FTA) may entertain a protest that alleges that Fresno Area Express/ Transportation Department failed to have or follow written protest procedures. Bidders must file a protest with the FTA not later than five (5) days after Fresno Area Express/ Transportation Department renders a final decision or five (5) days after the Bidder knows or has reason to know that Fresno Area Express/ Transportation Department has failed to render a final decision. Protests to the FTA must be filed in accordance with FTA Circular 4220.1F (as periodically updated). If a protest has been filed with the FTA, Fresno Area Express/ Transportation Department will not make an award of contract unless Fresno Area Express/ Transportation Department determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will

otherwise cause undue harm to Fresno Area Express/ Transportation Department or the Federal Government.

### **THIRD PARTY CONTRACTING CAPACITY**

Because bids and offers can at times be ambiguous, in its solicitation documents, City reserves the right to request additional information before making an award. City also reserves the right to seek clarification from any bidder or offer or about any statement in its bid or proposal that City finds ambiguous.

### **ADDITIONAL FEDERAL REQUIREMENTS RELATED TO THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

#### **DUNS Registration for Contractors and Vendors**

Contractors and Vendors must have a DUNS (Data Universal Numbering System) number, which can be searched for and/or registered for at: <http://fedgov.dnb.com/webform>. Contractors and direct vendors will be required to provide their DUNS number to Fresno Area Express/ Transportation Department (“FAX”).

#### **Reporting – Monthly Jobs Statistics**

All first-tier contractors and vendors will be expected to provide job creation/retention information to FAX on a monthly basis. This will include the number of direct, on-job FTE (fulltime equivalent) employees, hours, and payroll. In the case of a first-tier contractor that utilizes subcontractors or vendors to complete all or a portion of the work funded through ARRA, it will be the contractor’s responsibility to collect jobs data from said subcontractors / vendors and report that data to FAX as well. Reporting templates and deadlines will be provided to contractors/vendors prior to the first reporting deadline.

#### **Other FTA (Federal) Requirements**

Includes, but is not limited to, 49 U.S.C. Chapter 53, e.g., clauses noted in other sections of this contract like, ADA; Civil Rights; Waste, Fraud, & Abuse; Whistleblower Rights Notice, etc. The ARRA “Whistleblower” poster, which **must** be posted at your worksite, can be found at: [http://www.fta.dot.gov/documents/ARRA\\_09-06766\\_OIG\\_Whistleblower\\_Poster\\_JI-3.pdf](http://www.fta.dot.gov/documents/ARRA_09-06766_OIG_Whistleblower_Poster_JI-3.pdf).

#### **Additional Information**

The Federal Recovery website ([www.recovery.gov](http://www.recovery.gov)) provides a great deal of information about the Recovery Act, including links to ARRA legislation, news, reports, and frequently asked questions (FAQs). If you have a question specific to this Agreement, please contact your FAX project manager to discuss.