

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

This Agreement is made and entered into effective on \_\_\_\_\_, by and between the CITY OF FRESNO, a California municipal corporation (City), and MOORE TWINING ASSOCIATES, INC., a California corporation (Consultant).

**RECITALS**

WHEREAS, the City desires to obtain professional on-call Independent Assurance Consulting services for the Public Works Capital Improvement Program (Program); and

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

WHEREAS, the City has conducted a qualification-based selection process to obtain multiple professional laboratory/engineering firms to be contracted on an on-call basis for services, as defined by this Agreement, that are to be awarded Task Order work on a competitive basis per the selection criteria defined herein and solicited to the contracted Consultants; and

WHEREAS, the Consultant acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for the City by its Public Works Director (Director) or designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. The Consultant shall perform to the satisfaction of the City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.
2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect for Five years, subject to any earlier termination in accordance with this Agreement. The City, in its discretion, may extend the Agreement for up to five additional one-year terms. The Contract Administrator shall have the authority to execute an extension of this Agreement. The services of the Consultant as described in **Exhibit A** are to commence upon the City's issuance of a written "Notice to Proceed." A separate Notice to Proceed will be issued for each of the awarded Task Orders, following the Consultants successful submission of a Proposal, which shall be awarded based on the competitive criteria defined herein. City may, at its discretion, issue concurrent Notices to Proceed, allowing Consultant to perform concurrent Task Orders. By entry into this Agreement and

upon City's issuance of a written "Notice to Proceed," City contracts for the services in the specific Task Order. Consultant shall not perform any other Task Order work of the Agreement, and this Agreement shall not be a contract for any other Task Order, until further performance is authorized by City's issuance of a written "Notice to Proceed." It shall, however, remain Consultant's offer to perform all services described herein. In the event Consultant performs services without City's prior written authorization, Consultant will not be entitled to compensation for such services. Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within the agreed upon duration for each individual Task Order from such authorization to proceed.

3. Compensation.

- (a) The Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's approved Cost Proposal as described in **Exhibit A, Schedule of Fees**. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement. The Consultant will be reimbursed within thirty days upon receipt by the City's Contract Administrator of itemized invoices in duplicate.
- (b) In addition, the Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal of the authorized Task Order.
- (c) Specific projects will be awarded to the Consultant through issuance of Task Orders.
- (d) After a project to be performed under this Agreement is identified by the City, the City will prepare a Miniature Request for Proposal (Mini-RFP) for the specific Task Order. A Mini-RFP will identify the scope of services, expected results, project deliverables and will designate a City Coordinator. The Mini-RFP will be solicited to the contracted Consultant's for review. Evaluation criteria will be included in each solicitation. The Mini-RFP will contain evaluation criteria that will identify the most qualified firm for each task.
  - The evaluation criteria may include:
    - Availability of Personnel,
    - Staff Capabilities,
    - Completion Schedule,
    - Experience of Consultant or Sub-Consultant
    - Specialized Expertise
    - Past Performance
- (e) The Consultant's shall return a Proposal, excluding cost, and a draft Task Order, per **Exhibit E** attached hereto, within ten calendar days.
- (f) Proposals will be evaluated and ranked based on the defined criteria within

the Mini-RFP.

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

(City of Fresno / Johnan Ruiz)  
(1721 Van Ness Avenue, Fresno, CA 93710)
- (n) The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- (o) The total amount payable by the City for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.

- (p) If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- (q) Task Orders may not be used to amend the language (or the terms) of this Agreement or exceed the scope of work under this Agreement.
- (r) The total amount payable by the City for all Task Orders resulting from under this Agreement shall not exceed **\$117,000**. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

4. Termination, Remedies and Force Majeure.

- (a) This Agreement shall terminate without any liability of the City to the Consultant upon the earlier of: (i) the Consultants filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days prior written notice with or without cause by the City to the Consultant; (iii) the City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Program; or (iv) expiration of this Agreement.
- (b) Immediately upon any termination or expiration of this Agreement, the Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The Consultant shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.
- (c) In the event of termination due to failure of the Consultant to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.
- (d) Upon any breach of this Agreement by the Consultant, the City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that the City improperly terminated this Agreement for default, such termination shall be deemed a termination for

convenience.

- (e) The Consultant shall provide the City with adequate written assurances of future performance, upon Director's request, in the event the Consultant fails to comply with any terms or conditions of this Agreement.
- (f) The Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Consultant shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.
- (g) Any notice of termination sent to Consultant shall include the reason(s) for such termination or state that it is without cause.

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

- (a) Any reports, information, or other data prepared or assembled by the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of the City, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.
  - i. Permission granted to the Consultant to disclose information on one occasion shall not authorize the Consultant to further disclose such information or any other information or disseminate the same on any other occasion.
  - ii. The Consultant shall not comment publicly to the press or any other media regarding the Agreement or the City's actions on the same, except to the City's personnel or the Consultant's personnel involved in the performance of this Agreement at public hearings or in response to questions from a Legislative committee.
  - iii. The Consultant shall not issue any news releases or any public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the City and receipt of the City's written

permission.

- (b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by the Consultant pursuant to this Agreement, in any form whatsoever, are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Consultant. The Consultant grants the City a copyright license to use such drawings and writings. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the City of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or projects of this Program, or in uncompleted form, without specific written verification by the Consultant will be at the City's sole risk and without liability or legal exposure to the Consultant. The Consultant may keep a copy of all drawings and specifications for its sole and exclusive use.
    - i. In the event of the copyright of any reports or other products prepared under this Agreement by the Consultant or any subcontractor, the Federal Highway Administration (FHWA) shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.
  - (c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 5.
  - (d) This Section 5 shall survive expiration or termination of this Agreement.
6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as the Consultant represents to the City that the Consultant and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, the City relies upon the skill of the Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.
7. Indemnification.
- (a) To the furthest extent allowed by law, including California Civil Code section 2782.8, 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), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

- (b) 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.
- (c) This section shall survive termination or expiration of this Agreement.

8. Insurance.

- (a) Throughout the life of this Agreement, the Consultant shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by the City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.
- (b) If at any time during the life of the Agreement or any extension, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Consultant shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
- (c) The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The

duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

- (d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Consultant and the City prior to the commencement of any services by the subcontractor. The Consultant and any subcontractor/sub-consultant shall establish additional insured status for the City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

- (a) Prior to the City's execution of this Agreement, the Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.
- (b) The Consultant shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, 23 U.S.C. § 112, FHWA regulations applicable to design and engineering consulting contracts found at 23 C.F.R. 172.1 *et seq.*, California Government Code Section 1090 *et. seq.*, the California Political Reform Act (California Government Code Section 87100 *et. seq.*), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 *et. seq.*) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The Consultant shall take, and require its subcontractors to take, reasonable steps to avoid any

appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, the Consultant shall immediately notify the City of these facts in writing.

- (c) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either is employed by the City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.
- (d) The Consultant represents and warrants that it has not paid or agreed to pay any compensation, lawful or unlawful, contingent or otherwise, direct or indirect, to any party to solicit or procure this Agreement or any rights/benefits hereunder. The City shall have the right, in its discretion, to deduct from any payment to the Consultant under this Agreement, or otherwise recover the full amount of, any rebate, kickback or other consideration paid by the Consultant in violation of any representation or warranty under this section.
- (e) Neither the Consultant, nor any firm affiliated with the Consultant, nor any of the Consultant's subcontractors performing any services on a Task Order, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with a Task Order, with the exception of any subcontractor whose services are limited to providing surveying or materials testing information. The Consultant and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with a Task Order unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. An affiliated firm is one which is subject to the control of the same person(s) through joint-ownership or otherwise.
- (f) The Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this Agreement or any ensuing the City construction project. The Consultant shall also disclose any current clients who may have a financial interest in the outcome of this Agreement or any ensuing the City construction project, which will follow.
- (g) The Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- (h) If the Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the Consultant shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.
- (i) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event the Consultant maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, the Consultant at its sole cost and expense shall:
- (a) Immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing the City recycling programs is available from the City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
  - (b) Immediately contact the City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
  - (c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.
11. General Terms, Federal and State Assurances and Requirements.
- (a) Except as otherwise provided by law, all notices expressly required of the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or designee.
  - (b) Records of the Consultant's expenses pertaining to this Agreement shall be kept on a generally recognized accounting basis. The Consultant and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. The Consultant and its subcontractors shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for three years, or longer if required by law, from the date of final payment under the Agreement. City, the State, the State Auditor, FHWA or any duly authorized representative of the federal government shall have access to any books, records, papers, accounting records and other documents of the Consultant and its subcontractors that are pertinent to the Agreement for audit, examinations, excerpts, and transcriptions. Copies thereof shall be furnished by the Consultant, if requested. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of the three-year time period, all records shall be retained and made available until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this section and in the event a subcontract is entered into for an amount in excess of \$25,000, the subcontract shall include this paragraph in its entirety. This Section 11(b) shall survive expiration or termination of this Agreement.

- (c) Prior to execution of this Agreement by the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.
- (d) The Consultant's services pursuant to this Agreement shall be provided under the supervision of Zack Peacock, EIT, and he/she shall not assign another to supervise the Consultant's performance of this Agreement without the prior written approval of the Director.
- (e) The City will carry out applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, the Consultant agrees to comply with all applicable federal and state assurances and requirements identified in **Exhibit D along with its Appendix A** and require that each subcontract include the same assurances by each of its subcontractors.

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

- (a) The Consultant will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.
- (b) The Consultant will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. The Consultant shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to the Consultant's employment practices including, but not be limited to, the following: employment,

upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

- (c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.
- (d) The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of the Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

- (a) In the furnishing of the services provided for herein, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the Consultant is performing its obligations in accordance with the terms and conditions thereof.
- (b) This Agreement does not evidence a partnership or joint venture between the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.
- (c) Because of its status as an independent contractor, the Consultant and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to the City employees. The Consultant shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits.

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

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.
16. Assignment.
  - (a) This Agreement is personal to the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by the Consultant, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.
  - (b) The Consultant hereby agrees not to assign the payment of any monies due the Consultant from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Consultant directly to the Consultant.
17. Compliance With Law. In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, the State of California and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.
22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.
26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement

benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Consultant.
29. RFQ Document. Any Request for Qualifications and documents issued therewith (collectively RFQ) by the City that resulted in selection of the Consultant for entry into this Agreement are hereby incorporated into and made a part of this Agreement. In the event of a conflict between the RFQ and this Agreement (including any Exhibit hereto), this Agreement (including any exhibit hereto) shall take precedence.
30. Disadvantaged Business Enterprise (DBE) Participation. This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal. The goal for DBE participation for this AGREEMENT is zero percent (0%). Participation by DBE Consultant or subconsultants shall be in accordance with information contained in the Consultant's Exhibit 10-O2: Consultant Contract DBE Commitment.  
  
The Consultant shall comply with Title 49 of the Code of Federal Regulations (CFR), Part 26.37(c). To comply with 49 CFR 26.37(c), the Consultant must complete the Exhibit 9-F: Disadvantaged Business Enterprise (DBE) Running Tally of Payments from the execution of the contract until all DBE sub consulting activity on the entire project is completed. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the Consultant shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy also sent to the City of Fresno at [PublicWorksCIP@fresno.gov](mailto:PublicWorksCIP@fresno.gov).
31. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

**[Signatures follow on the next page.]**

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

CITY OF FRESNO,  
a California municipal corporation

By: \_\_\_\_\_  
Bill Herr,  
Assistant Director  
Public Works Department

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

No signature of City Attorney required.  
Standard Document **DPW-S FHWA  
Engineering On-Call, T&M – Multiple  
(04-2022)** has been used without  
modification, as certified by the  
undersigned.

By: \_\_\_\_\_  
Johnan Ruiz,  
Senior Engineering Inspector  
Public Works Department

REVIEWED BY:  
By: \_\_\_\_\_  
Johnan Ruiz,  
Senior Engineering Inspector  
Public Works Department

Addresses:  
City:  
City of Fresno  
Attention: Johnan Ruiz,  
Senior Engineering Inspector  
1721 Van Ness Avenue  
Fresno, CA 93721  
Phone: (559) 621-5635  
E-mail: Johnan.Ruiz@fresno.gov

MOORE TWINING ASSOCIATES, INC.,  
a California corporation

By: \_\_\_\_\_  
Name: Harry Moore

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

By: \_\_\_\_\_  
Name: Ruth Moore

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

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

Consultant:  
MOORE TWINING ASSOCIATES, INC.  
Attention: Zachary Peacock,  
Assistant Manager  
2527 Fresno Street  
Fresno, CA 93721  
Phone: 559-268-7021  
E-mail: ZacharyP@mooretwinning.com

**Attachments:**

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

## EXHIBIT A

### SCOPE OF SERVICES

**Consultant Service Agreement between City of Fresno (City)  
and MOORE TWINING ASSOCIATES, INC. (Consultant)  
Public Works Capital Improvement Program (Program)**

#### PROJECT OBJECTIVE:

Independent Assurance Consultant (IAC) will ensure laboratories performing materials acceptance testing and inspection services for the City of Fresno (City) are accredited and qualified. This generally includes verifying test equipment, checking for current calibration stickers, reviewing the testing laboratory's Quality Control Manual, issuing written examinations to qualify samplers and testers, and issuing Certificates of Proficiencies.

#### INDEPENDENT ASSURANCE SERVICES:

IAC will be compensated at the hourly rate listed for Project Manager on the attached "Rates for Testing and Inspection". Any additional tests required to perform the IAC services shall be billed at the test rates indicated on the attached rate sheet. The scope of services and reimbursement, as detailed and outlined in the following paragraphs, shall be in conformance with the 2021 City of Fresno Quality Assurance Program Manual (2021 QAP) or as amended from time to time.

#### Proficiency Testing by the IAC:

The IAC shall oversee a laboratory that performs annual proficiency tests using AMRL, CCRL and/or CT methods. Proficiency tests are also called corroboration tests, round-robin tests and split-sample tests. For the use of ASTM and AASHTO standards, the IAC shall be accredited by AASHTO and perform annual proficiency tests with AMRL and/or CCRL.

#### IAC Restrictions:

The IAC shall not perform both IA services and acceptance testing for the City. The IAC shall remain totally separate (or independent) from all elements of the specification compliance process. The main function of the IAC is to "test the acceptance tester" and not be directly involved with the acceptance of materials.

#### Use Separate Testing Equipment for IA Activities:

When acceptance testers perform proficiency tests, the IAC shall not use testing equipment that is also used for acceptance testing. Separate testing equipment should be used. This separate equipment shall never be used by others, especially workers who perform acceptance testing for the City of Fresno.

#### Issuing Certificates of Proficiency for Acceptance Samplers and Testers:

Annually the IAC shall issue a Certificate of Proficiency to all materials acceptance samplers and testers to qualify these persons to perform work for the City of Fresno. To

assist with this qualification process, samplers and/or testers may be asked to take a standard written examination to demonstrate knowledge of the test procedure.

The Certificate of Proficiency shall include the following items:

- The printed full name of the acceptance sampler and/or tester
- The company and address of the qualified sampler and/or tester
- A list of the test methods the sampler and/or tester is qualified to perform
- The re-qualification date (month and year) for each test
- The printed name (and signature) of the IA person
- The date the certificate is issued

Each sampler and/or tester shall receive a copy of the Certificate of Proficiency. Prior to sampling and testing on a City of Fresno project, the IAC shall provide the Resident Engineer with a copy of the Certificate of Proficiency for each sampler and tester on the project.

Issuing Laboratory Accreditation Certificates:

At least once during each calendar year, the IAC shall review each materials testing laboratory that performs work for the City of Fresno to verify the laboratory has the following:

- A current copy of the local agency's QAP (signed and dated by the city engineer).
- A current copy of all test methods used by the local agency.
- Proper test equipment (with firmly attached calibration stickers dated within 12 months of the current date), supporting calibration records and round-robin test results (from an accredited laboratory tied to AMRL, CCRL or Caltrans' RSP).
- Current Certificates of Proficiency for all samplers and/or testers expected to be on the project.

The Laboratory Accreditation Certificate shall include the printed name and address of the laboratory, the accreditation date, a list of the tests the laboratory is accredited to perform and the full name of the IA person, and a statement that all of the above requirements have been met.

Performing Witness Tests:

At least once during each calendar year, the IAC shall meet with the local agency acceptance samplers and testers, and observe them perform the test (or tests) that they are qualified to perform. The meeting location may be designated by the IAC. Materials used for the witness testing may be from any source or location determined by the IAC. If the IA person observes that the sampling and/or testing procedures are performed correctly, the successful witness test is documented.

If a test is not performed correctly, or the equipment does not have a proper calibration sticker, the IA person is required to immediately notify the acceptance sampler and/or tester that they are disqualified for that test. The disqualified person should also be handed a notice stating the terms of the decertification. An example would be: "the acceptance tester improperly used a wooden stake instead of the required tamping rod to consolidate the concrete during fabrication of the test cylinders ." The disqualified person should then wait at least seven days before requesting another witness test for the test that was incorrectly performed. It should be noted, that when a person is disqualified for one or more tests, the person is still qualified to perform the other tests identified on the Certificate of Proficiency.

**Performing Proficiency Tests (Also Known as Corroboration Tests, Round-Robin Tests and Split Sample Tests):**

At least once during each calendar year, the IAC shall present each acceptance tester with a representative sample of soil or aggregate for proficiency testing. Corroboration samples are prepared by the IAC using materials either on or off the project site. One split sample is tested by the IA person, using test equipment not used for acceptance testing. These test results are used as a standard to evaluate the results obtained by the acceptance tester.

After a second split sample is presented to the acceptance tester, the acceptance tester is asked to go to the laboratory and perform the following tests: sand equivalent, cleanness value and sieve analysis.

The acceptance tester's results shall be e-mailed or faxed to the IAC within three days after the split sample is presented. Test results from the acceptance tester are then compared to the test results of the IAC using the following table.

Type of Test	Degree of Corroboration		
	Good (Satisfactory)	Fair (Satisfactory)	Poor
(Unsatisfactory)			
Sieve Analysis(% Passing)			
No. 4 Sieve and larger	2 or less	3 to 4	5 or more
No. 8 - No. 30	2 or Less	3	4 or more
No. 50 - No. 100	2 or Less	3	4 or more
No. 200	1 or less	2	3 or more
Sand Equivalent	3 or less	4 to 5	6 or more
(Nearest whole Number)			
C'leanness Value	3 or less	4 to 6	7 or more
(Nearest whole Number)			

When an acceptance tester receives an "unsatisfactory rating", the IAC shall immediately meet with the tester, examine the test equipment, the equipment calibration scores, and the test procedures used by the acceptance tester and witness the acceptance tester

perform the test using their own test equipment. If the non-corroboration can be resolved and a satisfactory score achieved by the acceptance tester, the acceptance tester may continue to perform testing on the project. If the non-corroboration cannot be resolved, both the tester and equipment cannot continue to be used for acceptance testing and the tester is disqualified for the test in question until the problem is resolved. Usually this is done by presenting a second split sample for testing. It should be noted, that when a tester is disqualified for one test, the tester is still qualified to perform the other tests identified on the Certificate of Proficiency. The disqualified tester should also be handed a notice stating the terms of the disqualification. The tester must wait at least seven days before requesting another witness test for the test that was incorrectly performed. All Resident Engineers or project engineers should immediately be notified once an acceptance tester becomes disqualified.

#### Procedures for Tester Reinstatement:

Once a tester has been disqualified, the tester must wait at least 7 days before contacting the IA person to request a meeting to become re-qualified. After the waiting period, the IA person may decide to give the acceptance tester another written examination, ask the acceptance tester to present test equipment with a current calibration sticker, perform another witness test, and/or conduct another split sample test. Once satisfied that the acceptance tester is now performing the test satisfactorily (using properly calibrated test equipment and correct test procedures), the IA person is required to reissue an updated Certificate of Proficiency. It is the responsibility of the IA person to record and maintain all IA documents pertaining to the reinstatement of the acceptance sampler and/or tester, (i.e., copy of the written disqualification notice, record of written examinations, recertification notice, etc.). It is the responsibility of the acceptance tester to immediately show their updated Certificate of Proficiency to the Resident Engineer or project engineer.

#### Procedure for Dispute Resolution:

Dispute resolution refers to the process of denial, suspension, revocation, appeals, and reinstatement of an IA person, an acceptance sampler and tester, or a laboratory. If the contractor or acceptance laboratory has a dispute with the City of Fresno involving a quality assurance item, a manager from the City shall be selected to review the dispute. The IAC and the party in dispute will submit his/her substantiating paperwork to the management person, within 10 days after requested to do so. In some cases, one or more meetings may be needed to resolve disputes. Within a 30-day period, the City of Fresno management person should try to resolve the dispute, based on the evidence presented. Appeals by the contractor, acceptance tester or, the IAC person, may be made after the final decision by the local agency management person. The person making the appeal should be directed to contact the City Engineer no more than 14 days after receiving written notice of the final decision by the management person.

The City Engineer will head up the appeal process. Again, evidence will be presented and a final decision should be made within 30 days after receipt of the appeal. For additional guidelines concerning the dispute resolution process, refer to Caltrans IA Manual.

**Maintaining Accurate Records:**

It is the responsibility of the IAC and the City of Fresno project team to create, and maintain accurate records for all IA and acceptance materials testing performed on City of Fresno projects. Per CFR Title 49, Section 18.42, a local agency using federal funds for a transportation project must maintain pertinent construction records for three years subsequent to final project voucher reimbursement or through the period of litigation, whichever is later. A complete set of Records shall include the following:

- A log summary of the acceptance tests taken on the project
- Copies of all tester qualification and lab certifications
- All acceptance tests taken on the project
- Copies of all IA testing performed on the project
- Copies of Certificates of Compliance
- Records of pre-manufactured materials (collection of release tags)
- Materials certificate (signed by the Resident Engineer at the completion of the project)
- A copy of the approved QAP with the date of approval

## SCHEDULE OF FEES

See below.

**EXHIBIT 10-H2 COST PROPOSAL** Page 1 of 3  
 SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)  
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant Moore Twining Associates, Inc.  Prime Consultant  Subconsultant  2nd Tier Subconsultant

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Participation Amount \$ \_\_\_\_\_ Date 10/6/2022

<b>For Combined Rate</b>	<b>Fringe Benefit % + General &amp; Administrative %</b>	=	<b>Combined ICR%</b>
	OR		
<b>For Home Office Rate</b>	<b>Fringe Benefit % + General &amp; Administrative %</b>	=	<b>Home Office ICR%</b>
<b>For Field Office Rate</b>	<b>Fringe Benefit % + General &amp; Administrative %</b>	=	<b>Field Office ICR%</b>
	<b>Fee</b>	=	<b>8%</b>

**BILLING INFORMATION**

**CALCULATION INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate <sup>4</sup>	% or \$ Increase	Hourly Range - for Classifications Only
	Straight <sup>3</sup>	OT(1.5x)	OT(2x)	From	To			
Harry Moore* Principal Engineer	\$265.37	N/A	N/A	3/1/2022	12/31/2022	\$91.09		Not Applicable
	\$273.32	N/A	N/A	1/1/2023	12/31/2023	\$93.82	3.0%	
	\$281.51	N/A	N/A	1/1/2024	12/30/2024	\$96.63	3.0%	
Read Andersen Geotechnical Engineer	\$182.08	N/A	N/A	3/1/2022	12/31/2022	\$62.50		Not Applicable
	\$187.56	N/A	N/A	1/1/2023	12/31/2023	\$64.38	3.0%	
	\$193.18	N/A	N/A	1/1/2024	12/30/2024	\$66.31	3.0%	
Zachary Peacock EIT	\$154.05	N/A	N/A	3/1/2022	12/31/2022	\$52.88		Not Applicable
	\$158.68	N/A	N/A	1/1/2023	12/31/2023	\$54.47	3.0%	
	\$163.43	N/A	N/A	1/1/2024	12/30/2024	\$56.10	3.0%	
Adrian Lopez Staff Engineer	\$83.03	\$124.55	\$166.06	3/1/2022	12/31/2022	\$28.50		Not Applicable
	\$85.53	\$128.30	\$171.06	1/1/2023	12/31/2023	\$29.36	3.0%	
	\$88.10	\$132.15	\$176.20	1/1/2024	12/30/2024	\$30.24	3.0%	
Danny Morton Project Manager	\$90.31	N/A	N/A	3/1/2022	12/31/2022	\$31.00		Not Applicable
	\$93.02	N/A	N/A	1/1/2023	12/31/2023	\$31.93	3.0%	
	\$95.82	N/A	N/A	1/1/2024	12/30/2024	\$32.89	3.0%	
Inspector - Group 1 (No CA Prevailing Wages)	\$253.42	\$380.13	\$506.84	3/1/2022	6/30/2022	\$86.99		\$81.23-\$86.99
	\$260.71	\$391.07	\$521.42	7/1/2022	6/30/2023	\$89.49	\$2.50	\$0.00-\$89.49
	\$268.72	\$403.08	\$537.44	7/1/2023	6/29/2024	\$92.24	\$2.75	\$0.00-\$92.24
Inspector - Group 2 (No CA Prevailing Wages)	\$235.42	\$353.13	\$470.84	3/1/2022	6/30/2022	\$80.81		\$75.75-\$85.86
	\$242.70	\$364.05	\$485.40	7/1/2022	6/30/2023	\$83.31	\$2.50	\$0.00-\$88.36
	\$250.71	\$376.07	\$501.42	7/1/2023	6/29/2024	\$86.06	\$2.75	\$0.00-\$91.11
Inspector - Group 3 (No CA Prevailing Wages)	\$211.47	\$317.21	\$422.94	3/1/2022	6/30/2022	\$72.59		\$68.54-\$76.65
	\$218.76	\$328.14	\$437.52	7/1/2022	6/30/2023	\$75.09	\$2.50	\$0.00-\$79.15
	\$226.77	\$340.16	\$453.54	7/1/2023	6/29/2024	\$77.84	\$2.75	\$0.00-\$82.15
Inspector - Group 4 (No CA Prevailing Wages)	\$194.08	\$291.12	\$388.16	3/1/2022	6/30/2022	\$66.62		\$62.57-\$70.68
	\$201.36	\$302.04	\$402.72	7/1/2022	6/30/2023	\$69.12	\$2.50	\$0.00-\$73.18
	\$209.38	\$314.07	\$418.76	7/1/2023	6/29/2024	\$71.87	\$2.75	\$0.00-\$75.93

NOTES:

Moore Twining Associates, Inc.

Prime Consultant

Subconsultant

Contract No. \_\_\_\_\_

Date \_\_\_\_\_

	Quantity	Unit	Unit Cost	Total
Mileage Costs			IRS Rate	\$ 0.00
Equipment Rental and			at cost +15%	\$ 0.00
Permit Fees			at cost +15%	\$ 0.00
Permitting			at cost +15%	\$ 0.00
Plan Sheets			at cost +15%	\$ 0.00
Materials Testing			see fee schedule	\$ 0.00
Vehicle			\$25.00	\$ 0.00

**EXHIBIT 10-H2 COST PROPOSAL** Page 2 of 3  
 SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)  
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate <sup>4</sup>	% or \$ Increase	Hourly Range - for Classifications Only
	Straight <sup>3</sup>	OT(1.5x)	OT(2x)	From	To			
Michael Shwiyhat Materials Testing Division Manager	\$161.07	N/A	N/A	3/1/2022	12/31/2022	\$55.29		Not Applicable
	\$165.91	N/A	N/A	1/1/2023	12/31/2023	\$56.95	3.0%	
	\$170.89	N/A	N/A	1/1/2024	12/30/2024	\$58.66	3.0%	
Shaun Reich Engineer	\$104.88	\$157.32	\$209.76	3/1/2022	12/31/2022	\$36.00		Not Applicable
	\$108.02	\$162.03	\$216.04	1/1/2023	12/31/2023	\$37.08	3.0%	
	\$111.26	\$166.89	\$222.52	1/1/2024	12/30/2024	\$38.19	3.0%	
Jordi Fragoza Field Engineer	\$83.03	\$124.55	\$166.06	3/1/2022	12/31/2022	\$28.50		Not Applicable
	\$85.53	\$128.30	\$171.06	1/1/2023	12/31/2023	\$29.36	3.0%	
	\$88.10	\$132.15	\$176.20	1/1/2024	12/30/2024	\$30.24	3.0%	
Alan Villegas EIT	\$93.22	\$139.83	\$186.44	3/1/2022	12/31/2022	\$32.00		Not Applicable
	\$96.02	\$144.03	\$192.04	1/1/2023	12/31/2023	\$32.96	3.0%	
	\$98.90	\$148.35	\$197.80	1/1/2024	12/30/2024	\$33.95	3.0%	
Scott Krauter Project Manager	\$161.07	N/A	N/A	3/1/2022	12/31/2022	\$55.29		Not Applicable
	\$165.91	N/A	N/A	1/1/2023	12/31/2023	\$56.95	3.0%	
	\$170.89	N/A	N/A	1/1/2024	12/30/2024	\$58.66	3.0%	
Allen Harker Staff Geologist	\$113.09	N/A	N/A	3/1/2022	12/31/2022	\$38.82		Not Applicable
	\$116.47	N/A	N/A	1/1/2023	12/31/2023	\$39.98	3.0%	
	\$119.97	N/A	N/A	1/1/2024	12/30/2024	\$41.18	3.0%	


**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. [Title 23 United States Code Section 112](#) - Letting of Contracts
10. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
11. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
12. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

**Prime Consultant or Subconsultant Certifying:**

Name: Harry D. Moore Title\*: President  
Signature:  Date of Certification (mm/dd/yyyy): 10/6/2022  
[harrym@mooretwinning.com](mailto:harrym@mooretwinning.com) Phone Number: (559) 970-7021  
Address: 2527 Fresno Street Fresno CA 93721

\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

**List services the consultant is providing under the proposed contract:**

On-Call Independent Assurance Services including certifying/verifying certifications of materials testing laboratories and field personnel in accordance with the City of Fresno's QAP.



# 2022 Prevailing Wage Materials Testing Fee Schedule for Northern California

Moore Twining Associates, Incorporated

800-268-7021

[www.mooretwining.com](http://www.mooretwining.com)



## Northern California Prevailing Wage Fee Schedule

MATERIALS TESTING UNIT FEES				
AGGREGATES	TEST METHOD*			
Sieve Analysis of Fine and Coarse Aggregates	ASTM C136	\$	69.00	Each
Materials Finer than 75-um (No. 200) Sieve in Mineral Aggregates by Washing	ASTM C117	\$	69.00	Each
Relative Density (Specific Gravity) and Absorption of Coarse Aggregate	ASTM C127	\$	131.00	Each
Relative Density (Specific Gravity) and Absorption of Fine Aggregate	ASTM C128	\$	131.00	Each
Clay Lumps and Friable Particles in Aggregates	ASTM C142	\$	168.00	Each
Evaluating Cleanness of Coarse Aggregate CTM 227	CT 227	\$	135.00	Each
Determining the Percentage of Fractured Particles in Coarse Aggregate	ASTM D5821	\$	145.00	Each
Durability Index	CT 229	\$	135.00	Each
Resistance to Degradation of Large-Size Coarse Aggregates by Abrasion and Impact in the Los Angeles Machine	ASTM C535 / C131	\$	200.00	Each
Organic Impurities in Fine Aggregates for Concrete	ASTM C40	\$	90.00	Each
Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate	ASTM C88	\$	335.00	Each
Sand Equivalent of Soils and Fine Aggregate	ASTM D2419	\$	100.00	Each
Lightweight Particles in Aggregate	ASTM C123	\$	251.00	Each
Bulk Density ("Unit Weight") and Voids in Aggregate	ASTM C29	\$	57.00	Each
Flat Particles, or Flat and Elongated Particles in Coarse Aggregate	ASTM D4791	\$	135.00	Each
<b>ASPHALT</b>				
Preparation of Asphalt Mixture Specimens Using Marshall Apparatus	ASTM D6926	\$	270.00	Each
Asphalt Content of Asphalt Mixture by Ignition Method	ASTM C6307	\$	168.00	Each
Mechanical Size Analysis of Extracted Aggregate	ASTM D5444	\$	135.00	Each
Theoretical Maximum Specific Gravity and Density of Bituminous Paving Mixtures	ASTM D2041	\$	168.00	Each
Resistance to Deformation and Cohesion of Asphalt Mixtures by Means of Hveem Apparatus	ASTM D1560	\$	168.00	Each
Marshall Stability and Flow of Asphalt Mixtures	ASTM C6927	\$	227.00	Each
Bulk Specific Gravity and Density of Non-Absorptive Compacted Asphalt Mixtures	ASTM D2726	\$	50.00	Each
Bulk Specific Gravity and Density of Compacted Bituminous Mixtures Using Coated Samples	ASTM D1188	\$	50.00	Each
Swell of Bituminous Mixtures	CT 305	\$	249.00	Each
Moisture Vapor Susceptibility of Bituminous Mixtures	CT 307	\$	168.00	Each
Quantitative Extraction of Asphalt Binder from Asphalt Mixtures	ASTM D2172	\$	216.00	Each
Thickness or Height of Compacted Asphalt Mixture Specimens	ASTM D3549	\$	21.50	Each
<b>CONCRETE</b>				
Concrete Mix Design Review	ACI 214	\$	108.00	Each

Compressive Strength of Cylindrical Concrete Specimens 6"x12" (Set of 4)	ASTM C39	\$	92.00	Set of 4
Compressive Strength of Cylindrical Concrete Specimens 6"x12" (Single Specimen)	ASTM C39	\$	23.00	Each
Compressive Strength of Cylindrical Concrete Specimens 6"x12" (Held but Not Tested)	ASTM C39	\$	11.50	Each
Compressive Strength of Cylindrical Concrete Specimens 4"x8" (Set of 5)	ASTM C39	\$	97.50	Set of 5
Compressive Strength of Cylindrical Concrete Specimens 4"x8" (Single Specimen)	ASTM C39	\$	19.50	Each
Compressive Strength of Cylindrical Concrete Specimens 4"x8" (Held but Not Tested)	ASTM C39	\$	11.50	Each
Preparation of Cylindrical Concrete Specimens by Saw Cutting	ASTM C39	\$	21.50	Each
Obtaining and Testing Drilled Cores and Sawed Beams of Concrete	ASTM C42	\$	60.00	Each
Charge for Diamond Core Barrels	ASTM C42	\$	11.50	Inch
Flexural Strength of Concrete (Using Simple Beam with Third- Point Loading)	ASTM C78	\$	76.25	Each
Flexural Strength of Concrete (Using Simple Beam with Center- Point Loading)	ASTM C293	\$	76.25	Each
Splitting Tensile Strength of Cylindrical Concrete Specimens	ASTM C496	\$	54.50	Each
Determining Density of Structural Lightweight Concrete	ASTM C567	\$	27.80	Each
Compressive Strength of Lightweight Insulating Concrete	ASTM C495	\$	244.00	Each
Length Change of Hardened Hydraulic-Cement and Concrete	ASTM C157	\$	281.00	Each
Preparing and Testing Specimens from Shotcrete Test Panels	ASTM C1149	\$	281.00	Each
Measuring Thickness of Concrete Elements Using Drilled Concrete Cores	ASTM C174	\$	65.00	Each
Measuring Moisture Vapor Emission Rate of Concrete Subfloor Using Anhydrous Calcium Chloride Test Kits	ASTM F1869	\$	65.00	Each
Determining Relative Humidity in Concrete Floor Slabs Using In Situ Probes – Test Probes	ASTM F2170	\$	54.50	Each
<b>SOILS</b>				
Liquid Limit, Plastic Limit, and Plasticity Index of Soils	ASTM D4318	\$	168.00	Each
Specific Gravity of Soil Solids by Water Pycnometer	ASTM D854	\$	163.00	Each
Resistance R-Value and Expansion Pressure of Compacted Soils	ASTM D2844	\$	227.50	Each
One-Dimensional Consolidation Properties of Soils Using Increment Loading	ASTM D2435	\$	324.50	Each
Unconfined Compressive Strength of Cohesive Soil	ASTM D2166	\$	163.00	Each
Direct Shear Test of Soils Under Consolidated Drained Conditions	ASTM D3080	\$	270.00	Each
Expansion Index of Soils	ASTM D4829	\$	185.00	Each
Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass	ASTM D2216	\$	33.00	Each
Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter	ASTM D5084	\$	362.50	Each
pH of Soil for Use in Corrosion Testing	ASTM G51	\$	33.00	Each
Water-Soluble Sulfate in Soil	ASTM C1580	\$	33.00	Each
Soils and Waters for Chloride Content	CT 422	\$	35.00	Each

Estimating the Service Life of Steel Culverts	CT 643	\$	119.50	Each
California Bearing Ratio (CBR) of Laboratory- @ 100%	ASTM D1883	\$	380.00	Each
California Bearing Ratio (CBR) of Laboratory-Compacted Soils at 95% Relative Compaction, 3 Point Method	ASTM D1883	\$	757.00	Each
Correction of Unit Weight and Water Content for Soils Containing Oversize Particles	ASTM D4718	\$	135.00	Each
Determining Dispersive Characteristics of Clayey Soils by the Crumb Test	ASTM D6572	\$	54.50	Each
Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft <sup>3</sup> )	ASTM D698	\$	151.50	Each
Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf <sup>3</sup> ) 4 Inch Diameter Mold	ASTM D1557	\$	190.00	Each
Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf <sup>3</sup> ) 6 Inch Diameter Mold	ASTM D1557	\$	206.00	Each
Relative Compaction of Untreated and Treated Soils and Aggregates	CT 216	\$	173.00	Each
Unconfined Compressive Strength of Lime Treated Soils and Aggregates	CT 373	\$	163.00	Each

**MASONRY**

Preconstruction and Construction Evaluation of Mortars for Plain and Reinforced Unit Masonry (Compressive Strength of Cylindrical 2" x 4" Specimens)	ASTM C780	\$	21.50	Each
Sampling and Testing Grout	ASTM C1019	\$	33.00	Each
Compressive Strength of Masonry Prisms	ASTM C1314	\$	81.50	Each
Diagonal Tension (Shear) in Masonry Assemblages	ASTM E519	\$	54.50	Each
Sampling and Testing Concrete Masonry Units and Related Units (Compressive Strength)	ASTM C140	\$	81.50	Each
Sampling and Testing Concrete Masonry Units and Related Units (Absorption, Unit Weight and Moisture Content)	ASTM C140	\$	81.50	Each
Linear Drying Shrinkage of Concrete Masonry Units	ASTM C426	\$	81.50	Each
Relative Mortar Strength of Portland Cement Concrete Sand	CT 515	\$	270.00	Each
Compressive Strength of Hydraulic Cement Mortars (Using 2-in. Cube Specimens)	ASTM C109	\$	19.50	Each

**STEEL**

Tensile Strength / Yield Testing of Reinforcing Steel Products (Rebar) up to #6 Rebar	ASTM A370	\$	65.00	Each
Tensile Strength / Yield Testing of Reinforcing Steel Products (Rebar) #7 ~ #11 Rebars	ASTM A370	\$	86.50	Each
Bend Testing of Material for Ductility (Rebar Bend Test)	ASTM E290	\$	54.50	Each
Testing Multi-Wire Steel Prestressing Strand	ASTM A1061	\$	By quote	Each

**FIREPROOFING**

Thickness and Density of Sprayed Fire-Resistive Material (SFRM) Applied to Structural Members (Density)	ASTM E605	\$	54.50	Each
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\* ASTM = American Society for Testing and Materials\*CT = California Test

## EXHIBIT B

### INSURANCE REQUIREMENTS

**Consultant Service Agreement between City of Fresno (City)  
and MOORE TWINING ASSOCIATES, INC. (Consultant)  
Public Works Capital Improvement Program (Program)**

#### MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

#### MINIMUM LIMITS OF INSURANCE

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

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

2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY** (Errors and Omissions):
  - (i) \$1,000,000 per claim/occurrence; and,
  - (ii) \$2,000,000 policy aggregate.

#### **UMBRELLA OR EXCESS INSURANCE**

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

#### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

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

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

#### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

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

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. Consultant shall establish additional insured status for the City for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: CG 20 10 11 85 or both CG 20 10 & CG 20 37.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, Consultant 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 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 years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five-year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase "extended reporting" coverage for a minimum of five years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to 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 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 15en calendar days prior to the expiration date of the expiring policy.

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

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

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

#### **VERIFICATION OF COVERAGE**

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

**EXHIBIT C**

**DISCLOSURE OF CONFLICT OF INTEREST**

Public Works Capital Improvement Program (Program)

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional page(s) attached.

*Harry D. Moore*

\_\_\_\_\_  
Signature

11/8/2022

\_\_\_\_\_  
Date

Harry Moore

\_\_\_\_\_  
(Name)

Moore Twining Associates, Inc.

\_\_\_\_\_  
(Company)

2527 Fresno Street

\_\_\_\_\_  
(Address)

Fresno, CA 93721

\_\_\_\_\_  
(City State Zip)

**EXHIBIT D**  
**FEDERAL AND STATE ASSURANCES**  
**Consultant Service Agreement between City of Fresno (City)**  
**and MOORE TWINING ASSOCIATES, INC. (Consultant)**  
**Public Works Capital Improvement Program (Program)**

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

writing by the City's Contract Manager.

4. Equipment Purchase

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

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

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

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

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

renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

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

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

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

## 6. NON-DISCRIMINATION CLAUSE

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

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

**APPENDIX A TO EXHIBIT D**  
**Consultant Service Agreement between City of Fresno (City)**  
**and MOORE TWINING ASSOCIATES, INC. (Consultant)**  
Public Works Capital Improvement Program (Program)

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

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

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

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

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

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

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

(6) The Consultant shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The Consultant shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event the Consultant becomes involved in, or is threatened

with, litigation with a sub-applicant or supplier as a result of such direction, the Consultant may request STATE enter into such litigation to protect the interests of STATE, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

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

I HEREBY CERTIFY that I am Harry Moore, and duly authorized representative of the firm of Moore Twining Associates, Inc. whose address is 2527 Fresno St. Fresno, Ca 93721, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

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

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

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

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

11/8/2022

\_\_\_\_\_  
(Date)



\_\_\_\_\_  
(Signature)

**EXHIBIT E**

**TASK ORDER FORM**

**Consultant Service Agreement between City of Fresno (City)  
and MOORE TWINING ASSOCIATES, INC. (Consultant)  
Public Works Capital Improvement Program (Program)**

**TASK ORDER :**

Title/Project:  
Consultant:  
City Project ID:

Task Order Description (Attach Scope of Work):

Task Order Work Plan:

Task Order Deliverable:

Task Order Staffing:

**Task Order Cost:** \_\_\_\_\_  
**Task Order Period of Performance:** \_\_\_\_\_  
**Task Order DBE Commitment:** \_\_\_\_\_

Consultant Project Manager: \_\_\_\_\_  
City Project Manager: \_\_\_\_\_

Authorized Signatures	
Consultant's Authorized Representative	City's Authorized Representative
Signature	Signature
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Attachments:

1. *Scope of Work*
2. *Cost Proposal*