

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

THIS AGREEMENT is made and entered into effective the 1st, day of December, 2015, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and SZS Consulting Group LLC, a California limited liability corporation (hereinafter referred to as "CONSULTANT").

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

THE PARTIES THEREFORE AGREE as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the Scope of Services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or October 1, 2016, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a professional and expeditious manner.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed Two Hundred Forty One Thousand Nine Hundred Eighty Four Dollars and Twenty Cents (\$241,984.20)

payable on such terms and in such amounts as set forth in the Schedule of Fees in **EXHIBIT A**. Such fees include all expenses incurred by CONSULTANT in performance of such services.

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

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

shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

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

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

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

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

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

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its

contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

(g) CONSULTANT agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at CITY'S option, be joined and consolidated with any other dispute or disputes arising from or relating to the services provided hereunder so that all disputes arising from or relating to the services provided hereunder may be resolved in a single proceeding. CONSULTANT hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

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

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

5. Confidential Information.

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

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

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

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

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

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials,

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

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

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

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

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

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

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

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, lawful or unlawful, contingent or otherwise, direct or indirect, to any party to solicit or procure this Agreement or any rights/benefits hereunder. CITY shall have the right, in its discretion, to deduct from any payment to CONSULTANT under this Agreement, or otherwise recover the full amount of, any rebate, kickback or other consideration paid by CONSULTANT in violation of any representation or warranty under this section.

(e) Neither CONSULTANT, nor any firm affiliated with CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services provided hereunder, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Agreement with the exception of any subcontractor whose services are limited to providing surveying or materials testing information. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Agreement unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. An affiliated firm is one which is subject to the control of the same person(s) through joint-ownership or otherwise.

(f) CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this Agreement or any ensuing CITY project or agreement. CONSULTANT shall also disclose any current clients who may have a financial interest in the outcome of this Agreement or any ensuing CITY project or agreement, which will follow.

(g) CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

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

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

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

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

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

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

(b) Records of CONSULTANT'S expenses pertaining to the services provided under this Agreement shall be kept on a generally recognized accounting basis. CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. CONSULTANT and its subcontractors shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for 3 years, or longer if required by law, from the date of final payment under the Agreement. CITY, the State, the State Auditor, FTA or any duly authorized representative of the federal government shall have access to any books, records, papers, accounting records and other documents of CONSULTANT and its subcontractors that are pertinent to the Agreement for audit, examinations, excerpts, and transcriptions. Copies thereof shall be furnished by CONSULTANT, if requested.

If any litigation, claim, negotiations, audit or other action is commenced before the expiration of the 3-year time period, all records shall be retained and made available until such action is resolved, or until the end of said time period whichever

shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this section and in the event a subcontract is entered into for an amount in excess of \$25,000 the subcontract shall include this paragraph in its entirety. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

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

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

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

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

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex,

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

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

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

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

13. Independent Contractor.

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

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

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

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

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

16. Assignment.

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

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

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

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

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

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

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

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

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

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

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the

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

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

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

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

29. RFQ or RFP Document. Any Request for Qualifications, Request for Proposal, or Request for Qualifications and Proposal, and documents issued therewith (collectively referred to herein as "RFQ") by CITY that resulted in selection of CONSULTANT for entry into this Agreement are hereby incorporated into and made a part of this Agreement. In the event of a conflict between the RFQ and this Agreement (including any Exhibit hereto), this Agreement (including any Exhibit hereto) shall take precedence.

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

CITY OF FRESNO,
a California municipal corporation

SZS Consulting Group LLC,
A California limited liability corporation

By: _____
Brian Marshall,
Director
Fresno Area Express/
Transportation Department

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

ATTEST:
YVONNE SPENCE, CMC
City Clerk

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

By: _____
Deputy

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

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

By: _____
Jim Schaad Date
Assistant Director
Fresno Area Express/
Transportation Department

REVIEWED BY:

CONSULTANT:
SZS Consulting Group LLC
Attention: Syroun Sanossian,
Principle
2225 E. Bayshore Rd. Suite 200
Palo Alto, CA 94303
Phone: 866-694-7637
FAX: 866-670-4961

Brian Barr, Capital Development Specialist
Fresno Area Express/ Transportation
Department

Addresses:
CITY:
City of Fresno
Attention: Brian Barr,
Capital Development Specialist
2223 G Street
Fresno, CA 93706
Phone: (559) 621-1418
FAX: (559) 621-1418

Attachments:

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

Exhibit A

SCOPE OF SERVICES

**Consultant Service Agreement between City of Fresno (“City”)
and SZS Consulting Group LLC (“Consultant”)
FAX Bus Stop Assessment and Self Evaluation**

SERVICES TITLE

Consultant shall evaluate and assess all fixed route bus stops serviced by FAX for compliance to federal and state statute and regulations as described above. Services will include an on-site physical investigation and evaluation of each designated location including the capture of GPS coordinates and geo-linked digital photographs of each barrier to access performed by the Consultant’s in-house staff.

A GIS map in both PDF and ArcGIS will be produced showing the location of each designated bus stop location, in addition to a customized ArcGIS geo-database containing all barriers to access identified at no extra charge. The same data will be contained in the Consultant’s proprietary MS Access® database provided to the City of Fresno for use with no licensing fee or associated cost for the life of the project. The life of the project shall be defined as the completion of the recommendations contained in the transition plan. The draft and final reports will contain digital photographs and GIS maps and extensive data described in the deliverables section below. All digital photographs taken during the field investigation will be transferred to the City of Fresno with the final report documents. The following tasks will be included in this proposed scope of work:

- Consultant shall provide a site specific list of physical barriers that limit the accessibility, activities or services to individuals with disabilities when using the bus stops in the draft and final report. The site specific list shall include an associated GIS map and printed report describing the barrier and applicable code reference along with other information described above starting on page 31.
 - All data will be contained both in the Consultant’s database and a custom geo-database will be created in ArcGIS for the City at no additional charge.
 - An inventory of street furniture located at each bus stop shall also be included in the reports at no additional charge.
 - The bus stops shall be listed and organized by intersection or similar and include bus route number and bus stop ID (provided by FAX).
- Consultant shall provide a site specific GIS plan and detailed outline of methods to be used to remove these barriers and make the bus stops accessible to individuals with disabilities in the final report. Information provided shall include the following:
 - Standard construction details and plans for barrier remediation
 - Specifications of accessible elements including street furniture such as benches, trash receptacles, signage, etc. to ensure compliant elements are installed through the remediation process

- Each barrier shall include an approximate line item cost for removal
- Where relocation or removal is recommended by Consultant, an ADA compliant location shall be recommended in a nearby public right of way that can accommodate existing bus stop amenities.
- Consultant shall provide recommendations to implement technology improvements that enhance accessibility for people with disabilities in the final report including existing low- and high-tech solutions for providing visual information to blind/vision impaired persons.

NOTE: *This scope of work shall not be required to address ADA compliance at the Courthouse Park Intermodal Transfer Center (Van Ness/Fresno St) and Manchester Transfer Center (Blackstone Ave/Dayton) as these transit centers will be addressed by other projects.*

- Consultant shall inventory and assess all passenger amenities at each stop. Passenger amenities may include: shelter types, bench types, trash container types, signage, sidewalk widths, condition, etc. Inventory may include locating specific amenities.
- Consultant shall provide an analytical multi-year phased plan in the final report for the City of Fresno to address non-ADA compliant bus stops based upon criteria recommended by the Consultant and FAX.
- Consultant shall provide FAX with an overall estimated construction costs to upgrade bus stops to ADA compliance based upon recommended findings.
- At the completion of the study, Consultant shall provide FAX with all data, including the overall report, in editable digital formats. All data shall be organized and systemically structured in ArcGIS® and MS Access® to enable efficient review.
- In addition to analytical report, the consultant shall provide an editable list of the compiled data which will display at a minimum the bus stop ID (provided to consultant by FAX), route, location, passenger amenities, ADA deficiencies, proposed improvements, priorities, photograph hyperlinks, plan hyperlinks, etc. All MS Access files are editable and compatible with Microsoft Excel 2010 and shall be capable of exporting this information in a comma separate value (.csv) format.
- All digital photographs and site specific plan file names shall follow the City of Fresno naming template to be provided by FAX at the start of coordination.
- Consultant shall include appropriate number of in-person meetings with various stakeholders to complete this study and obtain feedback.
- Consultant will integrate data gathered and develop GIS layers for both existing and proposed pedestrian infrastructure within the study areas in addition to the scope

above. The layers will include database information which will present infrastructure type, condition, deficiencies, proposed improvements, and priority. GIS layers will be compatible with the City of Fresno GIS system and Consultant will coordinate the GIS layer development with City of Fresno staff.

This project is not a typical design project with typical phases of design (initial conceptual design, solicitation of customer feedback, preliminary engineering, final design, regulatory approval/permitting, delivery of final design package, etc.). Crucial tasks include the assessment and reporting phases while standard construction details will apply to the vast majority of the locations. Where they do not apply, construction documents will be provided. The significant tasks in this project include the following:

1. Perform Field Assessment
2. Start Self-evaluation Process
3. Analyze Findings and Report
4. Provide Standard Construction Details for typical barrier remediation including provision of specifications for compliant Point of Service machines (fare vending machines), street furniture, shelters, signage, benches, etc.
5. Provide Construction Documents for specific locations where standard details do not apply
6. Provide training for City of Fresno Building Inspection Staff
7. Perform Construction Monitoring of remediation process
8. Provide draft and final versions of Assessment report and Self-evaluation

DELIVERABLES

The following is a listing of expected deliverables:

1. (5) bound color copies of draft reports in D-ring binders.
2. (5) bound color copies of final reports in D-ring binders.
3. Electronic copies of the report in PDF and editable digital format in MS Access and ArcGIS. PDF shall include links from the table of contents to the associated bus stop within the report.
4. List of the data gathered in an editable format compatible with Microsoft Excel 2010.
5. Estimate of cost of upgrades per stop, phase and summary in PDF and native files (MS Excel).
6. GIS Map containing all bus stops and routes in PDF with native GIS shape files and custom Geodatabase.

7. Implementation schedule indicating annual barrier removal phases, cost per phase and overall cost.
8. MS Database containing all collected field data with implementation tools, report production capabilities in a editable format.

THE SELF-EVALUATION PROCESS

The FAX System provides 16 fixed-route bus lines and a Handy Ride Paratransit Service, which are considered programs, services or activities by the US DOJ. The Consultant shall complete an ADA Self-evaluation process for the policies and practices used to provide these services. In addition, Consultant will assist the City of Fresno in developing a Grievance procedure for public use that is required by the US DOJ. This part of the process will require input from City of Fresno key staff members who have developed and implemented policies and practices, and the time involvement should include interviews and time set aside to fill out questionnaires that originate with the US DOJ entitled the ADA Toolkit.

The Tool Kit was designed to teach state and local government officials how to identify and fix problems that prevent people with disabilities from gaining equal access to state and local government programs, services, and activities. Consultant has modified the Toolkit to include California statutes and regulations. The Toolkit questionnaires assess basic preparedness. The information obtained through their use represents the starting point of the process and provides information on vital needs such as emergency assistance. Consultant will use this information to establish a baseline for basic policies and practices that serve the needs of people with disabilities who use the FAX System. Further information will be obtained through interviews conducted by Consultant with City of Fresno key staff, which is essential to complete this process and provide recommendations to the City that are necessary to affect meaningful change.

Determining *program accessibility* is an essential part of the Consultant's analysis for ADA Title II entities. The US DOJ allows public entities to use program accessibility to ensure that programs, activities and services are accessible rather than basing accessibility requirements on physical access and buildings alone. This concept means that the City of Fresno must look at the way that they provide programs, services and activities to ensure that when they are viewed in their entirety, they are accessible to and usable by persons with disabilities rather than looking at individual facilities one by one. That process includes not only an analysis of physical barriers to access, but an evaluation of policies and practices that govern programs, services and activities that the City of Fresno provides in their facilities. This concept is very useful for public entities in reducing the amount of barrier removal required, but a consultant must have proven expertise in evaluating programs, activities and services as part of their facility assessments process in order to make use of program access when providing such a complex analysis as described in this scope of work.

Program accessibility was a significant factor in that plan as it allows an ADA Title II public entity to determine where the current need exists and relocate those programs and services to a location that is physically accessible along with providing physical alterations in

locations where it was technically feasible to do so. Through the Consultant's comprehensive approach, the Consultant has been able to assist clients in creating and applying policies and practices to ensure that their programs, services and activities are accessible, rather than relying solely on physical barrier removal, which often means simply giving up on improving access for people with disabilities. In a bus stop system, paratransit service such as Fresno's Handy Ride system will be the significant tool in providing program access. This means that the Consultant will be assessing not only the physical bus stops, but as paratransit is generally a point-to-point system, the policies and practices that it functions under must be reviewed and the vehicles used to provide the service must be assessed to determine compliance.

The Consultant's principal has served as the disability compliance officer for one of the largest state agencies in the US and other staff members have served as the ADA coordinators for large public entities. That depth of experience gives the Consultant an unparalleled expertise in developing and evaluating policies and practices within ADA title II entities that an ADA Transition Plan development depends on. This project is based not only on expertise in physical access, but on an in-depth understanding of the affect that operational policies have on disabled access in City facilities. A successful ADA Consultant must have expertise in coupling the know-how to analyze physical access requirements while ensuring that policies and practices are not discriminatory.

Mitchell Pomerantz is a member of the Consultant's team. His visual impairment provides insight into the needs of many users of the FAX system. He will be assisting the Consultant's team in reviewing policies and practices, including training for FAX staff on how to best serve people with disabilities, including vision impairments.

Normally, a public entity's policies and practices are reflected in its laws, ordinances, regulations, administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded or documented and may be based on local custom. The Consultant's work product will document and review existing City policies and procedures to create standard operating procedures for City staff to use to facilitate equal treatment of all individuals when using the FAX system. This process is an opportunity to educate City staff, demystify access, and create respect among the stakeholders involved. The Consultant can help to create a process to allow for discussion of the obstacles that stakeholders see and a plan for how those barriers (physical and procedural) can be addressed.

The Consultant will begin the process by talking to key stakeholders to identify issues that are common ground and other issues that may be barriers to the process. The biggest challenge is often the fact that issues surrounding disabled access elicits intense reactions. For civic leaders, disabled access can seem like a *grey area*, or just another liability. In basic terms, it may seem like another matter of extra work on their part. The ADA describes specific rules and requirements, but many ADA requirements, such as program access, are more conceptual and need to take into account the specifics of each situation or specific program. Disability types and needs vary widely in the general population and persons with disabilities do not always interact easily with the typical way that cities do business. Common societal views can give a distorted, paternalistic view of people with disabilities and some able-bodied people are uncomfortable around people with disabilities.

Keep in mind that people with disabilities are the only group that can be discriminated against by the built environment.

For the disability community, access is a very emotional issue because without the provision of physical access to City facilities, they feel as though they are being pushed to the sidelines. From their perspective, the ADA was enforced more than 20 years ago and should already be an integral part of our society. Many people with disabilities express concern over what they see as the slow pace of change. They express frustration about having to continue to demand their rights this long after the fact. In order to include this group and others within this process to improve disabled access to City facilities, it is important to allow all stakeholders to express their perspectives, so that all stakeholders can all be moved to common ground.

While the various stakeholders groups may not agree, each group should be given a chance to give input and create specific objectives that will move the City of Fresno toward full compliance. The public comment period is also a great opportunity to build bridges among the various stakeholders that can elicit a new level of pride in the community as a whole.

The Consultant believes that it is important to incorporate the significant elements of effective compliance identified by those stakeholders who have gone through the process. Effective compliance requires the commitment of City leadership, coordination of compliance activities, involvement of the disabled community, and institutionalized compliance procedures. The Consultant's projects with current and former clients have been successful in doing just that.

Oftentimes, the policies and practices that cities have in place appear harmless, but have the end result of denying individuals with disabilities the full participation of its programs, activities, or services. According to the US DOJ, the ADA Self-Evaluation portion of this proposal is required, at a minimum, to carefully examine the following areas:

- 1) Each City of Fresno FAX System program must be examined to determine whether any physical barriers to access exist. Steps to be taken will be identified to enable these programs to become accessible when viewed in their entirety.
- 2) City of Fresno FAX System policies and practices will be evaluated to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program, activity or service.
- 3) City of Fresno FAX System policies will be reviewed to ensure that they communicate with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others. If the facilities communicate with applicants and beneficiaries by telephone, they should ensure that TTY's or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech.
- 4) City of Fresno FAX System policies will be reviewed to ensure that they include provisions for readers for individuals with visual impairments and/or other means for

providing materials in alternate formats; interpreters or other alternative communication measures, as appropriate, for individuals with hearing impairments; and amanuenses for individuals with manual impairments. Methods for securing these services will be developed, including guidance on when and where these services will be provided.

- 5) City of Fresno FAX System policies and procedures will be reviewed for the evacuation of individuals with disabilities during an emergency. Where no policy or procedure is in place, the Consultant will assist in formulating policies and procedures.
- 6) Written and audio-visual materials used by the City of Fresno FAX System will be reviewed to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.
- 7) City of Fresno FAX System facility policies will be reviewed to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, service, or decision that an undue financial and administrative burden will be imposed, are made properly and expeditiously.
- 8) City of Fresno FAX System policies and procedures will be reviewed to ensure that individuals with mobility impairments are provided access to public meetings, when held as a part of this scope of work.
- 9) City of Fresno FAX System policies will be reviewed to ascertain whether measures have been taken to ensure that Facility employees are familiar with the policies and practices for the full participation of individuals with disabilities. A training program can be provided to employees, as an addition to the scope of work for this proposed project.
- 10) City of Fresno FAX System policies will be reviewed to evaluate the current level of ADA/CBC Accessibility, including participation requirements, facilities used, staffing, transportation, communications and emergency procedures

Where this Self-Evaluation process identifies City of Fresno FAX System policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, City staff should take immediate remedial action to eliminate the impediments to full and equivalent participation. Structural modifications identified in the Assessment Report that are required for program accessibility should also be made as expeditiously as possible. The US DOJ does not require public hearings for an ADA Self-Evaluation but the department strongly encourages public entities to consult with individuals with disabilities and organizations that represent them to assist in the Self-evaluation process.

Administrative policies and procedures are an internal matter, yet they have serious implications in terms of public use and public opinion. The Consultant's experience has found that bringing a diverse group of staff members together to discuss the requirements of the ADA in conjunction with current policies and procedures serves an important function. The Consultant refers to this as the *learning group effect*, because it creates an environment

through which staff members from a variety of areas can come together to share their knowledge and learn from each other. After all, City staff is service-oriented in nature. City staff members share the common goal of providing service to all persons who use the City of Fresno FAX System facilities and generally welcome the opportunity to improve their skills.

When City staff has a better understanding of both the diverse needs of persons with disabilities and the legal requirements to provide for those needs, they are better able to devise the most useful ways to provide accessible programs, activities and services that benefit the entire group as a whole. City staff knows how to best perform their jobs and they have a wealth of knowledge to share. This process intends to make use of that knowledge to improve policies and procedures for the universal benefit of all.

During the Self-evaluation process, it is often valuable to interview key members of the staff of a public entity to gain their input, one-on-one. Generally, discrimination is not intentional; it frequently occurs by accident and the examination of those instances often generates innovative approaches, which can lead to changes in the way programs, services and activities are provided.

The Consultant will identify City programs, services and activities with assistance from City staff and provide staff/public questionnaires derived from the US DOJ ADA Toolkit and adapted to include California statutes and regulations to gather information on the current use and function of City facilities. The toolkit functions to gather information that, when combined with the physical access data, paints a picture of how a facility functions and how well staff understands the needs of persons with disabilities. It is often an eye-opening experience to see in writing what the basic policies and procedures are that will provide access to people with disabilities within City program, services and activities. Staff questionnaires can help to demonstrate areas that require improvement or clarification.

The inclusion of individuals with disabilities in this process adds a new dimension. Persons with disabilities have unique perspectives on a public entity's programs, activities, and services. For example, individuals with mobility impairments can readily identify barriers that prevent them from obtaining full access to and use of the public entity's programs, activities, and services. Similarly, individuals with hearing impairments can identify the communication barriers that hamper participation in a public entity's programs, activities, and services.

The Consultant will also perform a physical assessment of para-transit vehicles to verify usability and compliance.

Please note that this proposed project does not include a review of employment practices or procedures of any kind or policies and practices outside of the Fresno FAX System.

PUBLIC OUTREACH MEETINGS

The Consultant shall, in coordination with the City of Fresno FAX department, develop an outreach program to advise the public of the ADA Self-Evaluation and Transition Plan project and to provide an opportunity for interested persons, individuals with disabilities or organizations representing persons with disabilities to participate in the development of the plan.

The Consultant shall prepare program materials, compile responses to public outreach questionnaires and assist the City of Fresno FAX department in eliciting public input into the ADA Transition Plan process, as necessary.

The Consultant shall assist the City of Fresno FAX department with organizing two Public Outreach Meetings to inform the community of the project and receive initial input on the process. The Consultant shall attend the workshop, maintain a record of the proceedings and comments and be prepared to answer questions within their area of expertise.

SCHEDULE OF VALUES

1) LABOR

ADA Transition Plan and Self-evaluation

Name	Role	Hours	Rate	Total
Syroun Sanossian	Project Manager	64	110.25 \$	7,056.00
Jing Le Liu	Project Manager	132	69.7 \$	9,200.40
Daniel Politte	Project Manager	88	69.7 \$	6,133.60
Mitchell Pomerantz	Self-Evaluation	30	200 \$	6,000.00
Io Seng Ng, Adib Altallal, Mansoor Safi, Mohamed Khairian	Field Investigators	1,158	57.5 \$	66,585.00

Public Outreach

Name	Role	Hours	Rate	Total
Syroun Sanossian	Project Manager	52	110.25 \$	5,733.00
Mitchell Pomerantz	Self-Evaluation	42	200 \$	8,400.00
Stephanie Todd	Technical Staff	60	45.6 \$	2,736.00

Training

Name	Role	Hours	Rate	Total
Syroun Sanossian	Training Prep	16	110.25 \$	1,764.00
Mitchell Pomerantz	Training Prep	12	200 \$	2,400.00
Syroun Sanossian	Training	8	110.25 \$	882.00
Mitchell Pomerantz	Training	8	200 \$	1,600.00

TOTAL - Direct Labor \$118,490.00

2) Labor Overhead

O. H Rate	X Base =	Total
23.98%		\$ 28,418.29

TOTAL - Labor Overhead

		\$28,418.29
3) Travel*		Total
Anticipated expenses		\$ 43,800.00
		TOTAL - Travel \$43,800.00
4) Subcontractors/Suppliers**		Total
None		None
		TOTAL - Subcontractors/Suppliers \$ -
5) Other Direct Costs*		Total
Integrate all data gathered and create GIS map	No Charge	0
Create custom Geo-database in ArcGIS	No Charge	0
6) Add/Alternate - GIS Layers		Total
Layer City GIS data with project data		\$ 7,500.00
		TOTAL - Other Costs \$7,500.00
7) General & Admin. Expense	1.5% of Labor Costs	Total
		\$ 1,777.35
		TOTAL - General Admin Expense \$1,777.35
FEE	(10.00%)	TOTAL - Profit (Fee) \$21,998.56
8) Time and material not to exceed for Plan Review		Total
		\$ 20,000.00
		TOTAL COST \$241,984.20
9) Deductive Alternative	Bus Stop Assessments	Total
	Remove fifty (50) bus stops	\$ (4,500.00)
	Remove one-hundred (100) bus stops	\$ (9,000.00)

	Remove one-hundred and fifty (150) bus stops	\$ (13,500.00)
10) Deductive Alternative	Add/Alternate - GIS Layers	Total
	Remove fifty (50) bus stops	\$ (220.00)
	Remove one-hundred (100) bus stops	\$ (440.00)
	Remove one-hundred and fifty (150) bus stops	\$ (660.00)

Plan reviews shall be billed on a not to exceed \$20,000 time and material basis in accordance with rates and overhead calculations included herein and shall proceed only by written authorization from FAX.

Consultant recognizes that the deductive alternates included in this Agreement may be authorized by Amendment at any time prior to the start of the associated work.

Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno (“CITY”)
and SZS Consulting Group LLC (“Consultant”)
FAX Bus Stop Assessment and Self Evaluation
SERVICES TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”.
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT’S profession. Architect’s and engineer’s coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

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

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

OR*

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

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

3. **WORKER'S COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT

must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

VERIFICATION OF COVERAGE

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

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

FAX Bus Stop Assessment and Self Evaluation
SERVICES TITLE

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

Explanation: _____

Signature

Date

(name)

(company)

(address)

(city state zip)

Additional page(s) attached.

Exhibit D

FEDERAL REQUIREMENTS Consultant Service Agreement between City of Fresno And SZS Consulting Group LLC

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

No Government Obligations to Third Parties

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

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

Program Fraud and False or Fraudulent Statements or Related Acts

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

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

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

Access to Records and Reports

(1) Where the CITY is a local government and is the FTA Recipient in accordance with 49 CFR 18.36(i), the CONSULTANT agrees to provide the CITY, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C.5307, 5309 or 5311.

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

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

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

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

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

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

Federal Changes

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master

Agreement between The CITY and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONSULTANT's failure to so comply shall constitute a material breach of this contract.

Termination

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

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

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

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

Civil Rights

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

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

(a) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulation, "Office of Federal Contract

Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of performing under this Agreement. The CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

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

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

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

Disadvantaged Business Enterprise (DBE)

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is 4%. A separate contract goal has not been established for this procurement.

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

The CONSULTANT is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the Consultant’s

receipt of payment for that work from City. In addition, the Consultant may not hold retainage from its subcontractors.

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

Incorporation of FTA Terms

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

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

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

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

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

Resolution of Disputes, Breaches, or other Litigation

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

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

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

Lobbying

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Clean Air

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

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

Clean Water

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that

the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

Energy Conservation

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

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

FTA Protest Notification

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

THIRD PARTY CONTRACTING CAPACITY

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

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

DUNS Registration for Contractors and Vendors

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

Reporting – Monthly Jobs Statistics

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

Other FTA (Federal) Requirements

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

Additional Information

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