

DESIGN CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and Q&D Construction., a Nevada Limited Liability Company (Consultant), as follows:

RECITALS

WHEREAS, the City desires to obtain professional design services for the design of plans and general construction contract documents for the Terminal Expansion at Fresno Yosemite International Airport (Project); and

WHEREAS, the City desires to utilize a Progressive Design Build delivery method to design and build the Project; and

WHEREAS, the selected design build team is composed of Q&D Construction (Design/Builder) and it's sub-consultants including architect and engineers from CSHQA shall provide design services and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

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

1. Contract Documents. The "Request for Qualifications," "Specifications," and the "DBIA Progressive Design Build Agreement", as modified, for design services related to a Terminal Expansion at Fresno Yosemite International Airport, copies of which are annexed hereto as part of Exhibit 1, together with all the documents specifically referred to in said annexed documents are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. Price. For the monetary consideration of \$8,450,000, as set forth in **Exhibit 1**, Consultant promises and agrees to perform or cause to be performed, in a good and workmanlike manner, and to the satisfaction of the City, and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.

3. Payment. The City accepts the Consultant's Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. The Consultant agrees to accept electronic payment from the City.

4. Scope of Services. Consultant shall perform the services described herein and in **Exhibit 1** to complete the design of the Project more fully described in **Exhibit 1**, and this shall include all work incidental to, or necessary to perform, such design services even though not specifically described in **Exhibit 1**. By entry into this Agreement and upon City's issuance of a written "Notice to Proceed," City contracts for the services in Phase One for design. Consultant shall not perform any other Phase of the Agreement, and this Agreement shall not be a contract for any other Phase, until further performance is authorized by City's issuance of a written "Notice to Proceed" for such additional phase(s). It shall, however, remain Consultant's offer to perform all remaining phases described herein. In the event Consultant performs services without

City's prior written authorization, Consultant will not be entitled to compensation for such services.

The DBIA Design Build Agreement (Agreement), as modified, contains additional terms and conditions related to this Contract. In the event of a conflict between this Contract and the Agreement, this Contract shall take precedence. However, if this Contract does not address a legal issue for this Project, the parties shall be governed by the provisions of the Agreement.

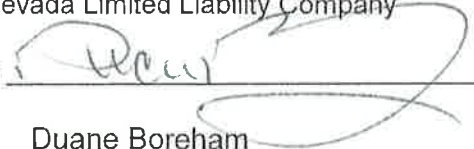
[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Consultant's, and this Contract shall be binding and effective upon execution by both parties.

CITY OF FRESNO,
A California municipal corporation

Q&D Construction
A Nevada Limited Liability Company

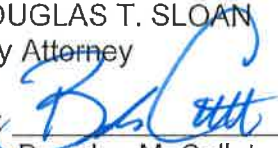
By: _____
Kevin Meikle
Director of Aviation

By:  _____
Duane Boreham
Vice President-Aviation

Dated: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

Dated: _____

By:  _____ 3/3/2020
Brandon M. Collet
Senior Deputy City Attorney

By: _____

Name: _____

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

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

REVIEWED BY:

By: _____
Deputy
Date

Addresses:
CITY:
City of Fresno
Attention: Kevin Meikle
Director of Aviation
4995 E Clinton Way
Fresno, CA 93727
Phone: (559) 621-4600
FAX: (559) [#]

CONSULTANT:
Q&D Construction
Attention: Duane Boreham
Vice President
1050 South 21st Street
Sparks, NV 89431
Phone: (775) 302-6425
FAX: (775) 786-5136

Attachment:
Exhibit 1 – Contract Documents including Scope of Services



Q&D CONSTRUCTION

est. 1964

**CONSENT OF MANAGER
OF Q&D CONSTRUCTION LLC**

The undersigned, Christopher A. Dianda ("Manager"), in his capacity as the sole Manager of Q&D Construction LLC, a Nevada limited liability company (the "Company"), hereby consents to the following resolutions and actions of the Company:

WHEREAS, Section 5.7 of the Company's Operating Agreement, dated January 31, 2018, provides the Manager may authorize by written action any person to enter into and perform any agreement on behalf of the Company other than an agreement which purports to:

- (a) Merge, consolidate or reorganize the Company, or recapitalize or reclassify the Units, or exchange more than fifty percent (50%) of the issued and outstanding Units of the Company with a Person;
- (b) Convey, sell, assign, lease, or otherwise dispose or Transfer, in one transaction or a series of transactions, all or any substantial part of the Company Property; or
- (c) Authorize or issue any additional Units, or additional classes or series of Units or securities convertible into or exchangeable for, or having option rights to purchase (collectively, "Restricted Agreements").

WHEREAS, the Manager believes it is in the best interests of the Company to authorize certain persons to execute certain agreements on behalf of the Company.

NOW THEREFORE, it is hereby:

RESOLVED, that the Manager hereby authorizes Lance Semenko, Duane Boreham, Toby Basta, Jeff Bean, and Kevin Linderman to execute RFP's, RFQ's, Bid Proposal Forms, Bid Bonds, Preconstruction Contracts, Owner Agreements, Performance and Payment Bonds and any subsequent documents and agreements, other than Restricted Agreements, on behalf of the Company.

IN WITNESS WHEREOF, the undersigned Manager adopts, ratifies, and approves the forgoing Resolution as an action of the Company.

Dated and Effective this 1st day of February, 2018.

Christopher A. Dianda, Manager

SERVICE. INTEGRITY. QUALITY.

P.O. Box 10865, Reno, Nevada 89510 | Main Office: 775.786.2677 | Fax: 775.786.5136
www.qdconstruction.com | NCL: 8197 A & B



PROGRESSIVE DESIGN-BUILD AGREEMENT

EXHIBIT 1

Document No. 544

First Edition 2019

© Design-Build Institute of America

Washington, DC



Progressive Design-Build Agreement

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ day of _____ in the year of 2020, by and between the following parties, for services in connection with the Project identified below:

OWNER: **City of Fresno, Airports Department**
(Name and address) **4995 E. Clinton Way**
Fresno, CA 93727-1525

DESIGN-BUILDER: **Q&D Construction**
(Name and address) **1050 South 21st Street**
Sparks, NV 89431

PROJECT:
(Include Project name and location as it will appear in the Contract Documents)
Fresno Yosemite International Airport (FAT) Terminal Expansion located at 5175 E Clinton Way, Fresno CA 93727

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

General

- 1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in Design-Build General Conditions.
- 1.3 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

Article 2

Design-Builder's Services and Responsibilities

- 2.1 General Services.
 - 2.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.
 - 2.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to Design-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.
- 2.2 Phased Services.
 - 2.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in Exhibit B, Contract Price Amendment . Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 7.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Contract Price Amendment (either as a percentage of design completion or by defined deliverables).
 - 2.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project,

the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 2.3.

2.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP).

2.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

2.3.1.1 The Contract Price that may be based on a Lump Sum or Design-Builder's Fee and Cost of the Work, with an option for a GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 7.4.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 7.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.6.2 hereof; and
- iii. If applicable, any prices established under Section 7.1.3 hereof;

2.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the Proposal (Exhibit A);

2.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents and further defined in the Contract Price Amendment;

2.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work as defined in Exhibit A and as further defined in the Contract Price Amendment;

2.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

2.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

2.3.1.9 If applicable, a Savings provision;

2.3.1.10 If applicable, Performance Incentives;

2.3.1.11 The time limit for acceptance of the Proposal; and

2.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

2.3.2 Review and Adjustment to Proposal.

2.3.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

2.3.2.3 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

2.3.2.4 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

i. Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.3 above;

ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or

iii. Owner may terminate this Agreement for convenience in accordance with Article 9 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Item 2.3.2.4 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, (b) suspend performance of Work in accordance with Item 70 of Design-Build General Conditions,, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof, or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2.4 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 2.3.2.4(iii), or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

2.3.3 Project Labor Agreement.

Owner has entered into a Project Labor Agreement for this Project, Design Builder shall comply with the terms and conditions of the Project Labor Agreement for this Project. The Project Labor Agreement is attached hereto as Exhibit J.

Article 3

Contract Documents

- 3.1 The Contract Documents are comprised of the following:
- 3.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the Design-Build General Conditions;
 - 3.1.2 The Contract Price Amendment referenced in Section 2.3.2.3 herein or the Proposal accepted by Owner in accordance with Section 2.3 herein.
 - 3.1.3 This Agreement, including all exhibits (List for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;
 - 3.1.4 The Design-Build General Conditions of Contract;
 - 3.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;
 - 3.1.6 Exhibit B, Contract Price Amendment; and
 - 3.1.7 The following other documents, if any:
 - 3.1.8 The order precedence of contract documents shall be determined in accordance with the Precedence of Contract Documents provision in the General Conditions.

Article 4

Interpretation and Intent

- 4.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 2.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.
- 4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 hereof. *(Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*
- 4.3 Terms, words, and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.
- 4.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their

compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

4.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 5

Ownership of Work Product

5.1 Work Product. Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by Design-Builder pursuant to this Agreement are the property of Owner at the time of preparation and shall be turned over to Owner upon expiration of termination of the Agreement or default by Design-Builder. Design-Builder grants Owner a copyright license to use such drawings and writings. Design-Builder shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. Owner may modify the design including any drawing or writings. Any use by Owner of the aforesaid sketches, tracings, plans computation, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by Design-Builder will be at Owner's sole risk and without liability or legal exposure to Design-Builder. Design-Builder may keep a copy of all drawings and specifications for its sole and exclusive use.

5.2 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 9 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Item 70 of Design-Build General Conditions, , Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 5.2 above, conditioned on the following:

5.2.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 5.4 herein, and

5.3 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Item 68 of Design-Build General Conditions, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 5.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 5.3 above.

5.4 Owner's Indemnification for Use of Work Product. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 5, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.

Article 6

Contract Time

6.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than the number of calendar days after the Date of Commencement ("Scheduled Substantial Completion Date"), as stated in the Contract Price Amendment.

6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as stated in the Contract Price Amendment.

6.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Item 55 of Design-Build General Conditions

6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the Design-Build General Conditions.

6.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

6.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the date stipulated in the Contract Price Amendment days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner the amount(s) as stipulated in the Contract Price Amendment as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

6.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

6.6 Early Completion Credit. If Substantial Completion is attained on or before TBD days before the Scheduled Substantial Completion Date (the "Credit Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 8.4 hereof an early completion bonus of the amount(s) stipulated on the Contract Price Amendment for each day that Substantial Completion is attained earlier than the Bonus Date.

Article 7

Contract Price

7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with the General Conditions of the Contract the sum of **Eight Million, Four Hundred Forty One, One Hundred Forty Three** Dollars (**\$8,441,143**) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

7.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 7 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 7.2 hereof or in the Contract Price Amendment, or equal to the Design-Builder's Fee (as defined in Section 7.4 hereof) plus the Cost of the Work (as defined in Section 7.5 hereof), subject to any GMP established in Section 7.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

7.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)* **NOT USED.**

7.2 Lump Sum. Owner shall pay Design-Builder in accordance with the General Conditions of the Contract the sum of **TBD** Dollars (\$ **TBD**) ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions.. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer, and other taxes mandated by applicable Legal Requirements.

7.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined in accordance with the General Conditions, the following markups shall be allowed on such changes:

7.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of FIFTEEN percent (15 %) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit E attached hereto.

7.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only]

No additional reduction to account for Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

7.4 Design-Builder's Fee.

7.4.1 Design-Builder's Fee shall be:

(Choose one of the following :)

_____ Dollars (\$ _____), as adjusted in accordance with Section 7.4.2 below.

or

_____ percent (_____%) of the Cost of the Work, as adjusted in accordance with Section 7.4.2 below.

7.4.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

7.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of fifteen percent (15%) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

7.4.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only]

No additional reduction to account for Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

7.5 Cost of the Work.

7.5.1 The term Cost of the Work shall mean costs reasonably incurred by or on behalf of Design-Builder in the proper performance of the Work. The Cost of Work shall include only the following:

7.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement or as stipulated in the Contract Price Amendment.

7.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

7.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in the Contract Price Amendment and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a **FIFTEEN** percent (15%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

7.5.1.4 Costs incurred by or on behalf of Design-Builder for employee benefits, premiums, taxes, insurance, deductibles/self-insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof.

7.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

7.5.1.6 Payments properly made by or on behalf of Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance, deductibles/self-insurance and bond premiums incurred by Subcontractors and Design Consultants.

7.5.1.7 Costs incurred by or on behalf of Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, deductibles/self-insurance Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

7.5.1.8 Costs, including transportation, inspection, testing, storage, and handling of materials, equipment, and supplies incorporated or reasonably used in completing the Work.

7.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

7.5.1.10 Costs of removal of debris and waste from the Site.

7.5.1.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.

7.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

7.5.1.13 Premiums for insurance (including deductibles/self-insurance) and bonds required by this Agreement or the performance of the Work.

7.5.1.14 All fuel and utility costs incurred in the performance of the Work.

7.5.1.15 Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

7.5.1.16 Legal costs, court costs, and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

7.5.1.17 Costs for permits, royalties, licenses, tests and inspections incurred by or on behalf of Design-Builder as a requirement of the Contract Documents.

7.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder arising from such suits or claims, and paying settlements made with Owner's consent.

7.5.1.19 Deposits which are lost, except to the extent caused solely by Design-Builder's negligence.

7.5.1.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.

7.5.1.21 Accounting and data processing costs related to the Work.

7.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

7.5.1.23 Owner and Design-Builder agree that an escrow account in the amount of **TBD** Dollars shall be outlined in the Contract Price Amendment and established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the contract amount, Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the contract amount.

7.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

7.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3 hereof.

7.5.2.2 Overhead and general expenses, except as provided for in Section 7.5.1 hereof, or which may be recoverable for changes to the Work.

7.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

7.5.2.4 If the parties have agreed on a GMP for work being done on a Time and Material (T&M) basis, costs that would cause the T&M GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

7.6 The Guaranteed Maximum Price.

- 7.6.1 Design-Builder guarantees that it shall not exceed the GMP of TBD Dollars (\$ TBD). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 2.3 above, to ensure that the basis for the GMP is well understood).*

[In lieu of 7.6.1, Owner and Design-Builder may want to include the following language.]

- Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$ _____). Documents used as basis for the GMP shall be identified as the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of _____ Dollars (\$ _____), and as set forth in the Contract Price Amendment (“General Conditions Cap”). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said general conditions line item and the GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth in Section 7.3 herein.

- 7.6.2 The GMP includes a Contingency in the amount of xxxx Dollars (\$xxx) which is available for Design-Builder’s exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

7.6.3 Savings.

7.6.3.1 If the Contract Price (which is the sum of the Price in Phase 1 added to the Price of Phase 2), not including contingency and as detailed in the contract price amendment, is less than the amount outlined in Section 7.6.1, as such Contract Price may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

(Choose one of the following)

 FIFTY percent (**50** %) to Design-Builder and
 FIFTY percent (**50** %) to Owner.

or

The first _____ Dollars (\$ _____) of Savings shall be provided to (choose either Design-Builder or Owner) _____, with the balance of Savings, if any, shared _____ percent (_____%) to Design-Builder and _____ percent (_____%) to Owner.

7.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 8.4 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

7.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

7.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

7.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by or on behalf of Design-Builder for the particular Allowance Item and the Allowance Value.

7.8 Performance Incentives.

7.8.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in the Contract Price Amendment.

Article 8

Procedure for Payment

8.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: *(Insert terms.)*

8.2 Contract Price Progress Payments.

8.2.1 Design-Builder shall submit to Owner on the **Tenth (10th)** day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with the General Conditions.

8.2.2 Owner shall make payment within fifteen (15) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with the General Conditions, but in each case less the total of payments previously made, and less amounts properly withheld under the General Conditions.

8.2.3 If Design-Builder's Fee under Section 7.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

8.3 Retainage on Progress Payments.

8.3.1 Retainage will apply to Phase 2 only. Retainage will not be held on Phase 1 (Design and Pre Construction Services).

8.3.2 Owner will retain FIVE percent (5 %) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

8.3.3 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to the General Conditions..

[If Owner and Design-Builder have established a warranty reserve pursuant to Section 7.5.1.23 above, the following provision should be included.]

If a warranty reserve has been established pursuant to Section 7.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 7.5.1.23 above.

8.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with the General Conditions. Owner shall make payment on Design-Builder's properly

submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that: (a) Design-Builder has satisfied the requirements for final payment set forth in the General Conditions.

8.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one percent (1%) per month until paid.

8.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Time and Material Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by the Owner and Design-Builder as part of this Agreement is not subject to audit.

Article 9

Termination for Convenience

9.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

9.1.1 All services performed and Work executed and for proven loss, cost, or expense in connection with the services and Work;

9.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

9.1.3 ***(Choose one of the following :)***

The fair and reasonable sums for overhead and profit on the sum of items 9.1.1 and 9.1.2 above.

or

Overhead and profit in the amount of **FIFTEEN**
percent (**15** %) on the sum of items 9.1.1 and 9.1.2 above.

9.2 In addition to the amounts set forth in Section 9.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

9.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid **\$0** of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

9.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid in accordance with Item 69 of Design-Build General Conditions.

9.3 If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 5.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 5.

Article 10

Representatives of the Parties

10.1 Owner's Representatives.

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under the General Conditions: *(Identify individual's name, title, address, and telephone numbers.)*

**KEVIN MEIKLE – DIRECTOR OF AVIATION
(559) 621-4600**

10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in the General Conditions: *(Identify individual's name, title, address, and telephone numbers.)*

**MARK DAVIS – AIRPORTS PLANNING MANAGER
(559) 621-4532**

10.2 Design-Builder's Representatives.

10.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under the General Conditions: *(Identify individual's name, title, address, and telephone numbers.)*

**DUANE BOREHAM – VICE PRESIDENT
(775) 302-6425**

10.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in the General Conditions: *(Identify individual's name, title, address, and telephone numbers.)*

**LAMONTE FORGAYS – CONSTRUCTION MANAGER
(775) 302-6492**

Article 11

Bonds and Insurance

11.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

11.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

(Check one box only. If no box is checked, then no bond is required.)

Required Not Required

Payment Bond.

(Check one box only. If no box is checked, then no bond is required.)

Required Not Required

Other Performance Security.

(Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.)

Required Not Required

Article 12

Other Provisions

12.1 Other provisions, if any, are as follows: *(Insert any additional provisions.)*

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner’s Project Criteria and Scope of Services
Exhibit B – Contract Price Amendment (incorporated as part of Phase 2)
Exhibit C – General Conditions (incorporated as part of Phase 2)
Exhibit D – Special Conditions (incorporated as part of Phase 2)
Exhibit E – Markups (incorporated as part of Phase 2)
Exhibit F – Federal Provisions
Exhibit G – Conflict of Interest Disclosure Form
Exhibit H – Labor Rates (incorporated as part of Phase 2)
Exhibit I – Tool and Equipment Rental (incorporated as part of Phase 2)
Exhibit J – Project Labor Agreement

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

Q&D Construction
(Name of Design-Builder)

(Signature)

Duane Boreham
(Printed Name)

Vice President-Aviation
(Title)

Date: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Date
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Date
Deputy

EXHIBIT A – OWNER’S PROJECT CRITERIA AND SCOPE OF SERVICES

to DBIA DOCUMENT 544

For the

FRESNO YOSEMITE INTERNATIONAL AIRPORT

TERMINAL EXPANSION – 2020

- Request for Qualifications Statement for Progressive Design-Build Services dated September 17, 2019 (excluding Attachment G – Draft Contract Agreement)
- Addendum No. 1 to Request for Qualifications Statements dated September 20, 2019
- Attachment B - Amended Scope of Work dated February 25, 2020

EXHIBIT B – CONTRACT PRICE AMENDMENT
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- Contract Price Amendment (CPA) to be submitted and approved prior to commencing with Phase 2.

EXHIBIT C – GENERAL CONDITIONS
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- General Conditions are to be incorporated into this Agreement as Exhibit C prior to commencing with Phase 2.

EXHIBIT D – SPECIAL CONDITIONS
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- Special Conditions, if any, are to be incorporated into this Agreement as Exhibit D prior to commencing with Phase 2.

EXHIBIT E – MARKUPS
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- Markups are to be incorporated into this Agreement as Exhibit E prior to commencing with Phase 2.

EXHIBIT F - FEDERAL PROVISIONS
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- Federal Provisions Applicable to All Agreements.

FEDERAL PROVISIONS APPLICABLE TO ALL AGREEMENTS

A. GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. CIVIL RIGHTS ACT OF 1964, TITLE VI

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- 1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3. Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to

the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the

Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq.).

C. FEDERAL FAIR LABOR STANDARDS ACT (MINIMUM WAGE)

All contracts and subcontracts resulting from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

EXHIBIT G – CONFLICT OF INTEREST DISCLOSURE FORM
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- Disclosure of Conflict of Interest (Attachment E).

EXHIBIT H – LABOR RATES
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- Labor Rates are to be incorporated into this Agreement as Exhibit H prior to commencing with Phase 2.

EXHIBIT I – TOOL AND EQUIPMENT RENTAL
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- Equipment Rental Rates are to be incorporated into this Agreement as Exhibit I prior to commencing with Phase 2.

EXHIBIT J – PROJECT LABOR AGREEMENT
to DBIA DOCUMENT 544
For the
FRESNO YOSEMITE INTERNATIONAL AIRPORT
TERMINAL EXPANSION – 2020

- Refer to Exhibit D of Request for Qualifications Statement for Progressive Design-Build Services dated September 17, 2019.

ATTACHMENT B

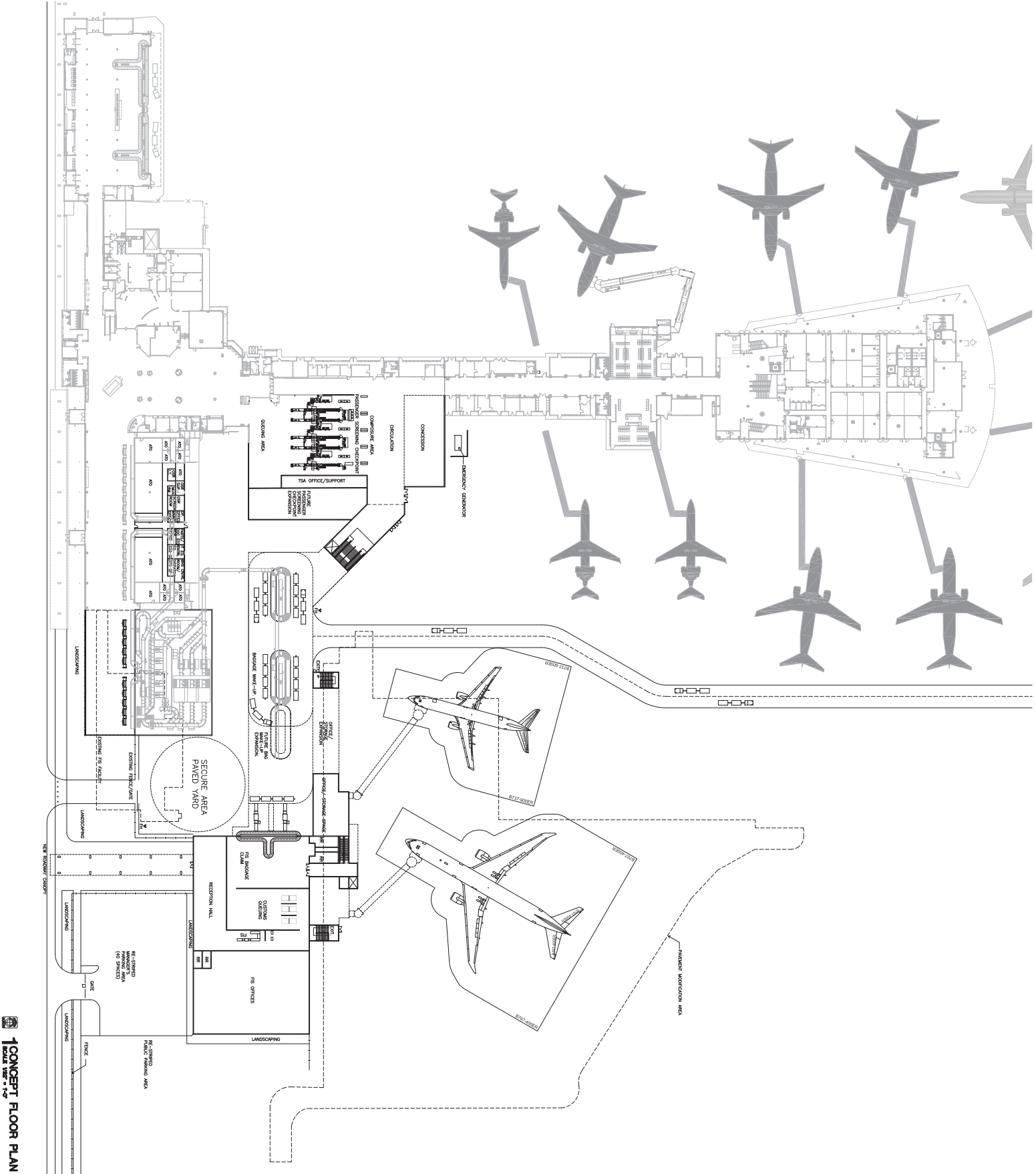
**Fresno Yosemite International Airport
Terminal Expansion – 2020
Request for Qualifications for Progressive Design-Build Services
September 17, 2019**

Refer to the attached site/floor plan drawings Exhibits 1, 2, & 3 dated February 25, 2020

Amended Scope of Work

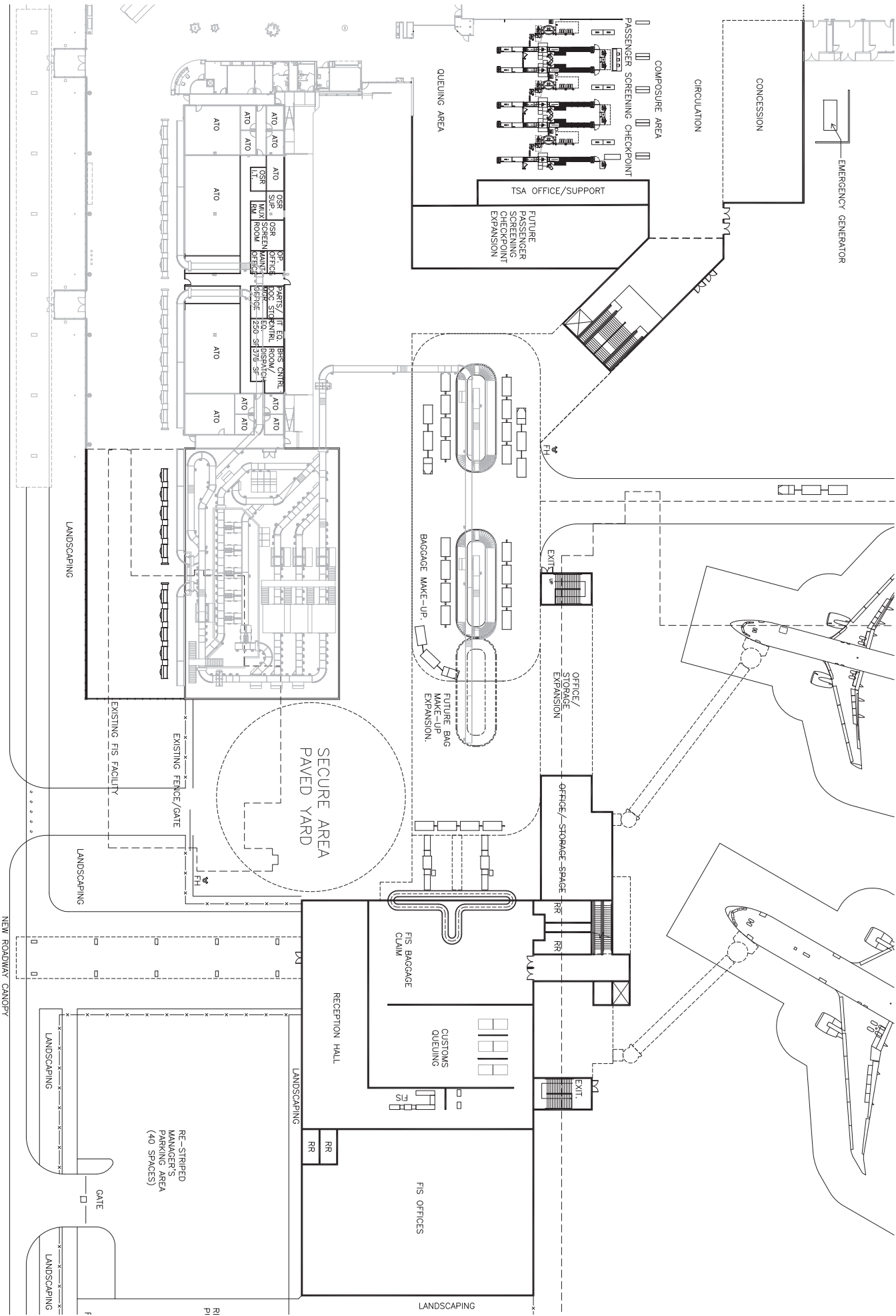
1. The Airside Site Work (East Apron Expansion Project) has been removed from this scope of work. The Airside Site Work will be completed under a separate contract in compliance with FAA – AIP funding regulations. It is anticipated that the East Apron Expansion Project construction may be completed prior to start of construction on the Terminal Expansion project. However, there will be design coordination between the East Apron Expansion Project design team and the Terminal Expansion design team, including coordination of pavement design, storm drainage design, underground utility design, passenger boarding bridge (PBB) locations, aircraft pavement marking layout, ground service equipment (GSE) planning and design and project boundary line coordination. The boundary line between the two projects is anticipated to align with the edge of heavy apron pavement as depicted in the attached amended site/floor plan drawings.
2. The concept for the new TSA in-line Checked Baggage Inspection Systems (CBIS) has been revised to include a new building addition on the east side of the existing terminal building ticket lobby wing. The new CBIS building will be approximately 9,000 sf. This concept allows for the phased construction of the new in-line CBIS without significant disruption to the existing baggage screening system. The concept improves construction phasing, maintains existing operations and provides the opportunity to construct additional Airline Ticket Office (ATO) space directly behind the existing ticket counters. This concept also provides more space for future expansion of the baggage screening system and an improved configuration of equipment that is more efficient and easier to maintain.
3. The TSA in-line CBIS project is contingent on TSA grant funding (approval of a TSA Other Transaction Agreement (OTA)) and will only move forward as a part of this project if TSA approves grant funding for design. Phase II construction of the CBIS is also contingent on TSA grant funding, which cannot be evaluated until the 100% CBIS design is submitted for TSA review and approval.
4. The scope of work has been amended to include the replacement of the existing ticket counter conveyor (per owner request) and additional conveyor to deliver baggage to the new in-line CBIS building.
5. The scope of work has been amended to include an ATO tenant improvement in the area previously occupied by the existing baggage screening system and baggage make-up area.
6. The amended scope of work/design concept includes a reduction in site (land side) work due to adding the new CBIS building.
7. We understand the Owner is currently preparing a Terminal Concession Master Plan. We understand that this may result in changes to the location and size of concession space in the terminal expansion project.

8. The current mechanical HVAC design concept includes roof top package units for all terminal building expansion areas. We will explore options to expand and utilize all or portions of the existing HVAC central plant for hot and chilled water to supply the terminal building expansion areas, but this may prove to be cost prohibitive. At the end of 30% design, design fees will be adjusted to align with the owner approved HVAC scope of work.
9. The current Telecommunications, Access Control, Video Surveillance, Public Address (PA), and Electronic Video Information Display System (EVIDS) systems are based on the concept of extending the existing systems into the terminal expansion area. This assumes that the existing headend equipment has the bandwidth and capacity to add devices in the expanded terminal building areas. This assumption will be evaluated during the 30% design and the design team will recommend upgrades to headend equipment if required. At the end of 30% design, design fees will be adjusted to align with the owner approved scope of work. Note: Any dedicated or stand-alone systems that would be required by the FIS or CBIS projects would be included in the based scope of work.
10. All parties understand that this is a conceptual design and will continue to evolve throughout the design process.



CONCEPT FLOOR PLAN
SCALE: 1/4" = 1'-0"

<p>DATE: 11/11/11</p> <p>SHEET: A21</p> <p>CONCEPT FLOOR PLAN</p>	<p>PROJECT: FRESNO YOSEMITE INT. AIRPORT - TERMINAL EXPANSION</p> <p>DATE: 11/11/11</p> <p>SCALE: 1/4" = 1'-0"</p>	<p>FRESNO YOSEMITE INT. AIRPORT - TERMINAL EXPANSION</p> <p>5175 E CLINTON WAY</p> <p>FRESNO, CA</p>		<p>OWNER: BONE THOMPSON, COMPANY</p> <p>200 BROAD STREET FRESNO, CA 93702 PHONE: (209) 343-1800 FAX: (209) 343-1814</p>	<p>PRELIMINARY NOT FOR CONSTRUCTION</p>
	<p>DESIGNED BY: [Redacted]</p> <p>DRAWN BY: [Redacted]</p> <p>CHECKED BY: [Redacted]</p> <p>DATE: 11/11/11</p>	<p> GD + CSHGA</p> <p>200 BROAD STREET FRESNO, CA 93702 (209) 343-1800 • FAX (209) 343-1814 WWW.CSHGA.COM</p>		<p>SCALE: 1/4" = 1'-0"</p> <p>DATE: 11/11/11</p> <p>BY: [Redacted]</p>	
	<p>EXHIBIT 1</p>			<p>DATE: 11/11/11</p> <p>BY: [Redacted]</p>	



1 CONCEPT FLOOR PLAN

A22

CONCEPTUAL FLOOR PLAN

EXHIBIT 2

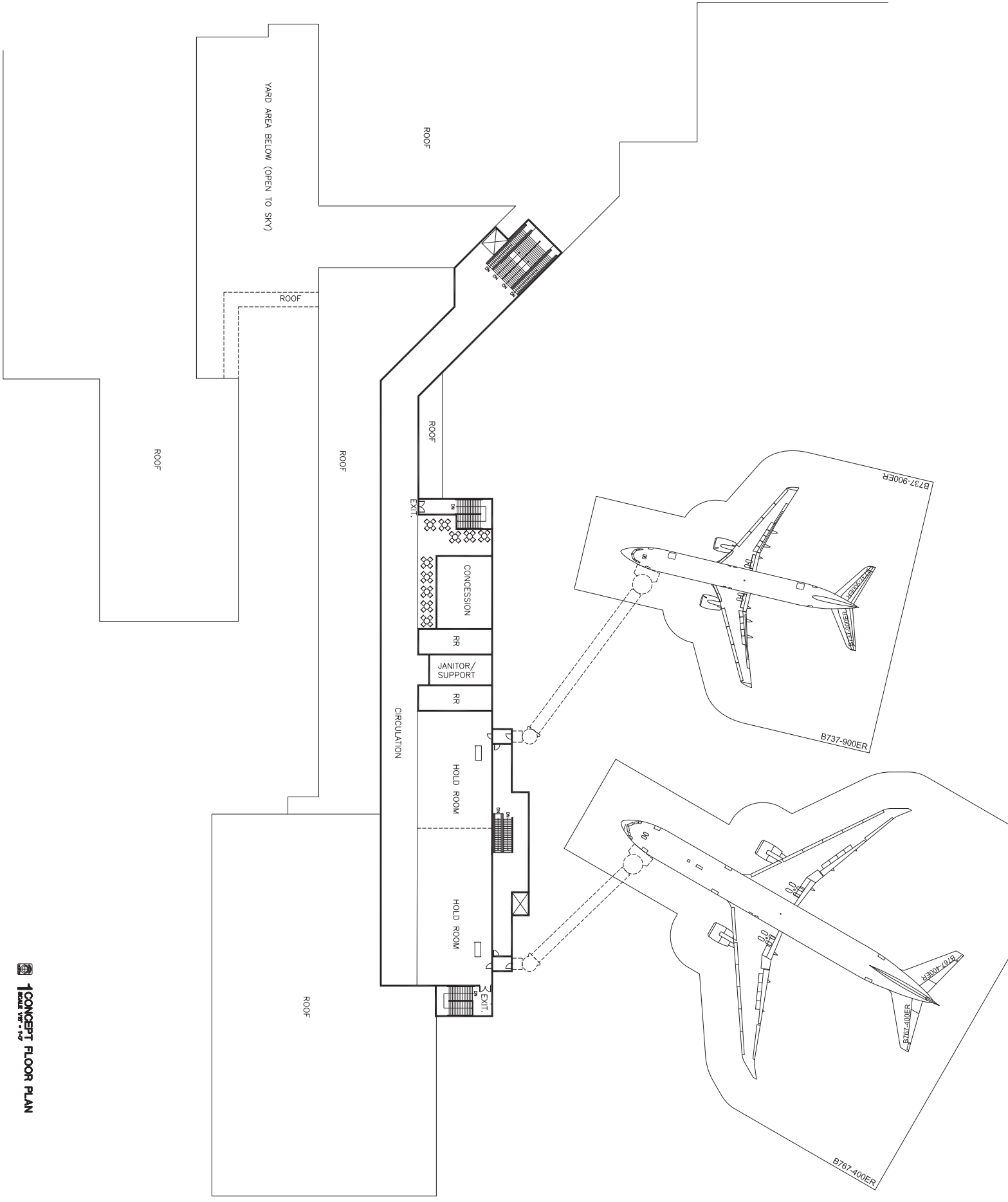
FRESNO YOSEMITE INT. AIRPORT - TERMINAL EXPANSION
5175 E CLINTON WAY



200 BROAD STREET
 BOISE, ID 83702
 (208) 343-4635 • FAX (208) 343-1888
 www.cshga.com

OFFICE: BOISE, IDAHO, OREGON
 200 BROAD STREET
 BOISE, IDAHO 83702
 (208) 343-4635 • FAX (208) 343-1888
 www.cshga.com

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 CONSTRUCTION**



CONCEPT FLOOR PLAN
SCALE: 1/8" = 1'-0"

<p>A23</p>	<p>CONCEPTUAL FLOOR PLAN</p>	<p>EXHIBIT 3</p>	<p>FRESNO YOSEMITE INT. AIRPORT - TERMINAL EXPANSION 5175 E CLINTON WAY</p> <p>CB + CSHGA</p>	<p>200 BROAD STREET 200 BROAD STREET BOISE, ID 83702 (208) 343-4635 • FAX (208) 343-1858 WWW.CSHGA.COM</p>	<p>PRELIMINARY NOT FOR CONSTRUCTION</p>
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EXHIBIT G

Attachment E

CITY OF FRESNO CONFLICT OF INTEREST DECLARATION

DISCLOSURE OF CONFLICT OF INTEREST

FRESNO INTERNATIONAL AIRPORT TERMINAL EXPANSION - 2020

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

Explanation: _____

Alaska, United & American Airlines.

Although we do work for these airlines and

have proposed on FAT projects, we have not

performed work at FAT for them, yet.

Additional page(s) attached.



Signature

Duane Boreham

(name)

Q&D Construction

(company)

1050 S. 21st Street

(address)

Sparks, NV 89431

(city state zip)