



FAX **FRESNO AREA**
EXPRESS

REQUEST FOR QUALIFICATIONS (RFQ) FOR:

PLANNING & DESIGN SERVICES FOR HYDROGEN
INFRASTRUCTURE & FACILITY MASTER PLAN

RFQ NO. 12502218

SCHEDULED DEADLINE:

MONDAY, JUNE 16, 2025



POINT OF CONTACT: ORIE RUBALCAVA



Orie.Rubalcava@fresno.gov



(559) 621-1573

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DIVISION I – INTRODUCTION

Summary:

Division I introduces the proposer to a brief description of the work to be accomplished and instructions on how proposals are to be submitted to the City.

NOTICE INVITING PROPOSALS

Sealed proposals or electronic proposals via Planet Bids will be received at the office of the Projects Administrator of the City of Fresno, 2223 G Street, Fresno, CA 93706, all in accordance with the Specifications for:

REQUEST FOR QUALIFICATIONS FOR COMPREHENSIVE PLANNING SERVICES FOR HYDROGEN INFRASTRUCTURE & FACILITY MASTER PLAN

REQUEST FOR QUALIFICATIONS NO. 12502218

The City of Fresno Department of Transportation/FAX (hereinafter ("FAX")) is soliciting proposals from qualified contractors for Planning Services.

The RFQ forms and specifications may be obtained from the Office of the Projects Administrator (phone 559-621-1537) via the City's website: www.fresno.gov, click on "Business" (at the top of the screen), then "Bid Opportunities" under the "Doing Business" section.

Proposals may be submitted electronically via Planet Bids or by paper only.

Proposals are to be submitted to the Projects Administrator of the City of Fresno, 2223 G Street, Fresno, CA 93706 or electronically using Planet Bids prior to the deadline at 3 p.m. on Monday, June 16, 2025.

Pre-Proposal Conference

A pre-proposal conference will be held at **2223 G Street, Fresno, CA 93706** and virtually on **May 14, 2025 at 1:00 PM**. The meeting will be held virtually at **[Join the meeting now](#)** Meeting ID 271 591 038 616 4. Participants can also dial in at **[+1 323-676-6164](tel:+13236766164)**, **[243742495#](tel:+13236762437)**. Prospective Proposers are encouraged to attend. City Staff will be present to answer any questions regarding the Specifications and provide a tour of the job site.

All proposals must be made on the proposal forms provided by FAX.

The City of Fresno hereby notifies all Proposers that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law.

This contract is funded in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the City of Fresno and the U.S. Department of Transportation.

Planning & Design Services for Hydrogen Infrastructure & Facility Master Plan,
Request for Qualifications No. 12502218

Although there is no specific goal or requirement to use participation by Disadvantaged Business Enterprises (DBE) for this project, The City of Fresno highly encourages the participation of Disadvantaged Business Enterprises (DBE). The City of Fresno encourages all prime Contractors to utilize qualified SBE (Small Business Enterprise) sub-Contractors on the City of Fresno projects and promotes the direct purchase of goods from qualified SBEs by utilizing SBE/DBE vendors when such vendors are available and the price of the goods or services sought is reasonable.

The Contractor is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA). If FTA requires any change to this Contract to comply with its requirements, both parties agree to amend the Contract as required by FTA. If such changes cause an increase or decrease in the work to be performed by the Contractor or the time for such performance, then the compensation to be paid the Contractor and time of performance shall be equitably adjusted.

The City of Fresno reserves the right to reject any and all proposals.

**INSTRUCTIONS TO PROPOSERS
FOR
PLANNING SERVICES FOR
HYDROGEN INFRASTRUCTURE & FACILITY MASTER PLAN**

REQUEST FOR QUALIFICATIONS NO. 12502218

- 1) No proposal will be considered for award unless it is submitted on the proposal forms furnished by the Projects Administrator, completely filled out, properly signed by the Proposer and delivered, under sealed cover plainly marked or submitted electronically via Planet Bids before the date and time specified in the Notice Inviting Proposals. The time clock on Planet Bids will be the official clock for documenting the time of filing. Electronically filed is defined as by means of electronic equipment or devices. In the event that both a paper and electronic proposal for the same project are submitted, the City will use and accept the electronic version as the authorized submittal
- 2) The City will award a Contract or reject any or all proposals within the time stated in the Specifications, and no proposal may be withdrawn within that period of time. Any award of a Contract exceeding \$100,000 shall be subject to the approval of the City Council.
- 3) The City reserves the right to reject any and all proposals.

Submittal of Proposal

- 4) Each Proposer shall carefully examine each and every term of this Request for Qualifications; and each Proposer shall judge all the circumstances and conditions affecting its proposal. Failure on the part of any Proposer to make such examination and to investigate thoroughly shall not be grounds for any declaration that the Proposer did not understand the conditions of this Request for Qualifications.
- 5) The Proposer shall comply with any and all federal, state or local laws, now in effect or hereafter promulgated, which apply to the services and products herein specified.
- 6) Proposers will submit an original proposal in a sealed envelope, marked on the outside **RFQ No. 12502218** and will include the name of the Proposer and the date and time of proposal submittal deadline. If proposals are submitted electronically, hard copies are not applicable.
- 7) This solicitation for proposals does not commit the City of Fresno to enter into a Contract or to pay any costs incurred in the preparation of responses to the request. The City of Fresno reserves the right to accept or reject any proposals, and to negotiate with any qualified source, or to cancel in part or in its entirety this Request for Qualifications. It may accept the proposal that it considers to be in the

interest of the City of Fresno, with or without negotiation.

- 8) The City reserves the right to waive any informality or minor irregularity when it is in the best interest of the City to do so, to negotiate for the modification of any proposal with mutual consent of the Proposer, to re-advertise for proposals if desired, and to accept the proposal which in the judgment of the City, even though it does not offer the lowest cost, is nevertheless deemed to offer the best value for the public and City. Any proposal which is incomplete, conditional, obscure, or which contains irregularities of any kind, may be cause for rejection.
- 9) The proposals received shall become the property of the City of Fresno and are subject to public disclosure. Those parts of a proposal which are defined by the Proposer as business or trade secrets as that term is defined in California Evidence Code, Section 3426.1, and are reasonably marked "Trade Secrets", "Confidential", or "Proprietary", and placed in a separate envelope shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most or all of their proposal as exempt from disclosure may be deemed non-responsive. Proposals, excluding confidential information, will be available for review after posting of staff recommendation.

Minimum Qualifications

The firm must be licensed to do business in the State of California.

Brooks Act

Proposers are put on notice that this solicitation is subject to 40 U.S.C 1101-1104 ("Brooks Act") and qualification-based procurement procedures will be used to determine the most qualified offeror. The Selection Committee shall attempt to negotiate fair and reasonable compensation with the most highly qualified firm. If the Selection Committee is unable to negotiate a satisfactory contract with the firm, the Selection Committee shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the Selection Committee is unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

In accordance with 2 CFR 200.324, to establish fair and reasonable compensation, each element of cost (that is, labor hours, overhead, materials, and so forth) will be examined. Profit shall be negotiated as a separate element and will be based on the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Lastly, the requirements to 49 U.S.C. § 5325(b)(2) apply and require that (1) third party contract or subcontract must be performed and audited in compliance with FAR part 31 cost principles, (2) third party contractor and its subcontractors, if any, must accept FAR indirect cost rates for the one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute, and (3) after a firm's indirect cost rates established as described above are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, and will not be limited by administrative or de facto ceilings.

Selection Process and Evaluation Criteria

Proposal Evaluation

The City will establish a selection committee to score proposals based on the evaluation criteria stated herein.

The Selection Committee will review and evaluate all proposals after formal receipt. To receive proper consideration, the proposal must meet the requirements of these Specifications. The evaluation process will provide credit only for those capabilities and advantages which are clearly stated in the Proposer's written proposals. In other words, advantages which are not stated will not be considered in the evaluation process.

Proposers whose proposals include a failure to comply with or take exception to these Specifications may be considered nonresponsive and dropped from the evaluation process.

The Selection Committee will evaluate the proposals based upon three categories (in order of relative importance):

a. Presentation on Approach to Work

After proposals are opened, each proposer will be scheduled for an in-person or virtual presentation to describe their approach to the *Statement of Work* and the benefits to the proposed approach. Any proposer who does not provide a presentation will be found non-responsive.

b. Qualifications of Key Personnel

Technical experience in performing work of a closely similar nature; experience working with public agencies; experience in providing specifically this type of service, strength and stability of the firm; strength, stability, experience, and technical competence of sub-consultants; assessment by client references; references with demonstrated success in providing similar services.

c. Past Performance and Experience

What is the Contractor's experience and history in planning services for hydrogen infrastructure and Facility Master Plans relevant to FAX's needs, including a description of direct experience on projects of similar size, scope, complexity, and references?

d. References

The Proposer shall provide a minimum of three (3) references. For each reference, provide the agency name, address, contact person, telephone number and email address. FAX reserves the right to contact references provided by the Proposer and solicit additional references to determine best value.

The City reserves the right to accept or reject any or all proposals and may select, and negotiate with one or more Proposers concurrently, and enter into a Contract with such Proposer who is determined, by the City, to provide the services which are in the interest of the City. The City may agree to such terms and conditions as it may determine to be in its interest.

The Selection Committee reserves the right to request additional information from Proposers, to negotiate terms and conditions of the Contract, to visit sites, to request demonstrations or oral presentations, to establish a competitive range, or ask Proposers to appear before the Selection Committee to clarify points of their proposal.

Selection will be based on qualitative analysis and cost. Any award shall be on the basis of the criteria specified and made to the Proposer whose proposal is judged as providing the best value in meeting the interest of the City and the objectives of the project.

The City reserves the right to make the selection of a Proposer, at its sole discretion, based on any or all factors of value, whether quantitatively identifiable or not, including, but not limited to, the anticipated initiative and ability of the Proposer to perform the services set forth herein.

Prevailing Wage

Work hereunder constitutes a "public work" as defined in Chapter 1, Part 7, Division 2 of the California Labor Code, and Contractor shall cause the work to be performed as a "public work" in accordance with such Chapter of the California Labor Code. The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of worker needed in the execution of Contracts for the City. Information specific to the Work to be done under this Contract can be obtained by contacting the Contract Coordinator.

This project is being funded with federal funds administered by the Federal Transportation

Authority. This project is subject to the payment of predetermined minimum wages mandated by the Davis-Bacon Act of 1931.

Pre-Proposal Conference

A pre-proposal conference will be held at **2223 G Street, Fresno, CA 93706** and virtually on **May 14, 2025 at 1:00 PM**. The meeting will be held virtually at [Join the meeting now](#) Meeting ID 271 591 038 616 4. Participants can also dial in at [+1 323-676-6164,,243742495#](#). Prospective Proposers are encouraged to attend. City Staff will be present to answer any questions regarding the Specifications and provide a tour of the job site.

Time to Award

The Proposer agrees that the City may have **ONE HUNDRED SIXTY (160) DAYS** to accept or reject proposals. It is further understood that, if the Proposer to whom any award is made fails to enter into a Contract as provided in the Specifications, award may be made to another Proposer, who shall be bound to perform as if she/he had received the award in the first instance.

Contract Documents

The proposer shall submit the required contract documents in a form acceptable to FAX at 2223 G Street, Fresno CA 93706 within 15 calendar days (except in the event federal funding is applicable to the Contract, then 10 working days) from the Notice of Award of proposal. Failure to provide said documents within the designated period shall be sufficient cause to find the proposal non-responsive and move to award to the next proposer offering the next best value to the City.

Questions, Clarifications and Concerns

The Specifications describing this project have been carefully prepared. **Any questions or concerns relating to these Specifications shall be directed in writing via Planet Bids or e-mail to Orie.Rubalcava@fresno.gov**. Please include the proposal file number and the title of the project in the subject heading of your e-mail.

Questions will be accepted only up to 5 working days prior to the proposal opening date to allow the City, if necessary, to issue an addendum to all proposals stating revisions, deletions, or additions to be made to the Specifications as a result of any questions. If questions arise after the deadline, please contact the designated FAX, but the City will not guarantee a response.

The City will not be responsible for verbal responses made by parties other than FAX or designee.

Any questions concerning Disadvantaged Business Enterprise (DBE) issues shall

be addressed to DBE Program staff at telephone no. (559) 621-1154 or email at DBE@fresno.gov.

Regulated Communications In City Procurement Process Ordinance

The Regulated Communications in City Procurement Process Ordinance (Chapter 4, Article 6 of the Fresno Municipal Code) became effective May 7, 2004. With certain specified exceptions, the Ordinance provides that no Respondent, Bidder, Proposer (as the case may be) shall initiate, engage in, or continue any communication to or with any City elected official concerning or touching upon any matter which is the subject of this competitive procurement process.

Any Respondent, Bidder, Proposer or elected official (as the case may be) who initiates, engages in, continues in, or receives any regulated communication shall file the written disclosure required by the Regulated Communications in City Procurement Process Ordinance.

Any Respondent, Bidder, or Proposer violating the Regulated Communications in City Procurement Process Ordinance may be disqualified from participating in this procurement process and/or determined to be non-responsible. Additionally, the City may set aside the award of a contract, prior to its execution, to a party found to have violated the Ordinance.

Note: The full text of Fresno Municipal Code, Chapter 4, Article 6 may be viewed on the City's website at, <http://www.fresno.gov>. Under Departments, "City Clerk" - Fresno Municipal Code- Or view the Fresno Municipal Code directly at https://library.municode.com/ca/fresno/codes/code_of_ordinances?nodeId=MUCOFR_C44CIPUCOSA_ART6RECOELOFPRPR

Debarment

A Proposer may be debarred from bidding or proposing upon or being awarded any contract with the City, or from being a subcontractor or supplier at any tier upon such contract, in accordance with the procedures in Fresno Municipal Code Section 4-104 adopted by Council on May 17, 2018. The initial period of any such debarment shall not be less than one year and may be permanent depending on the violation. A Proposer may request a hearing, in accordance with Fresno Municipal Code Section 4-104, upon receipt of a notice of proposed debarment from the City Manager or designee. A copy of the Ordinance may be obtained from the City Clerk's Office, 2600 Fresno Street, Fresno, California 93721.

Outreach To Small Business Enterprises In Subcontracting

The City of Fresno hereby notifies all Proposers that it is the City's policy to provide all small business enterprises, including minority, women, and disabled veteran business enterprises, equal access and opportunity for participation in the performance of all

construction contracts, professional service contracts, procurement of supplies, equipment and other services. Therefore, the City requests that a Proposer who intends to subcontract a portion of the work seek out small business enterprises that are potential subcontractors, suppliers, or consultants, and actively solicit their interest, capability, and prices.

Furthermore, the City of Fresno hereby notifies all Proposers that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

Proposers are advised that, as required by federal law, the City of Fresno is implementing new Disadvantaged Business Enterprise requirements for Disadvantaged Business Enterprises (DBE). The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 3.4%. No goal has been established for this contract.

ACH Payment Initiative - Electronic Payment

Proposer shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract. Payment for invoices submitted by the proposer shall only be rendered electronically unless payment by paper check is expressly authorized by the Controller, in the Controller's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary City procedures and practices. The proposer shall comply with the Controller's procedures to authorize electronic payments. Proposer acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the Controller's electronic payment procedures, except where the Controller has expressly authorized payment by paper check as set forth above.

ADA

Accessibility Requirements: Supplier warrants that it complies with California and federal disabilities laws and regulations; and the Services will conform to the accessibility requirements of WCAG 2.0AA. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Services. The City may require proposer to comply with these accessibility requirements if they are awarded a contract.

DIVISION II – BIDDING AND CONTRACT DOCUMENTS

Summary:

Division II provides the proposer with a checklist and required documentation to be submitted with their proposal.

PROPOSER'S NAME: _____
(Submit with Proposal)

PROPOSER'S CHECKLIST

Proposals shall be submitted in a three-ring binder, **one (1) original**. (If submitted electronically, hard copies are not applicable). The total proposal packet must be sealed and clearly marked on the outside **RFQ No. 12502218**.

Proposers are requested to submit this Checklist and the following information, providing the content in the sequence shown below. If the documentation provided is incomplete, the Proposer may be ineligible for award of a Contract.

REQUIRED

- ☒ 1. **BUSINESS LICENSE INFORMATION**, page 4
- ☒ 2. **PROPOSER'S QUALIFICATION QUESTIONNAIRE**, pages 5-6
- ☒ 3. **REFERENCES**, page 7
- ☒ 4. **ACCEPTANCE OF INDEMNIFICATION & INSURANCE REQUIREMENTS**, page 8
- ☒ 5. **DBE LISTING**, pages 9-10
- ☒ 6. **DEBARMENT AND SUSPENSION CERTIFICATION**, page 11
- ☒ 7. **NONLOBBYING CERTIFICATION**, page 12
- ☒ 8. **FEDERAL TAX LIABILITY & FELONY CONVICTION CERTIFICATION**, page 13
- ☒ 9. **DISCLOSURE OF CONFLICT OF INTEREST**, page 14
- ☒ 11. **DOE CERTIFICATION FORM**, page 15
- ☐ 12. **SAMPLE SERVICE CONTRACT**, pages 16-17
- ☐ 13. **PRE-PROPOSAL CONFERENCE** (See **Instructions to Proposers, pg. ii** for details)
- ☒ 14. **ADDENDA** - Signature page of all Addenda issued, Addenda No. __ to __. (Enter numbers if applicable)

FOR THE MOST QUALIFIED PROPOSER ONLY

- ☐ 15. **COST PROPOSAL INSTRUCTIONS**, pages 18 - 19

PROPOSER'S NAME: _____
(Submit with Proposal)

ADDENDA

The City makes a concentrated effort to ensure any addenda issued relating to these Specifications are distributed to all interested parties. It shall be the Proposer's responsibility to inquire as to whether any addenda to the Specifications have been issued. Upon issuance by the City, all addenda are part of the proposal. Signing the proposal on the signature page thereof shall also constitute signature on all addenda.

TIME PERIOD TO AWARD/REJECT

The undersigned Proposer agrees that the City may have **ONE HUNDRED SIXTY (160) DAYS** from the date proposals are opened to accept or reject proposals. It is further understood that, if the Proposer to whom any award is made fails to enter into a Contract as provided in the Specifications, award may be made to another Proposer, who shall be bound to perform as if she/he had received the award in the first instance.

PROPOSER'S NAME: _____
(Submit with Proposal)

BUSINESS LOCATION

- () The undersigned Proposer does not maintain a place of business in the City of Fresno.
- () The undersigned Proposer maintains a place of business in the City of Fresno
at: _____, Fresno, CA _____

BUSINESS LICENSE

- () The undersigned Proposer has a current City of Fresno Business License and the number is

If the successful proposer does not have a City of Fresno Business License, he/she shall obtain such a license prior to the issuance of a Notice to Proceed for the Work and maintain in effect throughout the term of this Contract.

PROPOSER'S NAME: _____
(Submit with Proposal)

PROPOSER QUALIFICATION QUESTIONNAIRE
REQUEST FOR QUALIFICATIONS FOR
PLANNING & DESIGN SERVICES FOR
HYDROGEN INFRASTRUCTURE & FACILITIES MASTER PLAN
REQUEST FOR QUALIFICATIONS NO. 12502218

TO: FRESNO AREA EXPRESS

The undersigned Proposer submits the following information in accordance with the proposal Specifications:
(Use additional sheets as needed.)

1. a. Business Name (If using more than one business name, please list all names.):

- b. Address: _____

Is your firm operating as a franchisee? Yes _____ or No _____

If yes, list the franchiser, and number of years your business has been franchised:

2. Provide the names, titles, qualifications, years of experience, and years with your firm, for all key personnel in authority in your business, including the key personnel that will be involved in this project, and the extent to which they will be involved in the performance of this Contract.*

3. How many years has your business been established? _____

How many years has your business been under your present name? _____

How many years under former names? (List name and number of years)

4. How many years has your business been providing relevant services? _____

5. What other types of services does your business provide? _____

6. Do you have any affiliated companies? (If parent company, list subsidiaries and divisions. If subsidiary or division, name parent company, its principals and their addresses):

PROPOSER QUALIFICATION QUESTIONNAIRE (Continued)

**REQUEST FOR QUALIFICATIONS FOR
PLANNING & DESIGN SERVICES FOR HYDROGEN INFRASTRUCTURE**

REQUEST FOR QUALIFICATIONS NO. 12502218

7. Have there been any contract terminations for the services, relevant or otherwise, your firm performs before the fulfillment of the contract within the past three years? Yes _____ or No _____

If so, list the date, client, and reason for termination below:

8. Provide an organization chart, indicating full-time personnel, job titles, locations, and whether each individual works out of an office or is in the field. Organization chart attached?
Yes _____ or No _____
9. Outline your support services including establishing direct lines of communication between City technical staff and the program manager. *

10. Submit a comprehensive plan for addressing the requirements per Appendix D - Statement of Work.

*Provide attachments as needed to accommodate responses.

PROPOSER'S NAME: _____
(Submit with Proposal)

REFERENCES

Please list at least three references of similar size and type of services, including governmental agencies, if available.

1.AGENCY/COMPANY

NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ EMAIL _____

PHONE NUMBER: _____ LENGTH OF CONTRACT: _____ YEARS

TYPE OF SERVICES PROVIDED: _____

2.AGENCY/COMPANY

NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ EMAIL _____

PHONE NUMBER: _____ LENGTH OF CONTRACT: _____ YEARS

TYPE OF SERVICES PROVIDED: _____

3.AGENCY/COMPANY

NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ EMAIL _____

PHONE NUMBER: _____ LENGTH OF CONTRACT: _____ YEARS

TYPE OF SERVICES PROVIDED: _____

PROPOSER'S NAME: _____
(Submit with Proposal)

**STATEMENT OF ACCEPTANCE OF THE INDEMNIFICATION
AND INSURANCE REQUIREMENTS**

REQUEST FOR QUALIFICATIONS FOR
PLANNING & DESIGN SERVICES FOR HYDROGEN INFRASTRUCTURE & FACILITY MASTER
PLAN
REQUEST FOR QUALIFICATIONS NO. 12502218

The Proposer shall sign below that the Proposer accepts in whole the Indemnification and Insurance Requirements set forth in these Specifications. If the Proposer takes exception to some portions, those portions shall be listed here below and the Proposer shall sign that the Proposer accepts all portions of the requirements not listed.

Note: Any exceptions may render the proposal non-responsive.

☐ **ACCEPT**
☐ **DO NOT ACCEPT**

If "DO NOT ACCEPT" is checked, please list exceptions:

Signature of Authorized Person

Type or Print Name of Authorized Person

PROPOSER'S NAME: _____
(Submit with Proposal)

DISADVANTAGED BUSINESS ENTERPRISES (DBE) LISTING

Bidders are advised that, as required by federal law, the City is required to report to the Federal Transit Administration on DBE participation for all Federally aided contracts each year so the attainment efforts may be evaluated.

The proposal will be considered non-responsive if this form is not fully completed.

Complete all information below (whether DBE or not) and list all Subcontractor information including, without limitation, DBE's that will perform any portion of the work or provide any products for this project, even if the dollar amount of the work the DBE will perform is less than one half ($\frac{1}{2}$) of one percent (1%) of the total bid amount.

Prime Contractor:

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Subcontractors: ☐ Check as N/A if a subcontractor(s) will not be used

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Planning & Design Services for Hydrogen Infrastructure & Facility Master Plan,
Request for Qualifications No. 12502218

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

NOTE: Use additional sheets if necessary

Revised 10/16/24

PROPOSER'S NAME: _____
(Submit with Proposal)

DEBARMENT AND SUSPENSION CERTIFICATION

Contractor and all subcontractors shall meet debarment, suspension, ineligibility, and voluntary exclusion requirements pursuant to Executive Order 12549. See Federal Requirements, of these Specifications. A list of excluded parties may be found at the following website:
<https://sam.gov/content/home>

Contractor shall return with its Proposal **this form.**

Note: Providing false information may result in criminal prosecution or administrative sanctions.

Date _____

Signature _____

Company Name _____

Title _____

PROPOSER'S NAME: _____
(Submit with Proposal)

NONLOBBYING CERTIFICATION

LOBBY RESTRICTIONS

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, 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 an 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 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 Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

PROPOSER'S NAME _____
(Submit with Bid Proposal)

Federal Tax Liability and Recent Felony Convictions Certification

FTA Master Agreement Section 4(g)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that they and their organization:

1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
2. Was not convicted of felony criminal violation under any Federal law within the preceding 24 months.

The Contractor agrees to flow this requirement down to participants at all lower tiers, without regard to the value of any sub-agreement.

Date _____

Signature _____

Company Name _____

Title _____

DISCLOSURE OF CONFLICT OF INTEREST

		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 Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.

Signature

Date

Name

Company

Address

City, State, Zip

PROPOSER'S NAME: _____
(Submit with Proposal)

DOE CERTIFICATION FORM

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that they and their organization comply with the Department of Energy requirements listed in **Appendix C – Federal Conditions**.

1. Disclosure of Connections with Foreign Countries of Risk
2. Foreign Commitments in Support of the Agreement
3. Foreign National Participation
4. Prohibition Related to Foreign Government-Sponsored Talent Recruitment Programs

Instructions: The bidder or offeror must initial only one (1) option and fill out the signature box below:

The bidder or offeror certifies
that it **will comply** with the
Department of Energy
requirements.

Initial: _____

The bidder or offeror certifies
that it **will not comply** with
the Department of Energy
requirements.

Initial: _____

The bidder or offeror requests
a waiver.

Initial: _____

Date _____

Signature _____

Company Name _____

Title _____

SAMPLE

SAMPLE SERVICE CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and [Contractor Name], [Legal Identity] (Contractor) as follows:

1. **CONTRACT DOCUMENTS.** The "Notice Inviting Proposals," "Instructions to Proposers," "Proposal" and the "Specifications" including "General Conditions," "Special Conditions", "Federal Conditions", "Functional Specifications" and "Technical Requirements" for the following: [Title] (Request for Qualifications No. [Number]) copies of which are annexed hereto, together with all the documents specifically referred to in said annexed documents, including the Performance Bond, if required, 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 not to exceed [WRITTEN \$ AMOUNT] DOLLARS AND [WRITTEN CENTS AMOUNT] CENTS (\$[DOLLAR AMOUNT]), as set forth in the Proposal, Contractor promises and agrees to perform or cause to be performed, in a good and workmanlike manner, and to the satisfaction of City, and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.

3. **PAYMENT.** City accepts Contractor'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.

4. **INDEMNIFICATION.** To the furthest extent allowed by law, including California Civil Code section 2782.8 (if applicable), CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

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.

[Signatures follow on the next page.]

Planning & Design Services for Hydrogen Infrastructure & Facility Master Plan,
Request for Qualifications No. 12502218

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

<p>CITY OF FRESNO, A California municipal corporation</p> <p>By: _____ [Name], [Title/Dept.]</p> <p>APPROVED AS TO FORM: ANDREW JANZ City Attorney</p> <p>By: _____ [Name] Date Deputy City Attorney</p> <p>ATTEST: TODD STERMER, MMC City Clerk</p> <p>By: _____ Deputy Date</p>	<p>[CONTRACTOR], [Legal Identity]</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____ (If corporation or LLC., Board Chair, Pres. or Vice Pres.)</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____ (If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)</p> <p>REVIEWED BY: _____</p>
<p>Addresses: CITY: City of Fresno Attention: [Name] [Title] [Street Address] Fresno, CA [Zip] Telephone: (559) [#] E-Mail: [E-Mail address]</p>	<p>CONTRACTOR: [Contractor Name] Attention: [Name] [Title] [Street Address] [City, State Zip] Telephone: [area code and #] E-Mail: [E-Mail address]</p>

PROPOSER'S NAME: _____
(Submit with Proposal)

**REQUEST FOR QUALIFICATIONS FOR
PLANNING & DESIGN SERVICES FOR HYDROGEN INFRASTRUCTURE & FACILITY MASTER
PLAN**

**REQUEST FOR QUALIFICATIONS NO. 12502218
COST PROPOSAL INSTRUCTIONS**

INSTRUCTIONS:

The top-ranked (highest scoring) proposer will prepare and submit to the City its cost proposal for its firm and any sub-consulting firms, including all supporting cost data necessary to negotiate an hourly rate and fixed fee that the City determines is fair and reasonable. These costs, as mutually agreed to by the City and proposer, will form the basis for billing. See **Attachment A – Sample Cost Proposal**, to prepare cost proposal.

Supporting cost data shall consist of the following:

Direct Expenses:

Labor Costs: A schedule of billing rates and hours worked by employee or category of employee is required of the prime contractor and all subcontractors. Billing rates shall be based on actual pay rates and should cover all costs associated with the employee (salary, benefits, and anticipated cost of living and/or merit increases during the term of the contract). The proposer should be prepared to validate billing rates with payroll registers, wage agreements, or other payroll documentation.

Other Direct Costs: Identification of non-labor costs, by type or category, that are specific to the project, including but not limited to: Travel and living expenses of principals and employees; Communication expenses (long-distance telephone, facsimile, shipping, special postage); Special services and equipment not applicable for inclusion in the general overhead; Identifiable stenographic and drafting supplies; Reproduction work; Graphic services; Audiovisual equipment for public meetings, and expenses for specialized health and safety programs.

Indirect Expenses:

Overhead Rates: Identification of indirect cost pool(s) and allocation base(s) for home, office and dedicated field office expenses and services essential to the conduct of the business. Overhead is typically expressed as a percentage of direct expenses and includes indirect costs such as: General office expenses (i.e. utilities, telephone, depreciation, rental furniture, rent, drafting equipment, engineering instruments, vehicle expenses, and office and drafting supplies not identifiable to a specific project); Taxes and insurance, other than those included as direct expenses (excluding state and federal income taxes); Library and periodical expenses; Technical and professional meetings; Continuing education; Salaries and expenses other than those identified in direct expenses. In each case, the Consultant shall identify cost elements contained within its overhead rate pool. If it is the Consultant's normal practice to show employee fringe benefits as a separate overhead rate on direct labor, then such practice shall be incorporated in the rates submitted.

Audited Overhead Rates: Consultant shall submit an audited overhead rate with its cost proposal. Audit shall have been conducted by the Federal Government, a State Department of Transportation, a Certified Public Accountant, or independent Auditor. Identify the audit agency, contact name, phone number, and furnish copies of findings.

If Applicant is unable to provide a current (not older than 18 months) audited overhead rate analysis, it will need to submit, at a minimum, an overhead schedule showing a breakout of allowable and unallowable overhead costs relative to direct salaries/wages/tax; percentage of overhead to direct salaries/wages; percentage of overhead to the total burden; and prorated allocation of overhead expenses based on billable rates. Applicant shall further state whether the rates are compliant with Federal Cost Principles contained in Title 48, Code of Federal Regulations, Part 31 and in accordance with the current revision of Office of Management and Budget (OMB) Circular A-87.

Negotiated Profit (Fixed Fee): Profit shall be submitted as a percentage of direct expenses and indirect expenses. Profit must be fair and reasonable, based on the complexity of the work to be performed, the risk undertaken by the consultant, the consultant's investment, the amount of subcontracting, the quality of the consultant's record of past performance, and industry profit rates in the Fresno geographical area for similar work.

The negotiated fee will be fixed at the inception of the contract and does not vary with actual costs but may be adjusted as a result of changes in the work to be performed under the contract.

DIVISION III – GENERAL CONDITIONS

Summary:

*Division III describes the framework for the entire relationship
between the parties in connection to a project.*

1. DEFINITIONS: Wherever used in the Specifications, including the Instructions to Proposers, the proposal, or any of the Contract Documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

- (a) "City" and "City of Fresno" shall each mean the City of Fresno, CA, unless otherwise indicated.
- (b) "City Manager" shall mean the City Manager of the City of Fresno.
- (c) "Contract" and "Contract Documents" shall each mean and refer to these Specifications, including the Instructions to Proposers, the proposal and any addenda thereto, the Contract and all City of Fresno specifications, and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
- (d) "Contractor" shall mean each person or entity awarded a Contract hereunder and named or to be named in the Contract with the City of Fresno to furnish the goods or services, or both, to be furnished under the Contract.
- (e) "Council" and "City Council" shall each mean the Council of the City of Fresno.
- (f) "Proposer" shall mean each person or entity submitting a proposal, whether or not such person or entity shall become a Contractor by virtue of award of a Contract by the City.
- (g) "Purchasing Manager" shall mean the Purchasing Manager of the City of Fresno.
- (h) "Specifications" shall mean the Contract Documents.

2. DELIVERY OF SERVICES: If Contractor is delayed providing services by (i) any acts or omissions of City or its employees, or others acting under authority of City by contract or otherwise, (ii) acts of God which Contractor could not reasonably have foreseen and provided for, (iii) illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, or (iv) any illegal general lockouts or other defensive action by employers, whether general or by organizations of employers; Contractor shall have no claim for damages against City for any such cause of delay, but shall be entitled to an extension of time as will reasonably compensate Contractor for actual loss of time occasioned thereby. Contractor may apply to the City Manager for such extension. However, no such extension of time shall be granted unless Contractor shall have notified FAX, in writing, within one week after the commencement or occurrence of the condition or event which is expected to cause a delay in delivery, of such condition or event and the actual or estimated number of days of delay anticipated on account thereof. The decision of the City Manager as to the number of additional days, if any, to be allowed for

completion of delivery on account of such condition or event, will be given in writing to Contractor.

3. TERMINATION FOR CONVENIENCE: The City reserves the right to terminate this Contract for any reason, upon sixty (60) days written notice to the Contractor. In the event of such termination, the Contractor shall be paid for satisfactory service performed to the date of termination.

4. TERMINATION FOR CAUSE:

a. If the Contractor shall fail to complete delivery, within the time or times specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the Contract, the City Manager of the City of Fresno or designee, acting for and on behalf of the City, may at any time after the expiration of the time for cure, terminate the Contract as to the whole thereof, or in the event partial delivery has been made and accepted, as to such of the items or service to be furnished which have not been delivered or accepted prior to such termination.

b. The City may terminate this Contract if the Contractor materially breaches any of its obligations under this Contract and fails to commence and diligently pursue reasonable efforts to cure such breach within fifteen (15) days after written notice by the City specifically describing the breach.

c. Such termination shall be effective upon receipt by Contractor of written notice of termination from said City Manager or designee, which notice shall be deemed to have been received by Contractor, if mailed by certified mail, within forty-eight hours to Contractor's address as contained in the proposal to the City or, if personally delivered, upon the delivery thereof to Contractor, the authorized representative of Contractor, or to the Contractor's said address.

5. CONTRACT DOCUMENTS: Upon award of the Contract, the Contractor shall execute and submit all required documents to the Projects Administrator, in a form acceptable to the City of Fresno within fifteen (15) calendar days from the date of Notice of Award. Failure to provide said documents within the designated period shall be sufficient cause to forfeit the proposal deposit and initiate a City departmental recommendation for City to award the Contract to another Proposer.

6. PRECEDENCE OF CONTRACT DOCUMENTS: The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Scope of Work.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order precedence.

7. FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986: As a material part of any contract for a City of Fresno project, every Contractor who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, the Contractor will make any employee documentation required to comply with the Act immediately available to the City upon its request for each individual employee working on a City of Fresno project.
8. WORKMANSHIP GUARANTY: The workmanship of the services to be performed for the City by the Contractor will be in accord with the Specifications, and where not specified, in accord with generally accepted standards.
9. ALTERATION OF TERMS: No alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by both parties.
10. CONTRACT CHANGES: No changes or modifications to the Contract shall be made unless agreed to and signed by both parties. No prior, current or post award verbal agreement or agreements with any officer, agent, or employee of the City shall affect or modify any terms or obligations of these Specifications or any Contract resulting from this procurement.
11. AMENDMENTS: The City of Fresno reserves the right to add, modify, or delete items from the Contract including Special Conditions or Scope of Work. Any changes shall be made only by means of a formal amendment signed by both the City and Contractor.
12. ASSIGNMENT: The Contract is personal to the Contractor and there shall be no assignment, transfer, sale, or subcontracting by the Contractor of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale or subcontracting by the Contractor, its successors or assigns, shall be null and void unless approved in writing by the City.
13. TERMINATION BY CITY FOR NON-APPROPRIATION: In the event of non-appropriation relating to the Contract, City shall have the right to terminate the Contract at the end of any fiscal year of City, in the manner and subject to the terms specified in this paragraph. City shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such fiscal year, and shall notify Contractor of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of the Contract by City.
14. INDEPENDENT CONTRACTOR: In the furnishing of the services provided for herein, the Contractor is acting as an independent contractor. Neither the Contractor, nor any of its officers, associates, agents, or employees shall be deemed an employee, joint

venturer, partner or agent of the City for any purpose. However, the City shall retain the right to verify that the Contractor is performing its respective obligations in accordance with the terms of the Contract. Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor 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, Contractor shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Contractor'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, Contractor may be providing services to others unrelated to City or to this Agreement.

15. GOVERNING LAW AND VENUE: The Contract 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 the Contract and any rights and duties thereunder shall be Fresno County, California.

16. COMPLIANCE WITH LAW: In providing the services required under the Contract, Contractor shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, 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 the Contract.

17. SEVERABILITY: The provisions of the Contract are severable. The invalidity, or unenforceability of any one provision in the Contract shall not affect the other provisions.

18. INTERPRETATION: The Contractor acknowledges that the Contract in its final form is the result of the combined efforts of the parties and that, should any provision of the Contract be found to be ambiguous in any way, such ambiguity shall not be resolved by construing the Contract in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

19. 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 the Contract, 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.

20. EXHIBITS: Each exhibit and attachment referenced in the Contract is, by the reference, incorporated into and made a part of the Contract.

21. MAINTENANCE OF RECORDS: Records of Contractor pertaining to the services hereunder shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of the Contract and for a period of three years after final payment and for the period of time required by law. In addition, all books, documents, papers, and records of Contractor pertaining to the Contract shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of the Contract.

22. RECYCLING: In the event Contractor 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, Contractor at its sole cost and expense shall:

(i) After award, immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing 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 the 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.

23. NOTICES: Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally 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 the Proposal in the case of the Contractor and at the address in the Special Conditions for mailing of invoices in the case of City, 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.

24. BINDING: Subject to Section 15 of these General Conditions, once this Contract 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.

25. WAIVER: The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach

of either the same or a different provision of this Contract. No provisions of this Contract may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

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 Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract 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 Contract. This Contract 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 Contract may be modified only by written instrument duly authorized and executed by both City and Contractor.

29. HEADINGS: The section headings in this Contract 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 Contract.

30. INCORPORATED APPENDICES: The following documents are appended to this Agreement and are incorporated by reference:

- Appendix A – Special Conditions
- Appendix B – Insurance Requirements
- Appendix C – Federal Conditions
- Appendix D – Scope of Services

APPENDICES

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Appendix A – Special Conditions

Appendix B – Insurance Requirements

Appendix C – Federal Conditions

Appendix D – Scope of Services

APPENDIX A

SPECIAL CONDITIONS

Summary:

Appendix A provides clarification, specificity, and added content in addition to the General Conditions that are to be followed during the life of a contract.

1. **PAYMENT:** The Proposer shall invoice the City of Fresno after the completion of each milestone. Invoices shall conspicuously display the City's contract number and shall be submitted to:

ATTENTION:
City of Fresno
Department of Transportation/FAX
Attn: Ori Rubalcava
2223 G. Street
Fresno, CA 93706

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

2. **CHANGES TO CONTRACT DOCUMENTS:** The City of Fresno may, from time to time, without invalidating the Contract, modify the Contract; by adding, deleting or changing sections of the Contract; by adding deleting or changing usage or space; by adding, deleting or changing Routine Work or Projects; by adding deleting or changing Special Conditions; or by adding, deleting or changing Specifications. All such changes shall be ordered by means of a Written Change Order. Any changes in the compensation to Contractor resulting from such Change Orders shall be agreed upon by the City of Fresno and the Contractor. Additionally, the parties may modify the Contract by written amendment.

Federal Transit Administration (FTA) Federal Funding Source: This contract is funded in whole or in part using FTA federal funding. As such any changes to this contract requires a cost analysis to be performed in accordance with FTA Circular 4220.1F and 2 CFR 200.324. This requirement obliges the City to perform a cost analysis that examines each element of the cost of the contract changes, to include profit as a separate negotiated cost element. The Contractor shall provide sufficient information to the City for the performance of the cost analysis in conformance with FTA Circular 4220.1F and 2 CFR 200.324. The Contractor may request and propose a non-disclosure agreement to protect sensitive business information, but such an agreement requires concurrence from the City Attorney's Office.

3. **NOTICE TO PROCEED:** Contractor shall not commence any work until he/she has received a written Notice to Proceed.

4. **CONTRACT ADMINISTRATOR:** The City of Fresno designates the Director, Department of Transportation/FAX, as Contract Administrator, who shall act on behalf of the City with respect to all aspects of this Contract. The City shall promptly notify Contractor in writing if the Contract Administrator is changed.

The Contract Administrator and designated representative shall have complete authority to require the Contractor to comply with all provisions of this Contract. Contractor shall strictly and promptly follow the instructions of the Contract Administrator. The Contract Administrator's decision upon all questions claims and disputes will be final and conclusive upon the parties of the Contract. The Contract Administrator shall exercise any discretionary authority in a reasonable manner.

The Contract Administrator shall decide any and all questions which may arise as to conformance of and acceptability of tools, equipment, supplies and all other materials and methods and procedures used in the performance of the Services with regard to the requirements included herein. The Contract Administrator shall decide all questions which may arise as to the interpretation of the Contract Documents relative to the Services and the fulfillment of the Contract on the part of Contractor.

The Contract Administrator will determine the amount and quality of the several kinds of Services performed and materials furnished which are to be paid for under this Contract.

The Contract Administrator shall have the authority to require Contractor to make temporary changes in the assignment of routine work, tasks and task frequencies. Such temporary changes shall not affect the amount of payment to Contractor.

5. CONTRACT COORDINATOR: The Contract Administrator shall designate the Projects Administrator of Projects Development, Department of Transportation/FAX, as Contract Coordinator to monitor and inspect the performance and progress of the Services provided under this Contract.

The Contract Coordinator has no authority to alter, waive or revoke any provision of this Contract. Any failure of Contractor to comply with the provisions of the Contract may be called to the attention of the Contract Administrator by the Contract Coordinator.

The Contract Coordinator shall have the authority to suspend the performance of the Services and compensation to Contractor until the Contract Administrator can decide any questions at issue.

The Contract Coordinator shall perform frequent inspections of each work assignment. The emphasis during these inspections should concentrate on the existence of those factors which significantly affect the probability of the assignment being performed as specified.

The Contract Coordinator shall coordinate the activities of Contractor and the occupants to minimize any interference or delay to either party. The Coordinator shall submit suggestions regarding revisions of the specifications to the Contract Administrator. The Coordinator shall receive and respond, with clerical assistance, to requests, complaints, and suggestions concerning the performance of the work directed under the Contract.

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The Contract Coordinator shall in no instance have the authority to act as a supervisor for Contractor, and shall not interfere with the Contractor in the supervision or direction of Contractor's employees.

Any advice provided to Contractor by the Contract Coordinator shall in no way be construed as binding upon the City of Fresno, or release the Contractor from fulfilling the provisions of the Contract.

6. PERFORMANCE OF THE SERVICES: Contractor shall be responsible for the complete and timely performance of all the Services under this Contract and for all manner and type of tools, equipment, supplies and materials of every description required to successfully perform all Services under this Contract.

7. NON-PERFORMANCE OF SERVICES: Services shall be considered not to have been performed when, in the judgment of the Contract Administrator, any one or more of, but not limited to, the following conditions exist:

- a. Adherence to established response times,
- b. Failure to provide reports per schedule and on time, or
- c. Failure to conform to the requirements per Statement of Work in Appendix D.

8. CONFIDENTIAL INFORMATION, OWNERSHIP OF DOCUMENTS AND COPYRIGHT LICENSE: Any reports, information, or other data prepared or assembled by the Contractor pursuant to this Agreement shall not be made available to any individual or organization by Contractor without prior written approval of the City. During the term of this Agreement, and thereafter, the Contractor shall not, without prior written consent of the City, disclose to anyone any Confidential Information. The term Confidential for the purpose of this Agreement shall include all proprietary marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source of 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

If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall cause each subcontractor to also comply with the requirements of this section. This section shall survive expiration or termination of the Agreement.

9. NONFEDERAL LABOR STANDARD PROVISIONS GENERAL PROVISIONS: The following Nonfederal Labor Standards Provisions, including the following provisions concerning: maximum hours of work, minimum rates of pay, and overtime compensation, with respect to the categories and classifications of employees hereinafter mentioned are included in the Contract pursuant to the requirements of applicable State or local laws, but the inclusion of such provisions shall not be construed to relieve the Contractor or any subcontractor from the pertinent requirements

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of any corresponding Federal Labor-Standard Provisions of this Contract. In cases the minimum rates of pay set forth below shall be higher than the minimum rates of pay required by or set forth in the Federal Labor-Standards Provisions of this Contract for corresponding classifications, the minimum rates of pay set forth below shall be deemed, for the purpose of this Contract, to be the applicable minimum rates of pay for such classifications. The limitations, if any, in these Nonfederal Labor Standards Provisions upon the hours per day, per week or month which employees engaged on the work covered by this Contract may be required or permitted to work thereon shall not be exceeded.

10. SCHEDULE OF WAGES AND SALARIES: In accordance with the provisions of sections 1770 to 1781, inclusive of the Labor Code of the State of California and/or section (1)(b) of the United States Labor Code, the Director of Industrial Relations and/or the United States Secretary of Labor shall ascertain the general prevailing rate of wages applicable to the work to be done under this Contract to be included in these Specifications by reference. (Copies of the wage rates or specific wage rate determinations may be obtained from <https://sam.gov/content/wage-determinations> and <https://www.dir.ca.gov/public-works/prevaling-wage.html>)

11. LABOR CODE SECTION 1775: PENALTIES FOR UNDER-PAYMENT OF WAGES: The Contractor and each subcontractor shall comply with California Labor Code section 1775 and pay not less than the wages established by the Director of the Department of Industrial Relations and/or the Federal government. In accordance with such section 1775, Contractor or such subcontractor shall, as a penalty to the City, forfeit up to \$200.00, as determined by the Labor Commissioner, for each calendar day or portion thereof for each worker under this Contract paid less than the established wage rates. These penalties shall be withheld from progress payments then due. The Contractor shall contain in each subcontract the requirements hereunder.

12. PENALTIES FOR VIOLATION OF EIGHT HOUR DAY: Eight hours labor constitutes a regular day's work under this Contract. Contractor or any subcontractor under him/her shall forfeit as a penalty to the City \$25.00 for each worker employed in the execution of this Contract by contractor or such subcontractor for each calendar day during which any such worker is required or permitted to labor more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of sections 1810 to 1815, inclusive, of the California Labor Code. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of the California Labor Code, and notwithstanding the foregoing, work performed by employees of contractors and subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours in excess of 8 hours per day at not less than one and one-half (1.5) times the basic rate of pay.

13. LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves \$30,000 or more, the Contractor and each subcontractor shall comply with California Labor Code section 1777.5, as it may be amended from time to time, the entire provisions of which are incorporated by this reference as if fully set forth herein,

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and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations for all apprenticeable occupations applicable to the work as defined in such laws and regulations. Contractor shall be responsible for the compliance with such Labor Code section for all apprenticeable occupations and shall contain in each subcontract the requirements hereunder. In accordance with section 1777.5 of the California Labor Code and the rules and regulations of the California Apprenticeship Council, properly indentured apprentices shall be employed in the execution of this Contract in at least the ratio of not less than 1 hour of apprentice work for every 5 hours of journeyman work (unless the respective contractor or subcontractor has been exempted from such ratio) and paid the prevailing rate of per diem wages for apprentices in the trade to which it is registered. The employment and training of each apprentice shall be in accordance with either the apprenticeship standards and apprentice agreements under which apprentice is training, or the rules and regulations of the California Apprenticeship Council. Prior to commencing work on the Contract, Contractor and each subcontractor shall submit contract award information to the City, if requested, and to an applicable apprenticeship program that can supply apprentices to the job site. The information shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. Within 60 days after concluding work on the Contract, the Contractor and each subcontractor shall submit to the City, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract. Contractor shall employ apprentices for the number of hours computed before the end of the Contract or, in the case of the subcontractor, before the end of the subcontract and endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site.

14. FRESNO MUNICIPAL CODE SECTION 4-113; LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves \$500,000 or more, the Contractor shall contain in each subcontract the requirements hereunder and be responsible for providing all documentation required hereunder from subcontractor to the City. The Contractor and each subcontractor shall provide documentation to City demonstrating compliance with the requirements of California Labor Code section 1777.5 and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations by providing City copies of each of the following:

- a. All contract award information (e.g., completed form DAS 140) sent by Contractor and by subcontractors to the State Division of Apprenticeship Standards and each applicable apprenticeship program in accordance with California Labor Code section 1777.5, as may be amended from time to time, including identification of addressee.
- b. All requests by Contractor and by subcontractors for approval, and all responses and certificates from any applicable apprenticeship program disapproving or approving Contractor or subcontractor(s), to train apprentices; if any.

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- c. All requests by Contractor and by subcontractors for dispatch of apprentices from any applicable apprenticeship program (e.g., completed form DAS 142); and all responses thereto, if any.
- d. All certifications, if any, of Contractor and of subcontractor(s) as an individual employer apprenticeship program by the State Division of Apprenticeship Standards or the California Apprenticeship Council.
- e. All apprenticeship agreements of apprentices employed by Contractor and by subcontractor(s) and performing work under the Contract.
- f. A verified statement by the Contractor and by the subcontractor within 60 days after concluding the work of the respective journeyman and apprentice hours performed on the Contract or subcontract.
- g. All certificates of any exemption by the State Division of Apprenticeship Standards, California Apprenticeship Council or any apprenticeship program of Contractor or subcontractor from any requirements of California Labor Code section 1777.5, as may be amended from time to time.
- h. Other documentation as may be requested by City.

15. LABOR CODE SECTION 6705: If this Contract involves an estimated expenditure in excess of \$25,000.00 and excavation of any trench or trenches five feet or more in depth, then your attention is directed to California Labor Code section 6705 relating to a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, the entire provisions of which are incorporated by this reference as if fully set forth hereinafter.

Before execution of the Contract by the City, the Contractor shall submit to the City and the Engineer shall accept, if satisfactory to him/her, said detailed plan.

If, in the Engineer's opinion, there is any noncompliance with said detailed plan, then the Contractor shall stop forthwith all trench work until, either in the Engineer's or the State Division of Industrial Safety's opinion, there is compliance. The City shall not be liable for costs incurred by the Contractor due to the work stoppage and the Contractor will not be given nor is entitled to an extension of time to complete the work within the time set forth in this Contract due to the work stoppage.

16. WAGE AND PRICE CONTROL: Notwithstanding any provisions of the Contract to the contrary, the Contractor shall be bound by the orders issued and rules and regulations adopted pursuant to the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Statutes 799), as amended, or any subsequent Act of Congress.

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17. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970: This Contract is subject to all terms and conditions of the OCCUPATIONAL SAFETY AND HEALTH ACT of 1970, the California Occupational Safety and Health Act and their present and future amendments.

Contractor expressly assumes responsibility for compliance therewith and warrants that all materials, supplies and equipment provided or installed pursuant to this Contract, whether provided by the Contractor, subcontractor, or a supplier, fully satisfy the requirements of said Acts. Contractor shall, upon insertion in each Contract with a subcontractor or supplier of a clause by which the subcontractor or supplier warrants such compliance, be relieved of responsibility by the subcontractor or supplier.

18. LABOR CODE SECTION 1776; PAYROLLS AND BASIC RECORDS: The Contractor and each subcontractor shall comply with California Labor Code section 1776, the entire provisions of which are incorporated by this reference as if fully set forth herein, and Contractor shall contain in each subcontract the requirements hereunder.

- a. Accurate payroll records and basic records relating thereto shall be maintained by the Contractor and each subcontractor during the course of the work and preserved for a period as required by law for all journeymen, apprentices, workers, and other employees employed in connection with the work. Such records shall contain information as on the payroll record forms provided by the Division of Labor Standards of the Department of Industrial Relations, the name, address, social security number, work classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents), daily and weekly number of hours worked, deductions made and actual per diem wages paid. The Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to all employees affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- b. (1) The Contractor shall submit weekly (7 days after each week ending pay period) for each week in which any Contract work is performed a certified copy of all payrolls to the Engineer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The Contractor is responsible for the submission of certified copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or its agent who pays or supervises the payment of the persons employed under the Contract and shall

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certify under penalty of perjury under the laws of the State of California each of the following:

- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "LABOR CODE SECTION 1776; PAYROLLS AND BASIC" and that such information is true, correct and complete;
 - (ii) That each employee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions;
 - (iii) That each employee has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract;
 - (iv) Contractor has complied with the requirements of California Labor Code sections 1771, 1811, and 1815 for any work performed hereunder by its employees.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b) (2) of this clause.
- (4) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution.
- c. The Contractor or subcontractor shall make certified copies of all the records required under paragraph (a) of this clause available for inspection at all reasonable hours at the principal office of the Contractor by, and furnished upon request to, the Engineer, the Division of Labor Standards Enforcement of the Department of Industrial Relations, the Division of Apprenticeship Standards of the Department of Industrial Relations, and each of their authorized representatives. A certified copy of the employee's record shall likewise be made available for inspection or furnished upon request by the employee or its authorized representative. The Contractor shall provide hereunder the street address, city and county of the location of the payroll records maintained by Contractor and shall provide a notice of any change of location and address within 5 working days of such change. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records within 10 days after each week ending pay period, or to furnish or make them available for inspection within 10 days of request, (Contractor has 10 days to comply) after written notice, the Contractor shall forfeit \$100.00 for each calendar day, or portion thereof, for each

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worker, until strict compliance is effectuated, pursuant to California Labor Code section 1776. These penalties shall be withheld from progress payments then due.

19. LABOR CODE SECTION 1771.1: CONSTRUCTION REGISTRATION WITH CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS. A Contractor or Subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. **The prime Contractor is required to post job site notices prescribed by California Code of Regulations. All Contractors and Subcontractors must furnish electronic certified payroll records directly to the Division of Labor Standards Enforcement.**

20. FAIR EMPLOYMENT PRACTICES AND NONDISCRIMINATION. In connection with the performance of work under this Contract, the Contractor agrees as follows:

- a. The Contractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, political affiliation, sex, age (over 40), sexual orientation, and denial of family care leave or on any other basis prohibited by law. The Contractor shall ensure that the treatment of employees and evaluation of applicants for employment are free of such discrimination and harassment. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment Practices section.
- b. Contractor and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

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- c. Contractor assures City that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989) and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Contract as the “anti-discrimination laws”.
- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a written notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the City, State of California, the State Fair Employment and Housing Commission, or any other appropriate agency designated by the City or the State of California, for the purposes of investigation to ascertain compliance with the Fair Employment Practices and Nondiscrimination section of this Contract.
- f. Contractor agrees to collect and maintain information to show compliance with the “anti-discrimination laws” including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.
- g. Contractor agrees to cooperate with City, and any other appropriate agency designated by the City, in all manner necessary to permit City and any such agency to adequately report to the United States Environmental Protection Agency on Contractor's compliance with the “anti-discrimination laws”.
- h. A finding of willful violation of the Fair Employment Practices section of this Contract or of the California Fair Employment and Housing Act shall be regarded by the City as a basis for determining the Contractor to be not a *responsible bidder* as to future contracts for which such Contractor may submit bids, for revoking the Contractor's prequalification rating, if any, and for refusing to establish, reestablish, or renew a prequalification rating for the Contractor.

The City will deem a finding of willful violation of the California Fair Employment and Housing Act to have occurred upon receipt of written notice from the Fair Employment and Housing Commission that it has investigated and determined

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that the Contractor has violated the California Fair Employment and Housing Act and has issued an order under California Government Code section 12973, section 12970, or obtained an injunction under California Government Code section 12973.

Upon receipt of such written notice from the Fair Employment and Housing Commission, the City shall notify the Contractor that unless it demonstrated to the satisfaction of the City within a stated period that the violation has been corrected, that it will be reported to the City Council as not a *responsible bidder* on any future Contract.

- i. The Contractor agrees, that should the City determine that the Contractor has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code sections 1735 and 1775, the Contractor shall forfeit, as a penalty to the City, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from the Contractor. The City may deduct any such damages from any monies due the Contractor from the City. Furthermore, Contractor agrees that the City shall have the right to terminate this Contract either in whole or in part, and any loss or damage sustained by City in securing the goods or services thereunder shall be borne and paid for by Contractor and by the surety under the performance bond, if any, and City may deduct from any moneys due or thereafter may become due to Contractor, the difference between the price named in the Contract and the actual cost thereof to City to cure Contractor's breach of the Contract.
- j. Nothing contained in this Fair Employment Practices section shall be construed in any manner or fashion so as to prevent the City from pursuing any other remedies that may be available at law.
- k. After award of the Contract, the Contractor shall certify to the City that it has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by the City:
 - (1) The Contractor shall provide evidence, as required by the City, that it has notified all supervisors, foremen, and other personnel officers in writing of the content of the antidiscrimination clause and their responsibilities under it.
 - (2) The Contractor shall provide evidence, as required by the City, that it has notified all sources of employee referrals (including unions, employment agencies, advertisement, Department of Employment) of the content of the antidiscrimination clause.

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(3) The Contractor shall file a Fair Employment Practices compliance report, as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire. The compliance report shall be kept current throughout the Contract in that the Contractor shall report any changes in or additions to the answers therein, including changes in agreements with others. After the work or supplying materials is complete, and before final payment, the Contractor shall submit a final statement of compliance.

(4) Personally, or through its representatives, the Contractor shall, through negotiations with the unions with whom it has agreements, attempt to develop an agreement which will:

- (i) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.
- (ii) Otherwise implement an affirmative antidiscrimination program in terms of the unions; specific areas of skill and geography, to the end that qualified disadvantaged workers will be available and given an equal opportunity for employment.

- I. Contractor's signature on this Contract shall constitute a certification under the penalty of perjury under the laws of the State of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.
- m. The Contractor will include the provisions of the foregoing paragraphs 1 through 12 in every first tier subcontract so that such provisions will be binding upon each such subcontractor.

21. PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS. All Contracts and Subcontracts (all tiers), shall contain the following provisions:

- a. Prompt Progress Payment to Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than 7 days of receipt of each progress payment in accordance with Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance, or

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noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

- b. Prompt Payment of Withheld Funds to Subcontractors. The City shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

APPENDIX B

INSURANCE REQUIREMENTS

Summary:

Appendix B describes type and coverage amount required of a successful proposer.

INSURANCE REQUIREMENTS

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 Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT’S profession.

MINIMUM LIMITS OF INSURANCE

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

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

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

2. COMMERCIAL AUTOMOBILE LIABILITY:

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

3. WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.

4. EMPLOYER'S LIABILITY:

(i) \$1,000,000 each accident for bodily injury;

(ii) \$1,000,000 disease each employee; and,

(iii) \$1,000,000 disease policy limit.

5. PROFESSIONAL LIABILITY (Errors and Omissions):

(i) \$1,000,000 per claim/occurrence; and,

(ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions.

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 under the General Liability policy for all ongoing and completed operations by use of

endorsements providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85 or CG 20 10 04 13.

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. 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 on the General Liability policy by use of ISO Form CG 20 01 04 13, or by an executed endorsement that provides primary and non contributory status as broad as that contained in ISO Form CG 20 01 04 13.

4. All policies of insurance shall 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.

5. 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.

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

7. The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor

limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

CLAIMS-MADE POLICIES

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 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.

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.

SUBCONTRACTORS

If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY Risk Manager or

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designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no side agreement is required, CONSULTANT shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONSULTANT shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONSULTANT, and CITY, prior to commencement of any work by the subcontractor.

APPENDIX C

FEDERAL CONDITIONS

Summary:

*Appendix C describes the federal conditions required of
Federal Transit Administration (FTA) funded projects.*

**FTA FEDERAL CONDITIONS
GREATER THAN \$250,000**

This contract/purchase agreement is subject to a financial assistance contract between the City of Fresno and the Federal Transit Administration, which requires that this contract/agreement contain the following clauses:

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The City and contractor/vendor 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 purchaser, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The contractor 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 contractor 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 this Project. Upon execution of the underlying contract, the contractor 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 contractor 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 contractor to the extent the Federal Government deems appropriate.

(2) The contractor 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. § 5323(l) on the contractor, to the extent the Federal Government deems appropriate.

Appendix C – Federal Conditions

(3) The contractor 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) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

(2) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(3) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

(4) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

FEDERAL CHANGES

(1) Contractor 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 Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

TERMINATION

(1) Termination for Convenience: The City of Fresno may terminate this contract, in whole or in part, at any time by written notice to the contractor. The contractor shall be paid its costs, including contract close out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to be paid by contractor. If the contractor has any property in its possession belonging to the City of Fresno, the contractor will account for the same, and dispose of it in the manner the City of Fresno directs.

(2) Termination for Default: If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract or if the contractor fails to comply with any other provisions of the contract, the City of Fresno may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

(3) If it is later determined by the City of Fresno that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of, or are beyond the control of the contractor, the City of Fresno, after setting up a new delivery or performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

EQUAL EMPLOYMENT OPPORTUNITY

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation

Appendix C – Federal Conditions

conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-

Appendix C – Federal Conditions

assisted contracts. Failure by the contractor 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 the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

INCORPORATION OF FTA 4220.1F TERMS

(1) 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, dated November 1, 2008, 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 contractor 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 of Fresno to be in violation of the FTA terms and conditions.

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

SUSPENSION AND DEBARMENT

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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 (Recipient)'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 in hereunder, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the City's decision.

LOBBYING

The prospective participant 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.

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(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.

The certificate titled *Non Lobbying Certification* must be completed and returned with your bid. This certificate is located behind the bid form page 11.

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.

Use of United States-Flag Vessels. The contractor agrees:

- (1) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- (2) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C. 20590 and the FTA recipient (through the contractor in the case of a subcontractor’s bill-of lading).
- (3) To include these requirements in all subcontracts issued pursuant to the contract when the subcontract may involve the transport of equipment, materials, or commodities by ocean vessel.

FLY AMERICA

Fly America Requirements:

- (1) Definitions. As used in this clause- “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas. “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- (2) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (3) If available, the contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(4) In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.
<i>Stated Reason(s):</i> _____

(5) The contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) *Minimum wages –*

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without

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regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do

Appendix C – Federal Conditions

not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)

(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) *Withholding* - City Utilities shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, City Utilities may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records* –

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter

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for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to City Utilities for transmission to the Federal Transit Administration as requested. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made

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either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job

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site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements* - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts* - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment* - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements* - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards* - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility* –

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(1) The contractor 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.

RECYCLED PRODUCTS

(1) The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

ADA ACCESS

(1) In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

SAFE OPERATION OF MOTOR VEHICLES

(1) *Seat Belt Use* - The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or City.

(2) *Distracted Driver* - The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

PROMPT PAYMENT

(1) The Prime Contractor shall pay any Subcontractor for work that has been satisfactorily performed no later than thirty (30) days from the date of the Prime Contractor's receipt of each payment made by the City of Fresno. Additionally, within thirty (30) days of satisfactory completion of all work required of the Subcontractor, the Prime Contractor shall release any retainage payments withheld to the Subcontractor.

VALUE ENGINEERING

The Contractor is encouraged to develop, prepare, and submit value engineering change proposal (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with the following:

(1) VECP's cannot impair any essential function or characteristic of the work to be performed, such as functionality, safety, service life, reliability, economy of operation, ease of maintenance, and necessary standardization of features.

(2) VECP Submission: At a minimum, the Contractor shall submit the following information:

(a) A description of the difference between the existing contract requirement and that proposed the comparative advantages and disadvantage, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(b) A separate, detailed cost estimate for the affected portions of the existing contracts requirements and the VECP.

(c) A description and estimate of costs City may incur in implementing the VECP.

(d) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, including any effect on the contract completion time or delivery schedule.

(3) Share Savings: The Contractor and City shall share the net savings resulting from any VCEP accepted and implemented as follows:

(a) City will not share in collateral savings or future savings resulting from the change proposal. Collateral savings are those savings anticipated by City exclusive of the contract; such as operations, maintenance, and logistical support. Future savings would be those resulting from the Contractor's value engineering proposals on future contracts for the same deliverables.

(b) City and the Contractor shall share the ratio of 50/50 percent of net savings. Net savings are defined as gross savings less the Contractor's cost for developing and implementing and proposal as well as any City's costs resulting from the change; such as but not limited to, review, implementation, and inspections. Gross savings include Contractor's labor, material, equipment, overhead, profit, and bond.

VETERANS EMPLOYMENT

(1) Pursuant to FTA Circular 4220.1F, this contract shall conform to 49 U.S.C. 5325(k)

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regarding Veterans Employment. By signing this contract the Contractor agrees that, to the extent practicable, the Contractor shall:

(a) Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and

(b) Will not require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

(2) Contractor also assures that its sub-recipients will:

(a) Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and

(b) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

NOTICE OF LEGAL MATTERS AFFECTING THE FEDERAL GOVERNMENT

(1) The Contractor agrees that if a current or prospective legal matter that may affect the Federal Government emerges, the Contractor shall promptly notify the City of the legal matter in accordance with 2 C.F.R. §§ 180.220 and 1200.220.

(2) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(3) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(4) *Additional Notice to U.S. DOT Inspector General.* The contractor must promptly notify the City and U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct

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involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the City and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the City. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

(5) The Contractor further agrees to include the above clause in each subcontract, at every tier, financed in whole or in part with Federal assistance provided by the FTA.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Contractor agrees to comply with 2 CFR 200.216 and Public Law 115-232, Section 889, and may not 1) procure or obtain; 2) extend or renew a contract to procure; or 3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system for this federally funded agreement. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b) Telecommunications or video surveillance services provided by such entities or using such equipment.
- c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Trafficking in Persons

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

DOE FEDERAL CONDITIONS

This contract/purchase agreement is subject to a financial assistance contract between the City of Fresno and the Department of Energy, which requires that this contract/agreement contain the following clauses:

Disclosure of Connections with Foreign Countries at Risk

The contractor must notify the City no later than ten (10) business days after learning of any of the following connections in relations to the contractor:

1. Any current or pending subsidiary, foreign business entity, or offshore entity that is based in or funded by a foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, joint venture or joint venture-like arrangement with an entity owned by a foreign country of risk or foreign entity based in a foreign country of risk;
3. Any current or pending change in ownership structure of the contractor or subcontractor that increases foreign ownership related to a foreign country of risk. Each notification shall be accompanied by a complete and up-to-date capitalization table showing all equity interests held, including limited liability company (LLC) and partnership interests, as well as derivative securities. Include both the number of shares issued to each equity holder, as well as the percentage of that series and of all equity on fully diluted basis. For each equity holder, provide the place of incorporation and the principal place of business, as applicable. If the equity holder is a natural person, identify the citizenship(s);
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has an affiliation with a foreign country of risk; and
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk.

Foreign Country of Risk. DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

Foreign Commitments in Support of the Agreement

The contractor must provide the City with advanced written notice at least 45 calendar days before any potential commitment with foreign entities, organizations, or governments in connection with the agreement. Commitments include any contractual, financial, or other binding commitment in which the contractor or a subcontractor will be obligated or entitled to provide or receive a sensitive service, product, or information resource. City may prohibit or impose conditions on the contractor relating to such commitments.

The contractor must also provide the city with a written list of all existing foreign commitments into which it has entered in connection with this agreement.

Foreign National Participation

A “foreign national” is defined as any person without U.S. citizenship or nationality and may include a stateless person.

If the contractor anticipates involving foreign nationals in the performance of the agreement, the contractor must provide the city with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the agreement.

Approval of foreign national participation rest with the DOE. The DOE may elect to deny a foreign national’s participation in the agreement, in its discretion, at any point during the performance of the agreement. Likewise, DOE may elect to deny a foreign national’s access to DOE sites, information, technologies, equipment, programs, or personnel. DOE’s determination to deny participation or access is not appealable.

Prohibition Related to Foreign Government-Sponsored Talent Recruitment Programs

Persons participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk are prohibited from participating in this agreement. The contractor must exercise ongoing due diligence to reasonably ensure that no individuals participating in this agreement are participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the contractor must notify the city within three (3) business days upon learning that an individual on the project team is or is believed to be participating in a Foreign

Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. DOE may modify and add requirements related to this prohibition to the extent required by law.

The following definitions apply to this agreement:

1. **Foreign Government-Sponsored Talent Recruitment Program.** An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and IP to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

2. **Foreign Country of Risk.** DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

APPENDIX D

SCOPE OF SERVICES

Summary:

Appendix D is a narrative description of the project's work requirements.

PROJECT OVERVIEW & STRUCTURE

INTRODUCTION

The City of Fresno's Department of Transportation/Fresno Area Express (FAX) seeks a consultant to provide a comprehensive planning study for a hydrogen fueling facility and an updated facility master plan for existing infrastructure. This work is intended to support FAX's effort to identify needs, modernize infrastructure to meet current and future operational demands, address community needs, and competitively position FAX for funding opportunities.

STRUCTURE

The work will be divided into two (2) parts, with *Part One* taking priority over and informing *Part Two*.

Part One: *Part One* consists of comprehensive planning services for a hydrogen fueling facility.

Part Two: *Part Two* is for the development of a Facilities Master Plan.

The details of each part can be found in the subsequent pages.

APPROACH TO WORK

The consultant's proposal must address all elements of the work described in Part One and Part Two of the *Statement of Work*. This includes approach to work narratives on special considerations, methodologies, research, and outreach. The proposal must provide a schedule of milestones for the consultant and FAX to meet.

Consultants are encouraged to offer creative approaches in their proposal.

PART ONE

COMPREHENSIVE PLANNING SERVICES FOR HYDROGEN FUELING FACILITY

INTRODUCTION

FAX operates scheduled fixed-route services throughout the Fresno-Clovis Metropolitan Area (FCMA). FAX provides over 10 million fixed route passenger trips a year, with a fleet of over 120 buses.

In December 2018, the California Air Resources Board (CARB) adopted the Innovative Clean Transit (ICT) regulation, a statewide goal to gradually transition public transit agencies to 100 percent zero-emission bus fleets by 2040. As result, FAX has prepared a plan for transitioning its fleet to zero emission and made it publicly available at CARBs website: <https://ww2.arb.ca.gov/our-work/programs/innovative-clean-transit/ict-rollout-plans>

As part of its transition plan, FAX's fixed route fleet transition will gradually phase in ZEBs over the next 20 years. By the 2040 deadline, FAX anticipates its fleet composition to be 67 BEBs and 56 fuel cell electric buses (FCEBs). However, given the growing interest in FCEB, this composition plan will change in the near future.

FAX also operates a complementary paratransit service usings cut-away vehicles. FAX has plans to gradually increase the size of its paratransit fleet from 51 to 65 vehicles between 2022 and 2029. The current roll out plan has the paratransit fleet composed of only BEB. However, given the growing interest in FCEB, this composition plan may change over time.

FAX is a subrecipient of the California Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) program. As a subrecipient, FAX and its contractors must comply with the US DOE terms and conditions as applicable in the ARCHES agreement.

FAX is seeking qualified consultants to provide comprehensive planning services for a hydrogen fueling facility. The consultant will be expected to be a key party to developing the projects goals, creating methodologies, determining feasibility, creating budgets, creating schedules, and participating in public outreach for the culmination into a project management plan (PMP), pre-design work, and the potential for environmental review. The work to be performed is for planning activities only, design and engineering will be initiated as a separate phase of this project.

SPECIAL CONSIDERATIONS

Funding for Hydrogen Fueling Infrastructure will likely be derived in part from federal US DOT and US DOE grant funding. These special considerations may include:

1. **Safety.** The US DOT and US DOE has taken deliberative steps to ensure every project funded meets high standards of safety. For a project to receive high marks in safety it must be able to demonstrate positive safety benefits to all users and promote safety through design.
2. **Climate Change, Resilience, and Sustainability.** Projects must consider climate change, resilience, and sustainability in the planning stage and project delivery. Typically, US DOT looks to address reductions in greenhouse gas emissions, incorporates evidence-based climate resilience measures and features, reduction of greenhouse gas emissions from the project materials, and how the project will avoid adverse environmental impacts to air or water quality.
3. **Stakeholder Engagement.** Projects must consider stakeholder assessments that evaluate whether the project creates proportional impacts and disparities to all populations in the project area.
4. **Public Access.** Projects with public access are prioritized with special focus on how a project (1) connects or promotes multi-modal hubs and shared-use fleets and services; (2) provides convenient, affordable access to fueling infrastructure to offer urban/suburban area the fueling option; (3) supports multi-purpose use to offer rural areas the fueling option; or (4) enables use for fleet vehicles that serve and operate in the given community.
5. **Buy America.** The project will need to comply with Buy America provisions such as Federal Transit Administration (FTA) 49 U.S.C. § 5323(j); 49 C.F.R. Part 661 (Buy America Requirements), and the new Build America Buy America requirements put into effect via the Bipartisan Infrastructure Law (<https://www.govinfo.gov/link/plaw/117/public/58>)
6. **American Disabilities Act (ADA).** As a recipient of FTA financial assistance, a Project Sponsor Agency is required to carry out provisions of the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, as amended, and the U.S. Department of Transportation's (DOT)
7. **Workforce Development, Job Quality, and Wealth Creation.** The projects ability to create good-paying jobs and free and fair choice to join a union, including, but not limited to the use of project labor agreements, promote investments in high-quality workforce development programs with supportive services to help train, place, and retain people in good-paying jobs or registered apprenticeships, with a focus on women, people of color, and others that are underrepresented in

infrastructure jobs. The project should also promote local inclusive economic development and entrepreneurship, including prioritizing the utilization of Disadvantaged Business Enterprise (DBE), Minority-owned Businesses, or Women-owned Businesses.

8. **Cross Agency & Public Working Groups.** The project calls for working alongside FAX staff, the public, and ARCHES project representatives.
9. **US DOE Go / No Go Requirements.** For each phase of the project the US DOE will conduct a go/no go review to determine whether to fund the next phase of the project. The requirements of Phase 1 include:
 - a. Preliminary Design (30%)
 - b. Technology Readiness Level Analysis (TRL)
 - c. Techno-Economic Analysis (TEA)
 - d. Lifecycle Assessment (LCA)
 - e. Financial Plan
 - f. Cyber Security Plan
 - g. Safety Plan
 - h. Site Alternative Identification
 - i. Environmental Information Volume (EIV)
 - j. Environmental Considerations Summary (ECS)
 - k. Project Risk Register
 - l. Permitting Requirements
 - m. Initial Data Management Plan (DMP)
 - n. Procurement Plan
 - o. Staffing Plan
 - p. Total Project Cost Estimate
 - q. Project Management Plan

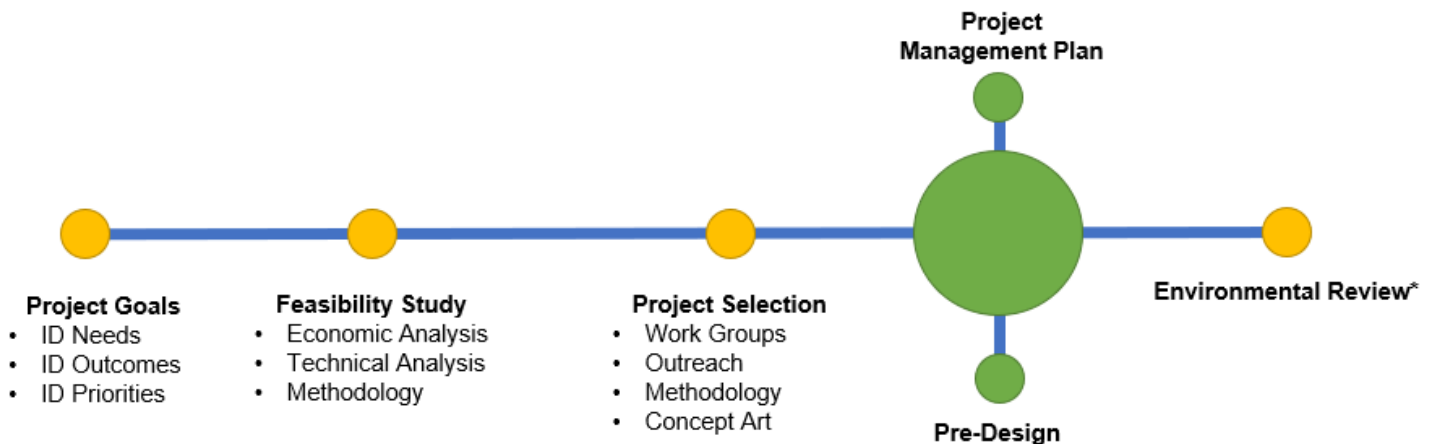
- r. Feedstock Identification & Market Analysis
- s. Community Benefits Summary Report
- t. Preliminary Justice 40 Benefit Assessment
- u. Work Structure Breakdown
- v. Air Quality Monitoring Assessment

SCOPE OF SERVICES

1. **Structure of Work.** The consultant will be expected to use a logical and scientific method in its approach to comprehensive planning services. The consultant should consider qualitative and quantitative factors to include general plan land use, regional goals, organizational goals, organizational capacity, project delivery strategies, public opinion, assumptions, and management structure.

The overall work should result in a process like figure 1 below:

Figure 1: Example Process



** Note: Environmental Review dependent upon outcome of project selection.*

2. **Project Goals.** The consultant will be expected to assist in the development of project goals and visions that align with the Department's regional and organizational priorities, identify needs, and set desired outcomes. This work would include:

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- a. Consulting the Long- and Short-Range Transit Plans to determine if FAX's objectives will be met by the project.
 - b. Consideration to how the project relates to:
 - i. The City of Fresno General Plan
 - ii. Any relevant Specific Plans
 - iii. The FCOG Regional Transportation Plan/ Sustainable Communities Strategy
 - iv. The Fresno Clovis Metropolitan Area (FCMA) Short Range Transit Plan (SRTP)
 - v. The City's Complete Streets Policy
 - c. Conducting appropriate levels of public outreach at various stages of the project (from planning through construction and into operation).
 - d. Considerations for Title VI and Environmental Justice
 - e. Considerations for how the project relates to Transit Asset Management (TAM) / State of Good Repair priorities (SGR)
 - f. Considerations for how the project relates to FAX's Innovative Clean Transit (ICT) Plan
 - g. Project safety benchmarks
 - h. Climate change, resilience, and sustainability of the project
 - i. Equity and public engagement
 - j. Public access
 - k. Workforce Development
3. **Feasibility Study.** The consultant will be expected to develop and implement a feasibility study to determine the best approach to constructing and operating a hydrogen fueling facility. The feasibility study must employ a logical and scientific approach to the study. The study will consider, but not limited to, the following concerns:
- a. **Study Assumptions.** The study must list out assumptions taken during the course of the study that may impact the accuracy of the study.
 - b. **Station Location.** FAX's fixed route and paratransit (Handy Ride) fleets are located on separate properties that each pose unique challenges which

impact the anticipated final ZEB fleet composition. The major factor affecting hydrogen infrastructure for the fixed route fleet depot is space limitation. There are few locations at the site that conform to NFPA 2 code restrictions, which requires offset distances, for example between hydrogen equipment and buildings, electrical power lines, parked cars, and the property line.

The consultant will take these limitations into consideration when determining the feasibility of the hydrogen fueling facility on FAX's existing property.

The consultant will also locate and assess alternative locations for hydrogen fueling facility. These alternatives must be measured against a hydrogen fueling facility on FAX property using the methodology as developed by the consultant and approved by FAX.

- c. **Market Analysis.** The consultant must conduct a market analysis in conjunction with each alternative to determine potential customers and their projected usage of the location alternative. This information will be crucial for determining future revenues generation, operational cost, and fuel demand associated with the location alternative.
- d. **Current/Future Fleet Composition.** The consultant must consider the current and future fleet composition that FAX will operate and its impacts on the location alternatives.
- e. **On-site Production Versus Delivery.** The consultant must evaluate hydrogen fueling production versus delivery methods for the respective location alternatives. On-site production may include the use of electrolysis, gas reformation, syn-gas, or other methods of producing hydrogen on-site. Delivery method may include the delivery and storage of hydrogen on-site from third party contractors who would reasonably be capable of providing hydrogen to the location alternatives.
- f. **Economic Evaluation.** The consultant must evaluate the economic impacts of the alternatives to FAX to better determine project feasibility. This will include at a minimum:
 - i. Capital equipment and facility development cost.
 - ii. Operations and Maintenance cost.
 - iii. Cost of hydrogen fuel.
 - iv. US DOE Go/No Go Requirements

- g. **Regulatory Constraints.** The consultant must evaluate the regulatory environment for each location alternative and its impact on the feasibility of the project. Special considerations should be taken for:
 - i. US DOT Regulations
 - ii. 2 CFR 200, Uniform Administrative Requirements
 - iii. Buy America
 - iv. California Public Utilities Code
 - v. California Civil Code
 - vi. California Government Code
 - vii. Cal/OSHA
 - viii. NFPA2 / California Fire Code
 - ix. US DOE Regulations
 - h. **Project Schedule.** The consultant must evaluate and provide projections on project timelines and their impact on the feasibility of the project for each alternative.
4. **Project Selection.** The consultant must develop, demonstrate, and assist in the selection of the project alternatives. This selection process must build upon the work conducted in the feasibility study and provide decision-makers with a methodology to objectively evaluate the project alternatives.
- a. **Working Groups.** A working group composed of both the consultant's team, ARCHES representatives, and designated FAX staff shall work collaboratively to formulate and implement steps to achieve public participation, project selection criteria & methodology, and other matters of importance to the selection process.
 - b. **Public Participation.** The consultant must be prepared to participate in multiple public participation events. The objective of the events is to obtain citizen feedback on the project alternatives and to be used as a weighted value in project selection. It is desired to have concept art ready for use at public participation events.

- c. **Executive Presentation / Project Decision.** The consultant must provide a presentation to FAX's executive team describing the actions taken and methodology used in assessing the project alternatives. The consultant must be prepared to make a recommendation on the best alternative for the Department based on this work.
- 5. **Project Management Plan (PMP).** Once the project has been selected, the consultant will develop and coordinate with FAX staff in the drafting of a PMP. The PMP is to be the overarching documentation of the project that spans the project period commencing no later than the completion of the Planning Phase and continuing through the closeout of the project. The PMP is an evolving document used by FAX to establish and disseminate its policies and practices for governing all requisite project activities. It includes procedures for FAX management and staff (and all third parties as applicable to project need and/or implementation techniques) that best ensure that performance is (qualitatively and quantitatively) measurable through sound design, engineering, and comparable industry practices that are readily identifiable, credible, and consistently applied. The PMP should demonstrate that all phases of the project have been thoroughly considered, giving thought to the methods to be used to execute the project, and the interfaces that will be created among various participants. The PMP may include the following:
 - a. **Capacity and Capability Review.** FAX's management capability and capacity to efficiently and effectively develop a project for implementation by evaluating the organizational structure of FAX, qualifications of personnel, as well as the policies, procedures, and implementation methods. Particular attention should be given to FAX's abilities, resources, and staff organization since these are essential to develop and manage project cost and schedule risks, real estate acquisition, safety and security, quality assurance and quality control, and other activities of Federal concern.
 - b. **Operations and Maintenance Plan (OMP).** An action plan for determining acceptability of the newly constructed facility and equipment. Activities may include production verification testing, construction inspection testing, installation and verification testing, acceptance testing, and demonstration testing. The plan should consider FAX staff who should take part in certain stages of testing. The plan should also consider factors such as assessing the labor required to operate and maintain the project and recruit personnel with the skills required in time to support the testing and start-up phases, as well as operational service phases and comprehensive training program for all O&M personnel. Changeover plan and process for the transfer of responsibilities from capital project to operational facility/equipment should be identified.

- c. **Quality Assurance/Quality Control Plan (QA/QC).** The QA/QC includes planning for quality management activities and confirming that those activities were carried out and the actual implementation of quality management activities, inspecting to confirm that processes are performed correctly and completely, and the documentation thereof. Such work may cover areas such as:
 - i. Management Responsibilities
 - ii. Documented Quality Management Systems
 - iii. Design Control
 - iv. Document Control
 - v. Purchasing
 - vi. Product Identification and Traceability
 - vii. Process Control
 - viii. Inspection and Testing
 - ix. Inspection, Measuring, and Test Equipment
 - x. Inspection and Test Status
 - xi. Nonconformance
 - xii. Corrective Action
 - xiii. Quality Records
 - xiv. Quality Audits
 - xv. Training
- d. **Real Estate Acquisition and Management Plan (RAMP).** The RAMP describes how FAX is to acquire new property and demonstrate adequate real estate organization with well-defined reporting relationships and responsibilities. This may include proposed acquisitions and relocation strategies, appraisals, schedule for acquisition, cost estimates, and utility relocation.

- e. **Risk and Contingency Management Plan (RCMP).** An action plan that evaluates, explores and analyzes uncertainties and risks as they pertain to the core assumptions included within the current project scope, cost estimate and schedule; establishes an appropriate qualitative and quantitative risk-informed assessment of ranges of forecasted cost and schedules; considers risk mitigation options and alternatives including the use of cost and schedule contingencies; describes and evaluates the management and analytical methods used; and prepares a report with independent recommendations for adjustment to scope, cost, schedule, and risk and contingency management.
 - f. **Safety and Security Management Plan (SSMP).** An action plan that describes consistent, comprehensive, and effective safety and security procedures to be implemented throughout the life of the project. The plan would define management's philosophy, scope, goals, decision makers, assignments, and stakeholders pivotal to the safety and security of the project.
 - g. **US DOE Go/No Go Requirements.** Each plan and analysis as required by US DOE for the completion of Phase 1 and entering Phase 2 of the project.
6. **Pre-Design.** A high-level design that provides the overall system configuration, schematics, diagrams, and layouts of the project configuration. For this work it shall cover no more than 30% design.
7. **Environmental Study (If Applicable).** If through the selection process it is determined that a National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) analysis is required, the consultant shall be responsible for carrying out the environmental study. The service may include:
- a. Prepare NEPA/CEQA compliance documentation (such as Initial Study, Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report) including necessary research and analyses, preparation of studies, support for consultations and negotiations, technical services, and other necessary activities.
 - b. Conduct monitoring and mitigation activities and prepare evaluations of facilities and sites for air quality, archaeological, biological, cultural, noise, paleontological, traffic, water, and other resources.
 - c. Conduct site visits to identify issues and collect data related to environmental concerns.
 - d. Conduct activities to acquire permits, registrations, or approvals (including compliance plans for notices to comply or notices of violation) from federal,

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State of California, or other entities for air quality, botanical, cultural resources, noise, traffic, zoological, and other resources.

- e. Conduct evaluations of NEPA/CEQA-related issues, make recommendations for NEPA/CEQA compliance, and prepare other technical studies related to NEPA/CEQA compliance or federal, State, or local codes and regulations.
- f. Provide technical experts, including, but not limited to arborists, archaeologists, biologists, and paleontologists to provide professional assessments of conditions related to the project.
- g. Assist in Tribal engagement, consultation, and monitoring processes.
- h. Represent FAX's interest in meetings with environmental regulatory agencies and others.

PART TWO

FACILITIES MASTER PLAN

INTRODUCTION

FAX currently owns and operates five (5) transit facilities located in Fresno, California. The facilities include the Bruce Rudd Administration building, FAX Maintenance building, bus wash/fuel island, paratransit building, and the Manchester Transit Center.

Figure 2: FAX Facilities



Figure 3: FAX Facilities

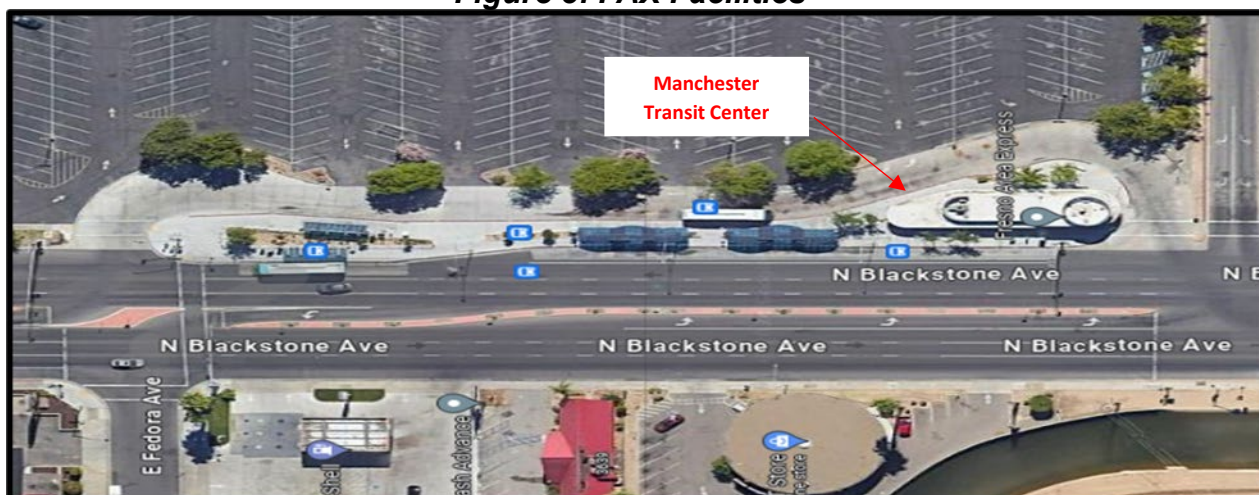


Figure 4: FAX Facilities



The Bruce Rudd Administration building, built in 1982, is a two-story 15,160 square foot structure, used primarily for clerical work and bus operations. The spaces are a combination of offices, conference rooms, break rooms with supporting restrooms, administrative offices, and mechanical and other utility spaces.

The FAX Maintenance building, last renovated in 1982, is a two-story 66,841 square foot structure, used primarily for fleet maintenance activities. The spaces are a combination of offices, breakrooms, parts storage, eight (8) service bays, bus wash facility with supporting restrooms, administrative offices, and other utility spaces.

The paratransit building, built in 1998, is a two-story 17,500 square foot structure, used primarily for the operations and maintenance of paratransit services. The spaces are a combination of offices, garage spaces, service bays, with supporting restrooms, administrative offices, and mechanical and other utility spaces.

The Manchester Transit Center, last renovated in 2020, is a one-story 1,920 square foot structure used primarily for in-person customer service. spaces are a combination of offices, public restrooms with administrative offices, and mechanical and other utility spaces.

FAX currently employs 518 personnel who report to the above-mentioned facilities. The Administrative building hosts seventeen (17) office spaces, two (2) common areas, one (1) conference room, and one (1) training room. The FAX Maintenance building hosts five (5) office spaces, one (1) conference room, and one (1) common area. The paratransit building hosts seven (7) office spaces, one (1) conference room, and one (1) common area. Lastly, the Manchester Transit Center has two (2) office spaces. These facilities are at capacity and unlikely to support future staffing needs.

SPECIAL CONSIDERATIONS

1. **Safety.** The US DOT has taken deliberative steps to ensure every project funded meets high standards of safety. For a project to receive high marks in safety it must

be able to demonstrate positive safety benefits to all users and promote safety through design.

2. **Climate Change, Resilience, and Sustainability.** Projects must consider climate change, resilience, and sustainability in the planning stage and project delivery. Typically, US DOT looks to address reductions in greenhouse gas emissions, incorporates evidence-based climate resilience measures and features, reduction of greenhouse gas emissions from the project materials, and how the project will avoid adverse environmental impacts to air or water quality.
3. **Stakeholder Engagement.** Projects must consider stakeholder assessments that evaluate whether the project creates proportional impacts and disparities to all populations in the project area.
4. **Enhanced Mobility.** Project must consider how rehabilitation or replacement improves the condition of the transit system and improve mobility for the transit riding public.
5. **Local and Regional Planning Priorities.** The project must be consistent with local and regional planning documents and local government priorities.
6. **Buy America.** The project will need to comply with Buy America provisions such as Federal Transit Administration (FTA) 49 U.S.C. § 5323(j); 49 C.F.R. Part 661 (Buy America Requirements), and the new Build America Buy America requirements put into effect via the Bipartisan Infrastructure Law (<https://www.govinfo.gov/link/plaw/117/public/58>)
7. **American Disabilities Act (ADA).** As a recipient of FTA financial assistance, a Project Sponsor Agency is required to carry out provisions of the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, as amended, and the U.S. Department of Transportation's (DOT).
8. **Title VI.** As required by 29 CFR 21.9(b)(3), new facility locations must not exclude persons from, denying them the benefits of, or subjecting them to discrimination under any government program on the grounds of race, color, or national origin.
9. **Internal Stakeholder Input.** The project must consider internal stakeholder input from those staff members who will be the ultimate end users of the respective facilities.
10. **Part One Considerations.** The project must be informed by the results of Part One of this solicitation.

OBJECTIVES

The following objectives outline the desired result from Part Two:

1. Identify current and future needs to propel transit within the City of Fresno.
2. Identify viable alternatives to facility shortcomings.
3. Develop preliminary project budget and schedule for facility enhancements or replacement.
4. Develop strategies for achieving the goals of the finalized Facility Master Plan.

SCOPE OF SERVICES

Although FAX will rely heavily on the guidance and expertise of the firm selected for the Project, it is anticipated that the development and content of a Facilities Master Plan will include, but is not limited to, the following:

1. **Operational Analysis.** An evaluation of FAX's current and future operational needs and the related facilities needed to support those operations.
2. **Site Assessment.** The site assessment will be a review of FAX's facilities and associated equipment. This includes inspections, meetings with facilities and maintenance staff to assess needs based upon building and equipment history, evaluation of maintenance and equipment replacement records, and review of facilities inventories, equipment data, specifications, and construction drawings. The site assessment should also include discussions with end users and their concerns over the condition and adequacy of existing facilities to meet current and future needs.
3. **Public Participation.** The consultant must be prepared to participate in multiple public participation events. The objective of the events is to obtain citizen feedback on alternatives.
4. **Develop Alternatives / Select Option.** The consultant must develop at least two options based on the information gathered and provide a cost benefit analysis for each option. The consultant should be prepared to provide a recommendation on which option FAX should select and why.
5. **Finalize Plan.** The consultant must finalize the plan based on the option selected that includes the following:
 - a. Develop a short-term (1-4 years), mid-term (5-15 years) and long term (15-30 years) sequence of events establishing the necessary stages of design, construction, redevelopment, and/or remodeling activity, as the case may suggest, for the selected option taking into consideration the need to maintain services and operations throughout implementation.

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- b. Provide a project budget and schedule for the selected option.
- c. Provide 30% drawings of the selected option.