

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

THIS AGREEMENT is made and entered into effective the 19th day of April, 2018, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Stantec Architecture, Inc., a North Carolina Corporation (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain professional architectural and engineering services for the design of plans and general construction contract documents for Fresno Area Express Facility Improvement Project, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical services as a architectural and engineering firm and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, this Agreement sets forth the terms and conditions under which CONSULTANT shall provide professional services, to be paid with Fresno Area Express/ Transportation Department funds and reimbursed with pledged Federal Transportation Administration ("FTA") funds as they are made available; and

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

WHEREAS, this Agreement will be administered for CITY by the Fresno Area Express/ Transportation Department Director (hereinafter referred to as "Director") or his/her designee.

**AGREEMENT**

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

1. Scope of Services. CONSULTANT shall perform the services described herein and in **Exhibit A** to complete the Project more fully described in **Exhibit A**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**. The services of CONSULTANT shall consist of five Parts as described below. A separate Notice to Proceed will be issued for each of the aforementioned Parts. By entry into this Agreement and upon CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in Part One. CONSULTANT shall not perform any other Part of the Agreement, and this Agreement shall not be a contract for any other Part, until further performance is authorized by CITY'S issuance of a written "Notice to Proceed." It shall, however, remain

CONSULTANT'S offer to perform all remaining Parts described herein. In the event CONSULTANT performs services without CITY'S prior written authorization, CONSULTANT will not be entitled to compensation for such services.

(a) Part One. Schematic Design Phase.

(1) CONSULTANT shall review the description of the Project set forth in **Exhibit A** and consult with designated representatives of CITY to ascertain the requirements of the Project.

(2) CONSULTANT shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible CITY department/division that is available in CITY'S records and is required by CONSULTANT in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions and easements. CONSULTANT shall notify CITY if a topographic survey is required.

(3) CONSULTANT shall provide a preliminary evaluation of the Project taking into consideration CITY'S estimate of the cost of construction ("Construction Budget") of approximately \$8,500,000 and will be refined in early stages of programming, including alternative approaches to design and construction of the Project.

(4) Based upon the mutually agreed upon Project requirements and any adjustments authorized by CITY in the Construction Budget, CONSULTANT shall design and prepare schematic design drawings and other documents for review, modification, if required, and acceptance by CITY staff sufficient to show the concept and scope of the proposed Project and the scale and relationship of Project components.

(5) CONSULTANT shall submit a preliminary estimate of construction cost for review and acceptance by CITY. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include CONSULTANT'S compensation as herein provided. Such estimate shall include, and shall separately state, the cost of any add or deduct alternatives, the cost of any work which may be let on a segregated bid basis and any equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget.

(6) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval

permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(7) CONSULTANT may not rely upon any as-builts provided by CITY, but shall investigate the existing conditions and ascertain the adequacy of such as-builts for CONSULTANT'S design. CONSULTANT shall bring to CITY'S attention any discrepancies in the as-builts that are discovered by CONSULTANT. CITY makes no representations regarding any as-builts.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within ~~210~~ (combined deliverable) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within ~~14~~ calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(b) Part Two. Design Development Phase. After review and acceptance of the schematic design phase and issuance of a written Notice to Proceed with this Part Two:

(1) Based upon the accepted schematic design documents and the Construction Budget, including authorized revisions thereto, CONSULTANT shall prepare for review and acceptance by CITY the design development documents consisting of drawings and other documents to fix and describe the size and character of the Project as necessary to show treatment of significant details. In addition, CONSULTANT shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents and specifications shall be subject to review and acceptance by CITY.

(2) CONSULTANT shall submit a revised estimate of construction cost for review and acceptance by CITY. The revised estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated bid basis, and any furnishings, equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget, including authorized revisions thereto.

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part 1 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the revised estimate and CONSULTANT shall, at no additional cost to CITY, make such design

changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by CITY. CITY shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in CONSULTANT'S compensation.

(4) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within |70 (combined deliverable)| calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within |14| calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(c) Part Three. Construction Document Phase. After review and acceptance of the design development phase and issuance of a written Notice to Proceed with this Part Three:

(1) CONSULTANT shall prepare from the accepted design development documents, detailed plans and specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. CONSULTANT shall also prepare necessary bidding information, general and special conditions of the general construction contract, technical specifications of the general construction contract, and the bid proposal and general construction contract forms. Such documents shall be subject to the review and acceptance by CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. CITY'S Standard Specifications must be used by CONSULTANT where possible. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by CITY shall be used by CONSULTANT unless the Director determines they would be impractical for this Project. CONSULTANT shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

(2) Upon request of CITY, CONSULTANT shall provide the calculations used to determine the general construction contract quantities; and structural calculations for the purpose of obtaining any building permits.

(3) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, report, statement, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(4) CONSULTANT shall provide CITY with ~~(5)~~ sets of completed plans and ~~(5)~~ sets of completed specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

(5) After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one set of accepted reproducible tracings and bid documents for the Project. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: ~~.dwg and .pdf~~.

(6) CONSULTANT shall submit a final estimate of construction cost for review and acceptance by CITY. Such estimate shall be calculated as of the date all general construction contract documents are delivered to CITY in final form ready for reproduction and advertising. Such estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated basis, and any equipment, or fixtures which may be incorporated in or excluded from the general construction contract.

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part 2 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the final estimate. If CITY elects to reject the final estimate, CONSULTANT shall at no additional cost to CITY, make such design changes as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by CITY.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within ~~105 (combined deliverable)~~ calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY,

shall be submitted to CITY within |14| calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

(d) Part Four. Bidding Phase. After review and acceptance of the construction document phase and if CITY elects to proceed to bid, which shall constitute a written Notice to Proceed with this Part Four:

(1) CONSULTANT shall assist CITY in obtaining bids. CONSULTANT shall not communicate with potential bidders regarding this Project without the express prior written authorization of CITY'S Purchasing Manager.

(2) CONSULTANT shall, within 7 calendar days of any request by CITY, expeditiously draft and promptly provide addendum as determined by CITY to be reasonable or necessary for the bidding process.

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by CITY, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, CONSULTANT shall, within 14 calendar days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, at no additional cost to CITY provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. CONSULTANT shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to CONSULTANT from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%.

(e) Part Five. Construction Phase and General Construction Contract Administration. The construction phase will begin with the award of the general construction contract, which shall constitute a written Notice to Proceed with this Part Five, and will terminate when a Notice of Completion is filed. Upon award of a general construction contract for the Project and under the direction of the Director through CITY'S designated Construction Manager for the Project:

(1) CONSULTANT shall attend the pre-construction conference and, if called upon by CITY, act on CITY'S behalf in discussing the various aspects of the construction phase.

(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and

applicable laws and regulations in a timely manner. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor.

(3) CONSULTANT shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents, and keep CITY informed of the progress of the work. In the event that CONSULTANT'S visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, CONSULTANT shall immediately advise CITY and document, in writing, the work CONSULTANT deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. Based on CONSULTANT'S best knowledge, information and belief, CONSULTANT shall provide CITY a general written assurance that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, CONSULTANT shall provide a written judgment of the acceptability of the work for payment applications and final acceptance, subject to CITY'S right to overrule CONSULTANT.

(4) Upon written request by CITY, CONSULTANT shall render interpretations of the general construction contract documents necessary for the proper execution or progress of the work.

(5) Upon written request by CITY, CONSULTANT shall render written recommendations on change orders, claims, disputes or other questions arising out of the general construction contract, in a timely manner. Recommendations by CONSULTANT in favor of a change order that is consequently accepted by CITY shall constitute approval by CONSULTANT who shall then approve the change order in writing. CONSULTANT shall not unreasonably withhold written approval in the event CITY accepts a change order that CONSULTANT recommended to be rejected. In the event of any technical disputes, CONSULTANT shall provide CITY with CONSULTANT'S written interpretation of the contract documents. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor. If CITY, CONSULTANT and the respective general construction contractor are unable to mutually agree on such period for CONSULTANT review, then CITY will make the determination and that determination will be final.

(6) Upon written request by CITY, CONSULTANT shall provide such design and specification services as may be requested by CITY to implement change orders necessary for clarification or interpretation of the general construction contract documents or which may have resulted from errors or omissions by CONSULTANT.

(7) Where change orders arise as a result of an increase in the scope of work or are due to unforeseeable conditions, the parties may modify this Agreement, which modification shall include an agreed upon increase in CONSULTANT'S compensation.

(8) Upon written request of CITY, CONSULTANT shall assist CITY in the preparation of Progress Payment Estimates and other related construction reports.

(9) CONSULTANT shall provide CITY with two sets of original as-grade plans wet-stamped and signed by the CONSULTANT'S Engineer of Record for the Project submitted for final approval by the CITY's Building and Safety Services Division of the Development and Resource Management Department

(10) CONSULTANT shall prepare Record Drawings by updating the accepted general construction documents in Part 3 to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the CITY, (iii) CONSULTANT provided Request for Information responses, and (iv) any CONSULTANT bulletins, amendments or clarifications. CONSULTANT shall provide CITY with one set of vellum Record Drawings for the Project within ~~(21)~~ calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within ~~(14)~~ calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Director. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of Record Drawings in the following format: ~~.dwg and .pdf~~.

2. CITY'S responsibilities. CITY will:

(a) Select the testing laboratory and pay the cost of borings, samplings, and other work involved in soils testing during construction.

(b) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release CONSULTANT from its responsibility to make periodic site visits under Section 1(e) for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to CITY.

(c) Prepare all change orders during construction in cooperation with CONSULTANT.

(d) Prepare all Progress Payment Estimates in cooperation with CONSULTANT following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon CONSULTANT'S best knowledge, information and belief.



(e) Pay, or cause to be paid, plan check fees, conditional use permit fees and site plan review fees.

(f) Arrange for and pay, or cause to be paid, any fees associated with Environmental Impact Reports or Statements.

(g) Give reasonably prompt consideration to all matters submitted by CONSULTANT for acceptance to the end that there will be no substantial delays in CONSULTANT'S program of work. For an acceptance, approval, authorization, a request or any direction to CONSULTANT to be binding upon CITY under the terms of this Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by CITY and signed on behalf of CITY by the Director.

### 3. Compensation and Cost Reimbursement.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed ~~One Million Seven Thousand Nine Hundred Ninety Dollars and Twenty-Four Cents (\$1,007,990.24)~~ **except at CONSULTANT'S own risk and expense.** Such fee includes all allowable expenses to be incurred by CONSULTANT in performance of this agreement on a cost reimbursable basis, except for those allowable costs eligible for reimbursement as set forth in subdivisions (e), (f) and (g) of this Section 3.

(b) CONSULTANT shall render detailed invoices monthly, to be reimbursed in the normal course of CITY business once approved. Such invoices shall detail all allowable costs incurred and shall be for an amount no greater than that attributable to the Part upon which CONSULTANT is then engaged, as provided in Section 3(c) below.

(c) For purposes of determining the division of the total compensation to CONSULTANT as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by CITY as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of CONSULTANT'S performance as follows: Part 1 - ~~41%~~, Part 2 - ~~18%~~, Part 3 - ~~22%~~, Part 4 - ~~2%~~ and Part 5 - ~~17%~~. Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to CONSULTANT.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due

to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

(e) CONSULTANT'S indirect rates (costs eligible for reimbursement) are only allowable to the extent that they comply with the cost principles of the Federal Acquisition Regulations as set forth in 48 CFR Part 31.2, and are subject to audit. City will accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.

(f) Until final annual indirect cost rates are established for any period, City shall reimburse CONSULTANT at billing rates established in the CONSULTANT'S proposal and audited by the CONSULTANT'S CPA Firm, subject to adjustment when the final rates are established. Final rates may be established by an audit performed by the federal government or other governmental agency, or if necessary, by an audit performed by the City or its Agent. These billing rates:

- i. Shall be the anticipated final rates; and
- ii. May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(g) At any time or times before final payment, the City may have CONSULTANT'S invoices or vouchers and statements of cost audited. Any payment may be reduced by amounts found by City not to constitute allowable costs and/or adjusted for prior overpayments or underpayments. Upon CONSULTANT'S compliance with all terms of this Agreement, City shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

#### 4. Termination, Remedies, Force Majeure, and Consolidation of Disputes.

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

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

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

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

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

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify the Director or his/her designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or his/her designee of the cessation of such occurrence.

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

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

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

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings, artwork and other documents prepared or provided by CONSULTANT pursuant to this Agreement (Work), and all data and copyrights related to such Work, shall be governed by the following provision for the benefit of the Federal Transit Administration (FTA):

United States Code Title 49: Transportation  
Part 18-UNIFORM ADMINISTRATIVE REQUIREMENTS FOR  
GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND  
LOCAL GOVERNMENTS  
Subpart C-Post-Award Requirements

§18.34

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

(c) CONSULTANT shall not reproduce (such as photographs and prints), duplicate, distribute reproductions, or incorporate into any trademark or service mark, the Work without the prior written consent of CITY. Any rights of the CONSULTANT in the Work terminate upon the death of such CONSULTANT and do not extend to such CONSULTANT'S heirs, successors or assigns.

(d) Title to the Work shall pass to CITY upon final acceptance of the artwork by CITY. CITY reserves the right to donate, transfer or sell the Work or any portion thereof. City shall have the exclusive right to publicly display the Work and shall have a license to reproduce (such as photographs and prints) or create three-dimensional reproductions of the Work for any noncommercial purpose (including, but not limited to, books, slides, postcards, film, Internet sites, reproductions for advertising, and other media). Such reproductions shall contain a credit to the CONSULTANT and a copyright

notice. Reproductions for commercial purposes are only to be made with the mutual written consent of CONSULTANT and CITY. All references and reproductions or adaptations of the Work will credit the Work to the CONSULTANT unless CONSULTANT requests to the contrary. CITY reserves the right to modify, remove and/or relocate the Work at any time, and after consultation with CONSULTANT, shall have the right to determine when and if modifications, repairs and/or restorations are needed. If City makes modifications, repairs or restoration not approved by the CONSULTANT, the CONSULTANT shall have the right to sever its association with the Work. CONSULTANT agrees to give CITY written notice prior to asserting any claim pertaining to the Work, and CITY shall have not less than 90 days from the date of receipt of claim to cure any such claim. CITY may incorporate the Work into any trademark or service mark to be utilized by City to register the same in accordance with Federal, state or local law.

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

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

7. Indemnification. **Except with regard to professional negligent errors and omissions, as provided in the paragraph below, to the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONSULTANT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. CONSULTANT's obligations under the preceding sentence shall apply regardless of whether CITY or any of their officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of CITY or any of their officers, officials, employees, agents or volunteers.**

**Specifically regarding professionally negligent errors and omissions and to the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONSULTANT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the professional negligent errors or omissions of CONSULTANT 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 their officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

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

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

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

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

9. Conflict of Interest and Non-Solicitation.

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

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

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

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

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

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

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

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

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



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

11. General Terms and Federal Requirements.

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

(b) Records of CONSULTANT'S expenses pertaining to the Project 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 this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 10(b) shall survive expiration or termination of this Agreement.

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

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

(e) CITY will carry out applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, CONSULTANT agrees to comply with all applicable federal requirements identified in **Exhibit D** and require that each subcontract include the same requirements by each of its subcontractors.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of

services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

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

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

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

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

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

13. Independent Contractor.

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

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

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

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

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

16. Assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement and any Requests for Qualifications and/or Requests for Proposals, together with any documents issued therewith (collectively, "RFQ/P") by CITY that resulted in selection of CONSULTANT for entry into this Agreement. This Agreement incorporates by reference such RFQ/P, which together represent the entire and integrated agreement between the parties with respect to the subject matter hereof and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

[SIGNATURE PAGE TO FOLLOW]

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

CITY OF FRESNO,  
a California municipal corporation

By: [Signature]  
Jim Schaad,  
Director |  
Fresno Area Express/  
Transportation Department

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: [Signature]  
Amanda B. Freeman, Deputy

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: [Signature] 4.23.18  
Deputy

REVIEWED BY:  
[Signature]  
Brian Barr, Projects Administrator |  
Fresno Area Express/ Transportation  
Department

Addresses:  
CITY:  
City of Fresno  
Attention: Brian Barr, Projects Administrator  
2223 G Street  
Fresno, CA 93706  
Phone: (559) 621-1418  
FAX: (559) 498-4957 |

Stantect Architecture, Inc.,  
a North Carolina Corporation

By: [Signature]  
Name: H. Joshua Gould

Title: Vice President  
(if corporation or LLC, Board  
Chair, Pres. or Vice Pres.)

By: [Signature]  
Name: Patrick McKelvey

Title: Sr. Principal  
(if corporation or LLC, CFO,  
Treasurer, Secretary or Assistant  
Secretary)

Any Applicable Professional License:  
Number: C 21617  
Name: Patrick M. McKelvey  
Date of Issuance: June 11, 1990

CONSULTANT:  
| Stantec Architecture, Inc. |  
Attention: Patrick McKelvey,  
Senior Principle  
523 West 6<sup>th</sup> Street Suite 1200  
Los Angeles, CA 90014-1218  
Phone: 213-955-3530  
FAX: NA |

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B.1 - Insurance Requirements for Professional Services
3. Exhibit B.2 - Insurance Requirements for Non-Professional Services
4. Exhibit C - Disclosure of Conflict of Interest
5. Exhibit D - Federal Requirements
6. Exhibit E - Schedule

## **Exhibit A**

### **SCOPE OF SERVICES**

#### **Consultant Service Agreement between City of Fresno ("City") and Stantect Architecture, Inc. ("Consultant")**

#### **Fresno Area Express Facility Improvement Project**

PROJECT TITLE |

Consultant shall provide full design services for multiphase facility improvements. Facility improvements include a vault room, office area, bus wash improvements, electric bus charging infrastructure, fire alarm upgrades, landscape revisions and an employee/visitor parking reconfiguration with solar parking canopies. The improvements are focused on support facilities to meet current and future fleet service demands.

All design elements necessary to achieve full construction documents will be contracted through this procurement under a single contract. It is the full responsibility of the Consultant to identify the necessary design disciplines and include appropriate sub-consultants to provide assistance with the design.

#### **Design Requirements:**

It is the intent of this scope of service to describe the minimum design requirements for each element of the various elements.

##### **Vault Room Addition to Bus Wash Facility**

- Design and engineer upgrades to the existing bus wash facility. The intent is to relocate the existing FAX bus fare box vault and currency counting room from the Administration building to newly constructed building attached to the bus wash facility similar to Attachment 5. Operationally, the new building will provide additional security, streamline operations, and increase overall working space of vault operations for years to come.
- Vault room specific scope of work:
  - The existing fare box vault room is located in the Administration building. Design may include refurbishment of the existing room into an office or storage room.
  - New facility shall include separate areas for fare counting, work stations, single-use restroom, men's and women's locker room, secure vault room, vault puller room, and vacuum equipment room. Fare box vaults shall be located at each lane of the bus wash. Vaults shall have the capability to transfer the contents via a mobile bin to the counting room. The vaults shall be protected by bollards.
  - Bus vault receiving and fare collections shall be consistent with similar operations from other major metropolitan cities (i.e. San Francisco, Sacramento, Los Angeles, etc.).
  - The vacuum equipment room must be acoustically isolated from the work stations.
  - Consultant shall include built-in countertops, workstations, cabinetry, room signage, lockers, code signage, etc.
  - Consultant shall include network infrastructure, associated IT equipment, etc. IT equipment may be located in the existing electrical room of the bus wash.

- The fare collections and money counting area should include consideration for easily cleanable noise damping finishes.
  - Mechanical systems should be highly efficient and capable of removing a high level of contaminants from the conditioned space.
  - Walls exposed to near vehicular traffic shall be protected by curbs and/or bollards for security.
  - All exterior doors shall include controlled access.
  - Upgrades shall be designed with consideration of a fully operational bus wash during construction.
  - Consultant shall tie new loads into existing switchboard panel located in the CNG station. Existing loads may require to be metered by Consultant for a period of time to determine existing load capacity shared between the FAX Administration building and Bus Wash.
  - Consultant shall include security camera and security infrastructure in the scope of work.
- **Bus Wash Upgrades Associated with the Construction of the Vault Room Addition**
    - Consultant shall review bus wash configuration and include in design services canopy additions to accommodate parallel 60' articulating buses in the bus wash gantry area, fueling station and vault area simultaneously as shown in Attachment 5. The bus serving the vault room does not require full canopy coverage. A complete reconfiguration of existing equipment locations may be necessary, with exception to the CNG dispensers.
    - Consultant shall include additional LED lighting and spotlighting as necessary with canopy additions.
    - Consultant to include equipment upgrades for a new traditional vacuum equipment for bus fleet within bus wash station. The existing system is obsolete.
    - Consultant shall include extension of the CNG gas detection system status lighting to the entry of the bus wash.
    - Consultant shall include the relocation of existing security cameras due to extension of facility.
    - Consultant shall include in the design services a new gantry bus wash system with reverse osmosis, traffic lights, undercarriage wash, vacuum system, electric eye activation, auto start, dryer, oil/water separator and water reclamation. Bus wash gantry shall be able to accommodate 60' articulating buses and 12' or 14' vehicle heights (to be confirmed by City). The existing system is obsolete.
    - Consultant shall include demolition and disposal of a decommissioned generator and ATS located in the bus wash electrical room. The ATS will be required to be bypassed.
    - Consultant shall include a new paint scheme for the building.
    - Consultant shall include ADA compliance upgrades to the existing restrooms.
    - Upgrades shall be designed with consideration of a fully operational bus wash during construction.
    - Consultant shall perform a safety evaluation of the bus wash and work area and address unsafe elements in the design. Safety evaluation shall be performed in conjunction with the City's Risk Management division.
    - Consultant shall include the removal of the existing underground diesel storage tanks, piping and dispensers. Soil testing and environmental lab analysis of existing conditions shall be included in this scope of work.



- Consultant shall include work plans and provide observation during the execution of the scope of work by the Contractor.
  - Consultant shall include hazardous material testing in the scope of work. Abatement requirements shall be provided in the construction documents for any positive tests.
  - Consultant shall include soil testing and engineering analysis (if required) for vault room and bus wash additions.
  - Consultant shall provide an ADA compliant pathway from administration building to bus wash and vault room.
- Employee Parking Reconfiguration
  - Consultant shall evaluate and design a complete reconfiguration of the employee parking lot to maximize stalls, increase circulation efficiency and increase security by separating visitor access from employee parking areas. The reconfiguration shall be designed to be implemented in phases (if possible).
  - A new secured employee only entrance shall be provided adjacent to the turn lane on G Street, just north of Divisadero Street. New entrance shall include:
    - New entry shall be secured by security gates and traffic arms with card key / remote access. Infrastructure for a future prefabricated guard booth shall be provided.
    - Entrance for employee and visitor parking.
    - Allow for 2-3 car staging.
    - Allow for 180 degree entry/exit lane prior to gate.
  - Complete reconfiguration of the parking lot may include eliminating/relocating existing trees and relocating utilities. Consultant shall present City with parking lot configuration options that do and do not include relocating major existing utilities.
  - Consultant may relocate or reduce picnic areas.
  - Consultant shall include a subconsultant to engineering and design solar parking canopies.
  - Consultant shall include revised exterior parking lot lighting and provide infrastructure for security cameras.
  - Consultant shall include revised civil design for parking lot design, water flow, drainage, utilities, landscaping, etc.
  - Reconfigure curb, gutter and landscaping as necessary. Utilize existing conditions and landscaping where appropriate.
  - Parking lot shall include a wrought iron fence separating the employee lot from other secured areas (i.e. bus parking, visitor areas, etc.).
  - Reconfigure pedestrian and ADA pathways to FAX Administration building as required by code.
  - The parking lot shall include electric vehicle charging stations.
  - An existing electrical pole will need to be relocated to obtain additional parking. An application has been submitted to PG&E for this work. Consultant shall employ a subconsultant to manage PG&E application.
  - City is seeking a temporary parking lot for City employees during construction. Consultant may be required to develop a plan with temporary paving on a dirt lot, etc.
- Visitor Parking Reconfiguration

- Consultant shall evaluate and design a complete reconfiguration of the visitor parking area to maximize stalls and increase circulation efficiency.
- Reconfigure curb, gutter and landscaping as necessary. Utilize existing conditions and landscaping where appropriate.
- Reconfigure pedestrian and ADA pathways to FAX Administration building as required by code.
- Consultant shall include a subconsultant to engineering and design solar parking canopies.
- Facility Entry Gate Reconfiguration
  - Consultant shall design and reconfigure the facility entry gate to allow 60' buses to enter and stage at the Divisadero Street and G Street entrance.
  - Entrance shall be for buses and fleet management vehicles only. Signage shall be designed appropriately.
  - New gate shall be secured with card key and/or remote and security cameras.
  - Include automatic programmable wrought iron security gates with loop detectors capable of detecting a bus 60' from gate. Multi-panel or swing gates may be considered.
  - Consultant shall include infrastructure and space planning for a pre-fabricated guard booth.
  - Exit gates are to be reconstructed to match entry gates.
  - Consultant shall address drainage at entrance gates to ease stress on gate motors due to elevation gain during operation.
  - Extend wrought iron fencing to revised entry and exit gates. Fencing south of exit gate to remain.
  - Allow for 180 degree entry/exit lane prior to security gate.
  - Consultant shall include landscape improvements at the entry gate.
  - Entrance gates shall have convenience outlets available for event lighting.
  - Reconfigure pedestrian and ADA pathways to FAX Administration building as required by code.
- Electric Bus Charging Infrastructure
  - Consultant shall design electrical infrastructure to accommodate a new 3500 AMP service and meter set specifically for electric bus charging. Each charging station requires approximately 200 AMPs. New electrical service and equipment will likely be located under bus canopies protected by new bollards.
  - Consultant shall evaluate whether FAX's existing emergency generator (located in storage) may be utilized to provide backup power for vehicle charging. Consultant shall design electrical infrastructure and concrete pad for potential use of existing generator or new generator to be determined by FAX at a later date.
  - New electrical equipment shall include an automatic transfer switch if a generator is tied in or an available slot for future installation.
  - Evaluate location for new switchgear dedicated to electric bus charging.
  - Consultant shall employ a subconsultant to manage PG&E application for new service. The City has submitted an application on December 20, 2017. Buy America and applicable Federal Requirements shall apply to the utility contracts.
- FAX Yard Site Improvements
  - Consultant shall include the replacement of all exterior parking lot lighting throughout the FAX yard with new Title 24 compliant LED fixtures.

- Consultant shall recommend other energy efficient upgrades.
- The existing bus canopy solar system is tied into a 400 AMP service near the Compressed Natural Gas (CNG) station. Consultant shall include the transfer of solar generator to an existing 2000 AMP service powering the CNG equipment. Consultant shall evaluate current setup and show modifications in plan.
- Consultant shall design structural best management practices (BMP) to trap and filter oil, grease, suspended solids and conductivity found within the storm water discharge system originating from the FAX Yard and Municipal Service Center. Please reference Attachment 9 for further information. Consultant is advised that additional storm water outlets have been found since Attachment 9 was published.

#### **Fire Alarm Facility Upgrades**

- Consultant shall investigate and analyze existing fire alarm system without the use of as-built drawings.
- The existing system is tied into the Municipal Service Center's (MSC) fire alarm system and does not identify FAX as the location of an alarm. Therefore, the Fire Department cannot locate the correct building or address in the event of an emergency.
- Consultant shall design an expansion and upgrade to the existing system.
  - Provide a digital addressable and expandable fire alarm system, including new main panels, which are separate from the MSC fire alarm. Each building within the FAX yard shall be identifiable in the event of an emergency.
  - The existing fire alarm sub panel is located in the bus wash electrical room.
  - Consultant shall design fire life safety devices to reflect the current building occupancy and new office space areas.
  - All existing fire life safety devices shall be modified or replaced to meet ADA standards.
  - Modify methane detection system in bus wash due to new bus wash configuration.
  - Tie methane detection system into fire alarm panel. Methane detection system is programmed to call out in the event of an emergency.

#### **Construction Document Phasing:**

- The City is interested in phasing the design and construction of these design elements. The construction schedule and phasing is highly dependent upon the expiration of grant funding March 31, 2019.
- The City is looking for recommendations to pre-purchase security related equipment (i.e. cameras, vaults, lighting, etc.) ahead of grant expirations as owner furnish contractor installed items.
- Tentatively, design services shall be split into **five separate** plan and specification submittals (see schedule for deliverable requirements):
  1. Facility entry gate
  2. Diesel tank removal plans
  3. Fire alarm facility upgrades
  4. Bus wash, vault room, employee parking lot and visitor parking lot
  5. Electrical bus charging and site improvements

#### **Cost Estimating & Engineers Estimate:**

- Consultant shall develop and maintain an Engineer's Estimate of construction cost for the project at each stage at the plan development. The estimate shall include a full breakdown of each line item beyond a cost summary. This includes quantities, units, assumptions and estimated costs for each element.
- During each design, Consultant may be asked to provide cost estimates for the proposed improvements, configurations and/or proposed finishes to assist the City in decision making.
- During the construction phases, the Consultant shall provide independent cost estimates for all construction changes, including field changes, RFIs and City lead changes. Consultant shall also review Contractor change order requests and provide comment to proposed costs (labor, material and equipment) and scope of work via official correspondence.

**Schedule:**

The City is proposing an aggressive design schedule. Please reference Attachment 4 for further details.

**General Inclusions:**

Those services will include but not necessarily be limited to the following.

1. Consultant shall employ a third party firm that specializes in ground penetrating radar (GPR) utility locating for all underground utilities in the entire FAX yard and adjoining utilities on G street immediately at the onset of design. Attachment 6, developed in 2001, shows the general magnitude of utilities that need to be located. Be advised that additional private utilities have been installed since 2001. All known as-builts shall be provided to the Consultant prior to GPR services commencing. Consultant shall pot hole select utilities (up to 20) deemed to be critical to the design by the Consultant. Consultant shall incorporate data into construction documents and provide all GPR data in pdf and CAD formats to the City.
2. Consultant shall prepare all environmental evaluation, analysis reports and determinations/declarations per California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) for formal adoption by the City. Consultant assumes that work is categorically exempt and excluded.
3. Consultant shall provide hazardous material testing for all items required for the Contractor to pull demolition permits.
4. Consultant shall assist the City with developing a Project Specific Plan and a Quality Management Plan for this project. The plans shall be authored by the City with input, review and comment by the Consultant.
5. Consultant shall perform all design related survey. City shall provide construction related survey.
6. The consultant will work directly with key FAX staff, stakeholders and related City Agencies to draft specifications and plan drawings at each level of design for the purpose to complete this project.

7. Consultant shall provide presentation boards, not limited to plan views, elevations, sections three-dimensional perspective, landscape, hardscape, perspective birds-eye and eye level rendering of street scenes illustrating proposed designs and pedestrian flow diagrams for use by the city staff in presenting the overall site improvements to the respective committees that have jurisdictional authority and/or interest in the project.
8. Consultant shall obtain and analyze title reports for the subject property.
9. Consultant shall solicit and collect feedback from all underground utility providers within the affected area and include appropriate remediation within the final design documents.
10. City shall provide the Consultant with a construction bid specification template. The Consultant shall incorporate all appropriate project specific items into the construction bid specification template. This includes bid items, quantities, explanation of bid items, technical specifications and similar.
11. Consultant shall include necessary in-person meetings with various City Departments as required to complete design. At a minimum, the Consultant shall present each design phase in person.
12. Consultant shall include monthly site visits during construction of any of the proposed improvements and shall issue reports accordingly.
13. All specifications/plans shall meet and or exceed City and County of Fresno Standards and ADA requirements.
14. Draft specifications/plans will be reviewed by FAX staff and the Public Works Department for the City of Fresno (as needed) as well as other City departments as determined and as directed by FAX in order to obtain comments to assure that all components necessary for obtaining the required building permits are included. Drawings shall be sufficient to allow for fixed price bidding by General Contractors.
15. All work will need to be reviewed, approved and certified by a licensed Engineer in the state of California prior to submission to the building department.
16. It is the sole responsibility of the Consultant to submit complete construction documents for plan check. The Consultant shall schedule and attend all back check appointments necessary to obtain permit approval. Back check appointments are held in person at City Hall with each plan reviewer (i.e. electrical, architectural, etc.). The building permit and plan check fees shall be paid by the Transportation Department.
17. The consultant will provide support through the procurement process as required to achieve the end goal. The details of this process are outlined in Part Four "Bidding Phase" of the Standard Consultant Services Agreement for Services attached to this RFQ/P. There may be multiple bid phases as described in the proposed schedule, Attachment 4.
18. The consultant will provide support through the construction process as required for completion of the project. The details of this process are outlined in Part Five "Construction Phase and General Construction Contract Administration," of the Standard Consultant Services Agreement for Services attached to this RFQ/P. There may be multiple construction phases as described in the proposed schedule, Attachment 4.

19. All submittals, potential change orders and RFIs shall be responded by the Consultant within a maximum of 5 business days. In circumstances where information will affect work in progress, Consultant shall make every effort possible to respond sooner.

**General Deliverables:**

- Presentation boards
- Appropriate number of full-scale plans required to depict the design intent at each stage of design.
- Environmental reports and analysis
- Electronic copies of full-scale plans in PDF and AutoCAD 2013 format
- Geotechnical and Soil reports
- Hazardous materials report
- Cost estimates per the above requirements.

## **Exhibit B.1**

**INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES**  
**Consultant Service Agreement between City of Fresno ("CITY")**  
**and Stantec Architecture, Inc. ("CONSULTANT")**  
Fresno Area Express Facility Improvements  
PROJECT TITLE

### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

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

### **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) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 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) \$5,000,000 per claim/occurrence; and,
- (ii) \$10,000,000 policy aggregate.

**UMBRELLA OR EXCESS INSURANCE**

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

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

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



designee, either:

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

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

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

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

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

If the Professional Liability (Errors and Omissions) insurance policy is written on a

claims-made form:

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

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

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.

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.

### **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 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.

## **Exhibit B.2**

### **INSURANCE REQUIREMENTS FOR NON-PROFESSIONAL SERVICES Consultant Service Agreement between City of Fresno ("CITY") and [Consultant Name] ("CONSULTANT")**

#### **INSURANCE REQUIREMENTS**

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

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

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

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

### **MINIMUM LIMITS OF INSURANCE**

CONSULTANT shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability 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 and EMPLOYER'S LIABILITY with limits of liability not less than:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
4. **BUILDERS RISK** (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. **(Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)**
5. **CONSULTANTS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:
  - (i) \$1,000,000 per occurrence or claim; and,
  - (ii) \$2,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by CONSULTANT pursuant to the Agreement.

### **UMBRELLA OR EXCESS INSURANCE**

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

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

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

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

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

- (i) 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 has been given to CITY, except ten (10) days for nonpayment of premium. 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.
- (ii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.

- (iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONSULTANTS' insurance shall be primary to and require no contribution from the City. The Commercial General and Pollution Liability policies are required to include primary and non contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If CONSULTANT maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONSULTANT.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
- (viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.
- (ix) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

**PROVIDING OF DOCUMENTS** - CONSULTANT shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **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. All subcontractors working under the direction of CONSULTANT shall also be required to provide all documents noted herein.

**Claims-Made Policies** - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) 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 work commencement date, CONSULTANT must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the 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 designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONSULTANT will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.



## Exhibit C

### DISCLOSURE OF CONFLICT OF INTEREST

Fresno Area Express Facility Improvements |  
PROJECT TITLE

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional page(s) attached.



Signature

April 4, 2018

Date

Patrick M. McKelvey

(name)

Stantec Architecture, Inc.

(company)

523 West 6th Street, Suite 1200

(address)

Los Angeles, CA 90014

(city state zip)

## Exhibit D

### FEDERAL REQUIREMENTS

#### Consultant Service Agreement between City of Fresno ("City" or "Purchaser") and Stantect Architecture, Inc. ("Contractor")

Fresno Area Express Facility Improvements

[PROJECT TITLE]

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest agrees as follows:

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

#### **No Government Obligation to Third Parties**

The Purchaser and Contractor 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.

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. Department of Transportation (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. 5307(n)(1) on the contractor, to the extent the Federal Government deems appropriate.

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

(2) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

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

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

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

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

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

## **Federal Changes**

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**

**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.

**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.

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.

## **Civil Rights**

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

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

(a) **Race, Color, Creed, National Origin, Sex** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulation, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment

Opportunity," 42 U.S.C. 2000e), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

(1) **Policy:** It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

(2) **DBE Obligation:** The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

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

### **Veterans Employment**

To the extent practicable, CONTRACTOR agrees that it:

(1) 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

(2) 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, and b.

CONTRACTOR also assures that its sub-recipients will:

(1) 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

(2) 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.

#### **Incorporation of FTA 4220.1F Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 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.

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

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

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

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

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

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

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

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

### **Lobbying**

The 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.

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

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

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

### **Clean Air**

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

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

## **Clean Water**

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

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

## **Energy Conservation**

The 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.

**Flow Down** – The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

## **FTA Protest Notification**

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

## **ADA Access**

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow



applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

### **THIRD PARTY CONTRACT CAPACITY**

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

## EXHIBIT E

### [Project Schedule]

See attached schedule for individual deliverable duration requirements. These durations further define durations of each of the various deliverables for schematic design, design document and construction document items.

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1		FRESNO AREA EXPRESS (FAX) FACILITY IMPROVEMENTS	608 days?	Fri 4/20/18	Tue 8/18/20																			
2		NTP	1 day?	Fri 4/20/18	Fri 4/20/18																			
3		KICK-OFF MEETING	1 day?	Mon 4/23/18	Mon 4/23/18																			
4		AE MOBILIZATION	1 wk?	Mon 4/23/18	Fri 4/27/18																			
5																								
6		TASK 1 - Facility Assessment / Investigation	30 days?	Mon 4/30/18	Fri 6/8/18																			
7		Facility Assessment	3 wks?	Mon 4/30/18	Fri 5/18/18																			
8		Information Gathering - Existing Report / Studies	2 wks?	Mon 4/30/18	Fri 5/11/18																			
9		Prepare Summary Report	1 wk?	Mon 5/21/18	Fri 5/25/18																			
10		FAX Review and Approval	2 wks?	Mon 5/28/18	Fri 6/8/18																			
11																								
12		TASK 2 - Programming, Scope Confirmation, Phasing	50 days?	Mon 4/30/18	Fri 7/6/18																			
13		Programming	2 wks?	Mon 4/30/18	Fri 5/11/18																			
14		FAX Review and Approval	2 wks?	Mon 5/14/18	Fri 5/25/18																			
15		Scoping & Phasing Charrette	1 wk?	Mon 5/28/18	Fri 6/1/18																			
16		Prepare Summary Report	3 wks?	Mon 6/4/18	Fri 6/22/18																			
17		FAX Review and Approval	2 wks?	Mon 6/25/18	Fri 7/6/18																			
18																								

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ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors
19		<b>TASK 3 - Environmental / Geotech</b>	<b>95 days?</b>	<b>Mon 5/7/18</b>	<b>Fri 9/14/18</b>	
20		Conduct Studies - Site Survey, Utilities Survey/GPR, Geotechnical	6 wks?	Mon 5/7/18	Fri 6/15/18	4FS+5 days
21		Hazmat Analysis	6 wks?	Mon 7/9/18	Fri 8/17/18	12
22		CEQA/NEPA	6 wks?	Mon 7/9/18	Fri 8/17/18	12
23		Prepare Report	2 wks?	Mon 8/20/18	Fri 8/31/18	21,22,20
24		FAX Review and Approval	2 wks?	Mon 9/3/18	Fri 9/14/18	23
25						
26		<b>TASK 4, 5, 6 (SD, DD, CD) - Early Start</b>	<b>175 days?</b>	<b>Mon 5/14/18</b>	<b>Fri 1/11/19</b>	
27		<b>Facility Entry Gate</b>	<b>25 days?</b>	<b>Mon 7/9/18</b>	<b>Fri 8/10/18</b>	
28		Design and Engineering	2 wks?	Mon 7/9/18	Fri 7/20/18	17
29		Cost Estimates	1 wk?	Mon 7/23/18	Fri 7/27/18	28
30		FAX Review	1 wk?	Mon 7/30/18	Fri 8/3/18	29
31		Updates per FAX Review Comments and FAX Back-check	1 wk?	Mon 8/6/18	Fri 8/10/18	30
32		Plan Checks and Approval	12 wks?	Mon 8/13/18	Fri 11/2/18	31
33		<b>Diesel Tank Removal</b>	<b>55 days?</b>	<b>Mon 5/14/18</b>	<b>Fri 7/27/18</b>	
34		Design and Engineering	4 wks?	Mon 5/14/18	Fri 6/8/18	8
35		Develop Removal Work Plan	4 wks?	Mon 5/14/18	Fri 6/8/18	8
36		Cost Estimates	2 wks?	Mon 6/11/18	Fri 6/22/18	34,35
37		FAX Review	2 wks?	Mon 6/25/18	Fri 7/6/18	36

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ID	Task Name	Task Mode	Duration	Start	Finish	Predecessors
38	Updates per FAX Review Comments and FAX Back-check		2 wks?	Mon 7/9/18	Fri 7/20/18	37
39	Finalize Package for Plan Check 1 wk?			Mon 7/23/18	Fri 7/27/18	38
40	Plan Checks and Approval		12 wks?	Mon 7/30/18	Fri 10/19/18	39
41	<b>Fire Alarm Facility Upgrades</b>		<b>35 days?</b>	<b>Mon 5/14/18</b>	<b>Fri 6/29/18</b>	
42	Design and Engineering		3 wks?	Mon 5/14/18	Fri 6/1/18	8
43	Interim Review by FAX		1 wk?	Mon 6/4/18	Fri 6/8/18	42,44
44	Coordination with Local Fire Dept		1 wk?	Mon 5/28/18	Fri 6/1/18	42FS-5 days
45	Complete Design and Engineering		1 wk?	Mon 6/4/18	Fri 6/8/18	44
46	Cost Estimates		2 wks?	Mon 6/11/18	Fri 6/22/18	45
47	FAX Review		1 wk?	Mon 6/11/18	Fri 6/15/18	45
48	Updates per FAX Review Comments and FAX Back-check		1 wk?	Mon 6/18/18	Fri 6/22/18	47
49	Finalize Package for Plan Check 1 wk?			Mon 6/25/18	Fri 6/29/18	48
50	Plan Checks and Approval		4 wks?	Mon 7/2/18	Fri 7/27/18	49
51	<b>Electrical Bus Charging and Site Improvements</b>		<b>75 days?</b>	<b>Mon 7/9/18</b>	<b>Fri 10/19/18</b>	
52	Design and Engineering		4 wks?	Mon 7/9/18	Fri 8/3/18	17
53	Interim Review by FAX		1 wk?	Mon 8/6/18	Fri 8/10/18	52
54	Coordination with PG&E		1 wk?	Mon 8/13/18	Fri 8/17/18	53

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ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors
55		Complete Design and Engineering	2 wks?	Mon 8/20/18	Fri 8/31/18	54
56		Cost Estimates	2 wks?	Mon 9/3/18	Fri 9/14/18	55
57		FAX Review	2 wks?	Mon 9/17/18	Fri 9/28/18	56
58		Updates per FAX Review Comments and FAX Back-check	1 wk?	Mon 10/1/18	Fri 10/5/18	57
59		PG&E Review and Coordination	1 wk?	Mon 10/8/18	Fri 10/12/18	58
60		Finalize Package for Plan Check	1 wk?	Mon 10/15/18	Fri 10/19/18	59
61		Plan Checks and Approval	12 wks?	Mon 10/22/18	Fri 1/11/19	60
62		<b>TASK 4 - Schematic Design</b>	<b>50 days?</b>	<b>Mon 7/9/18</b>	<b>Fri 9/14/18</b>	
63		Design and Engineering	6 wks?	Mon 7/9/18	Fri 8/17/18	17
64		Cost Estimates	2 wks?	Mon 8/20/18	Fri 8/31/18	63
65		FAX Review and Approval	2 wks?	Mon 9/3/18	Fri 9/14/18	64
66						
67		<b>TASK 5 - Design Development</b>	<b>50 days?</b>	<b>Mon 9/3/18</b>	<b>Fri 11/9/18</b>	
68		Design and Engineering	4 wks?	Mon 9/3/18	Fri 9/28/18	64
69		Interim Review	1 wk?	Mon 10/1/18	Fri 10/5/18	68
70		Complete DD Documents	2 wks?	Mon 10/1/18	Fri 10/12/18	68
71		Cost Estimates	2 wks?	Mon 10/15/18	Fri 10/26/18	70
72		FAX Review and Approval	2 wks?	Mon 10/29/18	Fri 11/9/18	71
73						
74		<b>TASK 6 - Construction Document</b>	<b>75 days?</b>	<b>Mon 11/12/18</b>	<b>Fri 2/22/19</b>	

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ID	Task Name	Task Mode	Duration	Start	Finish	Predecessors	2018	2019	2020
75	Develop Construction Document		4 wks?	Mon 11/12/18	Fri 12/7/18		Mar	Apr	May
76	Interim Review		2 wks?	Mon 12/10/18	Fri 12/21/18		Jun	Jul	Aug
77	Complete CD		2 wks?	Mon 12/24/18	Fri 1/4/19		Sep	Oct	Nov
78	Cost Estimates		2 wks?	Mon 1/7/19	Fri 1/18/19		Dec	Jan	Feb
79	FAX Review		2 wks?	Mon 1/21/19	Fri 2/1/19		Mar	Apr	May
80	Updates per FAX Review Comments and FAX Back-check		2 wks?	Mon 2/4/19	Fri 2/15/19		Jun	Jul	Aug
81	Finalize Package for Plan Check		1 wk?	Mon 2/18/19	Fri 2/22/19		Sep	Oct	Nov
82	Plan Checks and Approval		12 wks?	Mon 2/25/19	Fri 5/17/19		Dec	Jan	Feb
83							Mar	Apr	May
84	<b>TASK 7 - Construction Procurement 299 days? (thru Contract Award)</b>			<b>Mon 7/30/18</b>	<b>Thu 9/19/19</b>		Jun	Jul	Aug
85	<b>Early Start - Facility Entry Gate</b>		<b>89 days?</b>	<b>Mon 11/5/18</b>	<b>Thu 3/7/19</b>		Sep	Oct	Nov
86	Solicit		5 wks?	Mon 11/5/18	Fri 12/7/18		Dec	Jan	Feb
87	Review Bids		2 wks?	Mon 12/10/18	Fri 12/21/18		Mar	Apr	May
88	Council Report		3 days?	Mon 12/24/18	Wed 12/26/18		Jun	Jul	Aug
89	Council Review/Award		4 wks?	Thu 12/27/18	Wed 1/23/19		Sep	Oct	Nov
90	Contract Documents/Bonds/Insurances		4 wks?	Thu 1/24/19	Wed 2/20/19		Dec	Jan	Feb
91	Submittals		2 wks?	Thu 2/21/19	Wed 3/6/19		Mar	Apr	May
92	NTP Construction		1 day?	Thu 3/7/19	Thu 3/7/19		Jun	Jul	Aug
93	<b>Early Start - Diesel Tank Removal 89 days?</b>			<b>Mon 10/22/18</b>	<b>Thu 2/21/19</b>		Sep	Oct	Nov

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ID	Task Name	Task Mode	Duration	Start	Finish	Predecessors
94	Solicit		5 wks?	Mon 10/22/18	Fri 11/23/18	40
95	Review Bids		2 wks?	Mon 11/26/18	Fri 12/7/18	94
96	Council Report		3 days?	Mon 12/10/18	Wed 12/12/18	95
97	Council Review/Award		4 wks?	Thu 12/13/18	Wed 1/9/19	96
98	Contract Documents/Bonds/Insurances		4 wks?	Thu 1/10/19	Wed 2/6/19	97
99	Submittals		2 wks?	Thu 2/7/19	Wed 2/20/19	98
100	NTP Construction		1 day?	Thu 2/21/19	Thu 2/21/19	99
101	Early Start - Fire Alarm Facility Upgrades		89 days?	Mon 7/30/18	Thu 11/29/18	
102	Solicit		5 wks?	Mon 7/30/18	Fri 8/31/18	50
103	Review Bids		2 wks?	Mon 9/3/18	Fri 9/14/18	102
104	Council Report		3 days?	Mon 9/17/18	Wed 9/19/18	103
105	Council Review/Award		4 wks?	Thu 9/20/18	Wed 10/17/18	104
106	Contract Documents/Bonds/Insurances		4 wks?	Thu 10/18/18	Wed 11/14/18	105
107	Submittals		2 wks?	Thu 11/15/18	Wed 11/28/18	106
108	NTP Construction		1 day?	Thu 11/29/18	Thu 11/29/18	107
109	Early Start - Electrical Bus Charging and Site Improvements		89 days?	Mon 1/14/19	Thu 5/16/19	
110	Solicit		5 wks?	Mon 1/14/19	Fri 2/15/19	61
111	Review Bids		2 wks?	Mon 2/18/19	Fri 3/1/19	110

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ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	1018	Qtr 2	2018	Qtr 3	2018	Qtr 4	2018	Qtr 1	2019	Qtr 2	2019	Qtr 3	2019	Qtr 4	2019	Qtr 1	2020	Qtr 2	2020	Qtr 3	2020	Qtr 4	2020
112		Council Report	3 days?	Mon 3/4/19	Wed 3/6/19	111																							
113		Council Review/Award	4 wks?	Thu 3/7/19	Wed 4/3/19	112																							
114		Contract Documents/Bonds/Insurances	4 wks?	Thu 4/4/19	Wed 5/1/19	113																							
115		Submittals	2 wks?	Thu 5/2/19	Wed 5/15/19	114																							
116		NTP Construction	1 day?	Thu 5/16/19	Thu 5/16/19	115																							
117		Bus Wash Facility, Vault Room, Parking Lot, Electrical Infrastructure, Entry Gate, Site Improvement	89 days?	Mon 5/20/19	Thu 9/19/19																								
118		Solicit	5 wks?	Mon 5/20/19	Fri 6/21/19	82																							
119		Review Bids	2 wks?	Mon 6/24/19	Fri 7/5/19	118																							
120		Council Report	3 days?	Mon 7/8/19	Wed 7/10/19	119																							
121		Council Review/Award	4 wks?	Thu 7/11/19	Wed 8/7/19	120																							
122		Contract Documents/Bonds/Insurances	4 wks?	Thu 8/8/19	Wed 9/4/19	121																							
123		Submittals	2 wks?	Thu 9/5/19	Wed 9/18/19	122																							
124		NTP Construction	1 day?	Thu 9/19/19	Thu 9/19/19	123																							
125																													
126		PG&E Design, Engineering, Construction & Installation	16 mons?	Mon 6/4/18	Fri 8/23/19	15																							
127																													

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ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	1018	Qtr 2, 2018	Qtr 3, 2018	Qtr 4, 2018	Qtr 1, 2019	Qtr 2, 2019	Qtr 3, 2019	Qtr 4, 2019	Qtr 1, 2020	Qtr 2, 2020	Qtr 3, 2020
128		<b>TASK 8 - Construction Administration</b>	<b>448 days?</b>	<b>Fri 11/30/18</b>	<b>Tue 8/18/20</b>												
129		Early Start - Facility Entry Gate	8 wks?	Fri 3/8/19	Thu 5/2/19	85											
130		Early Start - Diesel Tank Removal	10 wks?	Fri 2/22/19	Thu 5/2/19	93											
131		Early Start - Fire Alarm Facility Upgrades	10 wks?	Fri 11/30/18	Thu 2/7/19	101											
132		Early Start - Electrical Bus Charging and Site Improvements	20 wks?	Fri 5/17/19	Thu 10/3/19	109,126											
133		Bus Wash Facility, Vault Room, Parking Lot, Electrical Infrastructure, Entry Gate, Site Improvement	238 days?	Fri 9/20/19	Tue 8/18/20	117											

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