

8/9/18
10:18-0843(2-A)

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

THIS AGREEMENT is made and entered into effective the 9th day of August ~~day of April~~, 2018, by and between the CITY OF FRESNO, a California municipal corporation (CITY), and The Taylor Group Architects (CONSULTANT).

RECITALS

WHEREAS, CITY desires to obtain professional Certified Access Specialist (CAsp) inspection services for Accessible Fresno Small Business Initiative (Project); and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a CAsp and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; 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 its Public Works Director (Administrator) or designee.

AGREEMENT

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

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

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through one (1) year from effective date, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**. The Administrator shall have the authority to extend the Agreement's term for up to three additional one-year terms.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed One Hundred Five thousand (\$105,000), paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

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

4. Termination, Remedies and Force Majeure.

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

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 the Administrator. 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, 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 writings and documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) 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.

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

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as 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

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

CITY OF FRESNO,
a California municipal corporation

By: Scott L. Mozier
Scott L Mozier,
Public Works Director

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Marco Martini
Deputy Marco Martini

APPROVED AS TO FORM: 8/27/18
City Attorney's Office

By: [Signature]
[Name] Date
Deputy City Attorney

Addresses:

CITY:
City of Fresno
Attention: Shannon M. Mulhall,
ADA Coordinator
2600 Fresno Street #4011
Fresno, CA 93721
Phone: (559) 621-8716
FAX: (559) 457-1351

Attachments:

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

The Taylor Group Architects,
[Legal Identity]

By: [Signature]
Name: RUSSELL F TAYLOR

Title: PRESIDENT / SECRETARY
(If corporation or LLC., Board
Chair, Pres. or Vice Pres.)

By: _____

Name: _____

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

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

CONSULTANT:
The Taylor Group Architects
Attention: Russell F. Taylor,
Principal
410 Park Creek Drive
Clovis, CA 93611-4435
Phone: (559) 708-4046

Exhibit A

SCOPE OF SERVICES

Consultant Service Agreement between City of Fresno (CITY) and The Taylor Group Architects (CONSULTANT) CASp Inspections for Accessible Fresno Small Business Initiative

Synopsis of Scope of Services

City will expect the qualified Consultants to provide adequate personnel, equipment, and materials to conduct all aspects of the scope of services. It is anticipated that multiple Consultants will receive contracts for services. Each Consultant must have the full capability of performing the complete scope of work. No subcontractors will be allowed.

The Consultant(s) selected will perform CASp disabled access inspections and provide inspection reports of results to business owners. The services provided shall be delivered in compliance with the requirements of the Construction-Related Accessibility Standards Compliance Act (CRASCA, Civil Code §55.51-55.545) so that the business is eligible for "qualified defendant" status. The Consultants will be responsible for employing and supervising personnel to perform the contracted services described below.

1) Inspection Agreement with Business

The program administrator will provide the contracted Consultant with the name of a selected participating business. The Consultant shall then provide the business owner or designated representative with a written agreement, signed by both parties (or designated representative), that contains the following information:

- The public accommodation area of the business site to be inspected
- Statement that the CASp inspection report will be prepared according to the CRASCA
- Statement that a disability access inspection certificate will be provided
- The CASp's certification number and certification expiration date

Businesses eligible for participation will meet the following criteria:

- Small for-profit business (\$1 million or less annual gross revenue) located in the City of Fresno
- Current valid business tax certificate
- Place of Public Accommodation, as defined in ADA Title III. Targeted places of public accommodations include:
 - Sales or rental establishment
 - Establishment serving food or drink
 - Service establishment
- Has not yet been served a summons and complaint of a construction related accessibility claim for the property site
- Business public use area is 4,000 square feet or less
- Individual business site (not a multi-business complex. Businesses that are located in a multi-business complex are eligible, however the multi-business complex itself is not eligible.)
- No outstanding code violations on record

2) CASp Inspection

The Consultant will conduct a complete and thorough inspection of the business site in accordance with CRASCA. All areas of the business that are available to the public, as defined in the agreement, should be included in the CASp inspection. Ensure all staff performing inspections are licensed CASps.

3) CASp Inspection Report and Disability Access Inspection Certificate

A detailed CASp inspection report, prepared according to CRASCA, will be provided to the business owner or their designated representative. The CASp inspection report shall state that the site either "meets applicable standards" or "inspected by a CASp" in accordance with CRASCA requirements.

For a site that "meets applicable standards" the inspection report shall contain the following information:

- An identification and description of the inspected structures and areas of the site
- A signed and dated statement that, in the opinion of the CASp, the inspected structures and areas of the site meet construction-related accessibility standards. The statement shall clearly indicate whether the determination of the CASp includes an assessment of readily achievable barrier removal
- If a determination of "meets applicable standards" is issued in a report after corrections are made as a result of a CASp inspection, then the report shall contain a signed and dated statement by the CASp that indicates such and includes an itemized list of all corrections and dates of completion

For a site that is "inspected by a CASp" the inspection report shall contain the following information:

- An identification and description of the inspected structures and areas of the site
- A signed and dated statement that, in the opinion of the CASp, the inspected structures and areas of the site need correction to meet construction-related accessibility standards. The statement shall clearly indicate whether the determination of the CASp includes an assessment of readily achievable barrier removal
- An identification and description of the structures or areas of the site that need correction and the correction needed
- A schedule of completion for each of the corrections within a reasonable timeframe, which has been developed in conjunction with the business owner or their designated representative

The Consultant shall provide the business owner or designated representative with a Disability Access Inspection Certificate, purchased from the Division of the State Architect (DSA). DSA Disability Access Inspection Certificates are blue, sequentially numbered, and bear a golden State of California Seal.

Under no circumstances shall the City of Fresno receive or review the CASp inspection report of a business.

4) CASp Inspection Support Services

The Consultant shall provide individualized inspection support services throughout the course of the CASp inspection process. The CASp inspection support services at a minimum shall provide the business owner or designated representative with the following:

- Thorough review and explanation of their CASp inspection report
- Assistance understanding the factors for determining readily achievable barrier removal
- Assistance understanding the requirements to develop a schedule of completion for each of the identified corrections with a reasonable timeframe
- Information about the requirements for eligibility for qualified defendant status

5) Progress/Completion Reporting

The Consultant shall provide monthly progress reports to the City of Fresno. A progress report template will be provided to the Consultant. The report shall include, at minimum:

- In-progress tasks
- Work completed in the current month and cumulatively
- Confirmation that inspections and inspection reports generated are accurate and in accordance with the procedures established by the DSA.

Exhibit B

INSURANCE REQUIREMENTS **Consultant Service Agreement between City of Fresno (CITY)** **and The Taylor Group Architects (CONSULTANT)** CASp Inspections for Accessible Fresno Small Business Initiative

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

MINIMUM LIMITS OF INSURANCE

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

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

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

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

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

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

- 1. CITY, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City 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.

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

VERIFICATION OF COVERAGE

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

Exhibit C

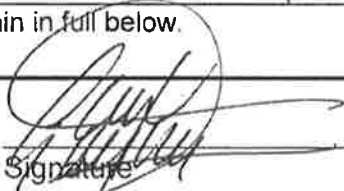
DISCLOSURE OF CONFLICT OF INTEREST

CASp Inspections for Accessible Fresno Small Business Initiative

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

Explanation: _____

I AM UNAWARE OF
ANY OF MY PAST OR
PRESENT CLIENTS DOING
BUSINESS WITH THE CITY
OF FRESNO BUT IT IS
A POSSIBILITY.



 Signature

4.25.18

 Date

RUSSELL F TAYLOR

 (name)

THE TAYLOR GROUP ARCHITECTS

 (company)

410 PARK CREEK DRIVE

 (address)

CLOVIS, CA. 93611

 (city state zip)

Additional page(s) attached.