

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

THIS AGREEMENT (Agreement) is made and entered into, effective on _____, by and between the CITY OF FRESNO, a California municipal corporation (City), and Provost & Pritchard Engineering Group, Inc. (Consultant).

RECITALS

WHEREAS, the City desires to obtain professional consultant services for the Affordable Housing and Sustainable Communities (AHSC) Dakota Transit-Related Amenities (TRA) Bus Stop Improvements Design (Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a professional architect 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, the 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 the City by its Department of Transportation/Fresno Area Express (FAX) (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. The Consultant shall perform to the satisfaction of the 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 construction completion, subject to any earlier termination in accordance with this Agreement. The services of the 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**.
3. Compensation.
 - (a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall not exceed \$112,922.22, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit F**.

- (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. The 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 the 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. The 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 the City to the Consultant upon the earlier of: (i) the Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days prior written notice with or without cause by the City to the Consultant; (iii) the 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, the Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The 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 the Consultant to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.
- (d) Upon any breach of this Agreement by the Consultant, the 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 the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

- (e) The Consultant shall provide the City with adequate written assurances of future performance, upon Administrator's request, in the event the Consultant fails to comply with any terms or conditions of this Agreement.
- (f) The Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The 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 the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the 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 the 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 the City.
- (b) Any and all writings and documents prepared or provided by the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.
- (c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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 the Consultant represents to the City that the

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, the City relies upon the skill of the Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782, Consultant shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this Agreement) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

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

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, the 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 the City's Risk Manager or designee at any time and in its 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 the 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, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance, all services and work under this Agreement shall be discontinued immediately, and all payments due, or that become due, to the Consultant shall be withheld until insurance is in compliance with the requirements. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the 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 the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the 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 the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

9. Conflict of Interest and Non-Solicitation.

- (a) Prior to the City's execution of this Agreement, the Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in the RFQ.. During the term of this Agreement, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.
- (b) The 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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The 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, the Consultant shall immediately notify the City of these facts in writing.
- (c) Consultant's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City

entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

- (d) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either is employed by the 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 Contract Administrator, if no actual or potential conflict is involved.
 - (e) The 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.
 - (f) Neither the Consultant, nor any of the 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 unless fully disclosed to and approved by the Contract Administrator, in advance and in writing. The 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 Contract Administrator, in advance and in writing. Notwithstanding any approval given by the Contract Administrator under this provision, the Consultant shall remain responsible for complying with Section 9(b), above.
 - (g) If the Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the Consultant shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.
 - (h) This Section 9 shall survive expiration or termination of this Agreement.
10. Recycling Program. In the event the 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, the Consultant at its sole cost and expense shall:
- (a) Immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing the City recycling programs is

available from the City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

- (b) Immediately contact the 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.
- (c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) above and the ongoing maintenance thereof.

11. General Terms.

- (a) Except as otherwise provided by law, all notices expressly required of the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.
- (b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the 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 the 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 the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.
- (c) Prior to execution of this Agreement by the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, the 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, the Consultant agrees as follows:

- (a) The 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) The Consultant will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. The Consultant shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to the 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- (c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the 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) The 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 the 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 the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the 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 the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.
- (c) Because of its status as an independent contractor, the Consultant and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to the City employees. The 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, the Consultant shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of the 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 the City employment benefits, entitlements, programs and/or funds offered employees of the 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, the Consultant may be providing services to others unrelated to the 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 the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the Contract Administrator or designee. Any attempted assignment by the Consultant, its successors or assigns, shall be null and void unless approved in writing by the Contract Administrator or designee.
 - (b) The Consultant hereby agrees not to assign the payment of any monies due the Consultant from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Consultant directly to the Consultant.
17. Compliance With Law. In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, the State of California and the 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. The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project if applicable; (2) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Scope of Work; (6) Consultant's Proposal.
Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order precedence.
26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Consultant.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

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: _____
Gregory A. Barfield, M.A., Director
Department of Transportation/FAX

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: Brent Richardson 7/28/2026
Brent Richardson Date
Senior Deputy City Attorney

ATTEST:
AMY K. ALLER
City Clerk

By: _____
Deputy

Addresses:

CITY:
City of Fresno
Attention: Brian Cetti, Project Manager
2223 G Street
Fresno, CA 93706
Phone: (559) 621-1440
E-mail: Brian.Cetti@Fresno.gov

Attachments:

1. Exhibit A – Scope of Services
2. Exhibit B – Insurance Requirements
3. Exhibit C – Federal Conditions
4. Exhibit D – Special Conditions
5. Exhibit E – FAX Standard Bus Stop Drawings
6. Exhibit F – Cost Proposal

Provost & Pritchard Engineering Group,
Inc.

Signed by:
By: Matthew W Kemp
Matthew W Kemp
Name: _____

Title: Chief Strategic Officer
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

Signed by:
By: Ronald J Samuelian
Ronald J Samuelian
Name: _____

Title: President/CEO
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

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

CONSULTANT:
Provost & Pritchard Engineering Group,
Inc.
Attention: Michael Osborn, Principal-in-
Charge
455 W. Fir Ave
Clovis, CA 93611
Phone: (559) 449-2700
E-mail: mosborn@ppeng.com

EXHIBIT A

SCOPE OF SERVICES

AHSC DAKOTA TRA BUS STOP IMPROVEMENTS DESIGN

PROPOSAL No. 12601691

The purpose of this RFQ is to hire a consultant to provide full design services for up to nineteen (19) Fresno Area Express Standard Bus Stops per the City of Fresno Standard Drawings FAX-1, FAX-2, FAX-3 and FAX-4. These bus stop locations are located throughout the City of Fresno and exact locations will be provided to the winning proposer. In areas where it is not possible to design per the City of Fresno FAX Standard Drawings, adjustments will be made on a case-by-case basis.

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 aid with the design.

The services of the Consultant shall consist of four parts as described below.

(1) Part One. Schematic Design Phase.

- (a) The Consultant shall review the description of the Project and consult with designated representatives of the City to ascertain the requirements of the Project.
- (b) The Consultant shall complete a 30% Schematic Design in accordance with the detailed minimum requirements. The 30% Schematic Design shall include sufficient detail for the design of the Project, to provide a general outline of the AHSC Dakota TRA Bus Stop Improvements Design, and as necessary to obtain the acceptance of the City. The Consultant shall provide the City with an electronic file of the Fresno Area Express AHSC Dakota TRA Bus Stop Improvements Design in the following format: PDF.
- (c) The 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 the City department/division that is available in the City's records and is required by the Consultant in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions and easements. The Consultant shall notify the City if a topographic survey is required.

- (d) The Consultant shall provide a preliminary evaluation of the Project, including alternative approaches to design and construction of the Project. The Consultant shall submit a preliminary estimate of construction cost for review and acceptance by the City. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include the 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.
 - (e) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the 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 the City.
 - (f) CONSULTANT may not rely upon any as-builts provided by the City but shall investigate the existing conditions and ascertain the adequacy of such as-builts for the Consultant's design. CONSULTANT shall bring to the City's attention any discrepancies in the as-builts that are discovered by CONSULTANT. The City makes no representations regarding any as-builts.
 - (g) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered, and deliverables submitted within 8 weeks or 56 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 the City, shall be submitted to the City within 14 calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.
- (2) **Part Two. Construction Document Phase.** After review and acceptance of the design development phase:
- (a) The 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. The 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 the City. The Consultant shall cooperate with, assist and be responsive to the City's Project Manager in preparation of all documents including, without limitation, slip- sheeting final documents for printing when requested. The City's Standard Specifications must be used by the Consultant where possible. Final drawings shall be printed or reproduced by a process providing a permanent record in black on vellum, or high-quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by the City shall be used by the Consultant unless the Director determines they would be impractical for this Project. The Consultant shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by the Consultant are consistent with any documents regularly used by the City that are used for this Project.

- (b) Upon request of the City, the Consultant shall provide the calculations used to determine the general construction contract quantities; and structural calculations for the purpose of obtaining any building permits.
- (c) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the 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 the City.
- (d) The Consultant shall provide the City with one (1) PDF set of completed plans and one (1) set of completed specifications for review and final acceptance by the City. Should the plans and specifications as submitted by the Consultant not be accepted by the City, the Consultant shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to the City.
- (e) After acceptance of final corrections, if any, the Consultant shall provide the City with one set of accepted reproducible tracings and bid documents for the Project. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: PDF and AutoCAD.
- (f) The Consultant shall submit a final estimate of construction cost for review and acceptance by the City. Such estimate shall be calculated as of the date all general construction contract documents are delivered to the 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.

- (g) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, the City shall have the option of accepting or rejecting the final estimate. If the City elects to reject the final estimate, the Consultant shall at no additional cost to the 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 the City.
 - (h) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered, and deliverables submitted within 12 weeks or 84 calendar days from the issuance of a Notice to Proceed unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within fourteen (14) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.
- (3) **Part Three. Bidding Phase.** After review and acceptance of the construction document phase, the City's decision to proceed with this Part Three as follows:
- (a) The Consultant shall assist the City in obtaining bids. The Consultant shall not communicate with potential bidders regarding this Project without the express prior written authorization.
 - (b) The Consultant shall, within seven calendar days of any request by the City, expeditiously draft and promptly provide addendum as determined by the City to be reasonable or necessary for the bidding process.
 - (c) 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 the 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, the Consultant shall, within 14 calendar days of any request by the 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 the City provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. The Consultant shall also submit such revised

plans and specifications, together with a new final estimate of construction cost, to the City for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to the 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%.

- (4) Part Four. Construction Phase and General Construction Contract Administration. The construction phase will begin with the award of the general construction contract. Upon award of a general construction contract for the Project and under the direction of the Director through the City's designated Construction Manager for the Project:
 - (a) The Consultant shall attend the pre-construction conference and, if called upon by the City, act on the City's behalf in discussing the various aspects of the construction phase.
 - (b) The Consultant shall review and recommend in writing to the 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 the 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 the City, The Consultant and the general construction contractor.
 - (c) The 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 the City informed of the progress of the work. In the event that the Consultant's visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, the Consultant shall immediately advise the City and document, in writing, the work the Consultant deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. Based on the Consultant's best knowledge, information and belief, the Consultant shall provide the 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, the Consultant shall provide a written judgment of the acceptability of the work for payment applications and final acceptance, subject to the City's right to overrule the Consultant.

- (d) Upon written request by the City, the Consultant shall render interpretations of the general construction contract documents necessary for the proper execution or progress of the work.
- (e) Upon written request by the City, the 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 the Consultant in favor of a change order that is consequently accepted by the City shall constitute approval by the Consultant who shall then approve the change order in writing. The Consultant shall not unreasonably withhold written approval in the event the City accepts a change order that the Consultant recommended to be rejected. In the event of any technical disputes, the Consultant shall provide the City with the Consultant's written interpretation of the contract documents. The period for the 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 the City, the Consultant and the general construction contractor. If the City, the Consultant and the respective general construction contractor are unable to mutually agree on such period for the Consultant review, then the City will make the determination, and that determination will be final.
- (f) Upon written request by the City, the Consultant shall provide such design and specification services as may be requested by the 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 the Consultant.
- (g) 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 the Consultant's compensation.

Design Requirements:

Minimum design requirements for each element of the RFQ as shown in the City of Fresno Blue Book Standard Bus Stop Layout design FAX-1, FAX-2, FAX-3 and FAX-4 attached. These bus stop locations are located throughout the city of Fresno and exact locations will be provided to the winning proposer. In areas where it is not possible to design per the FAX drawings, adjustments will be made on a case-by-case basis.

- Design should include grades, elevations, and required construction details to be approved for permits by City of Fresno Public Works Department.

- Design and engineer all aspects of the site to meet State and Federal accessibility standards.
- Consultant to work with FAX personnel to complete all necessary survey.
- FAX to provide survey data to consultant for input into the drawings. Cost Estimating & Engineers Estimate:
- Consultant shall develop and maintain an Engineer's Estimate of construction cost for the project at 30%, and 90% 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 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 as necessary.

Schedule:

FAX intends to adopt an accelerated design schedule to ensure timely project delivery, and Consultant is requested to provide a schedule of services.

General Inclusions:

Services will include, but are not necessarily limited to, the following:

- City shall provide the Consultant with a construction bid specification template. The Consultant shall incorporate all appropriate project specific bid items and technical specifications into the construction bid template. This includes bid items, quantities, explanation of bid items, technical specifications and similar.
- Consultant shall attend, either in-person or virtually, all meetings required to complete their design and deliver approved 100% level construction documents.
- All specifications/plans shall meet and/or exceed City and County of Fresno Standards, California Building Code, CalTrans standards where required, and Americans with Disabilities Act requirements.

- All work will need to be reviewed, approved, and certified by a licensed Engineer in the state of California prior to submission to the requisite City Departments for approvals.
- The Consultant will provide support through the contractor bidding process as required to deliver a successful bid. The details of this process are outlined in Part Three “Bidding Phase” of this RFQ.
- 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 Four “Construction Phase and General Construction Contract Administration,” of this RFQ.
- All submittals, potential change orders and RFIs shall be responded to 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:

- To expedite engineering, Consultant shall develop a 30% design document submittal for FAX review, then proceed to 90% construction documents which will be used for completion of the City plan check process.
- The Consultant shall perform all services in a logical and coordinated sequence to ensure timely and efficient completion of the work. The following submittal schedule shall apply unless an extension is granted in writing by the Project Manager:

30% Design Submittal

All deliverables for the 30% design phase shall be submitted within eight (8) weeks or fifty-six (56) calendar days from the issuance of the Notice to Proceed for this part.

90% Design Submittal

All deliverables for the 90% design phase shall be submitted within four (4) weeks or twenty-eight (28) calendar days from the City’s written notice of acceptance of the 30% design.

100% Design Submittal

All deliverables for the 100% design phase shall be submitted within two (2) weeks or fourteen (14) calendar days from the City’s written notice of acceptance of the 90% design.

Re-submittals

Any required re-submittals necessary to obtain City acceptance shall be submitted within fourteen (14) calendar days from receipt of the City's comments, unless an extension is approved in writing by the Director.

- Electronic copies of full-scale plans in PDF and AutoCAD format
- Engineer's Estimate of Cost to be provided per the above requirements at 30% design and 90% design.

Exhibit B
INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno (City) and Provost &
Pritchard Engineering Group, Inc. (Consultant)
AHSC DAKOTA TRA BUS STOP IMPROVEMENTS DESIGN

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

MINIMUM LIMITS OF INSURANCE

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

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

- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY:

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

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

4. EMPLOYER'S LIABILITY:

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

5. PROFESSIONAL LIABILITY (Errors and Omissions):

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

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City under the General Liability policy for all ongoing and completed operations by use of endorsements providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85 or CG 20 10 04 13.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status on the General Liability policy by use of ISO Form CG 20 01 04 13, or by an executed endorsement that provides primary and non contributory status as broad as that contained in ISO Form CG 20 01 04 13.
4. All policies of insurance shall contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.
5. All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
6. Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
7. The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a

limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

CLAIMS-MADE POLICIES

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

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

VERIFICATION OF COVERAGE

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

SUBCONTRACTORS

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

FTA FEDERAL CONDITIONS

All references to "Contractor" herein shall refer to "Consultant" as defined in the Agreement. This contract/purchase agreement is subject to a financial assistance contract between the City of Fresno and the Federal Transit Administration, which requires that this contract/agreement contain the following clauses:

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

(2) The contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. § 5323(l) on the contractor, to the extent the Federal Government deems appropriate.

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

ACCESS TO RECORDS AND REPORTS

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

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

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

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

FEDERAL CHANGES

(1) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

TERMINATION

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

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

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

EQUAL EMPLOYMENT OPPORTUNITY

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

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

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

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

INCORPORATION OF FTA 4220.1G TERMS

(1) The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1G, dated January 17, 2025, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Fresno request, which would cause the City of Fresno to be in violation of the FTA terms and conditions.

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

SUSPENSION AND DEBARMENT

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

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

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

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

RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

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

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

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

LOBBYING

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

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

(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.

FLY AMERICA

Fly America Requirements:

(1) Definitions. As used in this clause- "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. "United States"

means the 50 States, the District of Columbia, and outlying areas. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(2) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(3) If available, the contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

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

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

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

SEISMIC SAFETY

(1) The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety

Regulations and the certification of compliance issued on the project.

INTELLECTUAL PROPERTY RIGHTS

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this

Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) Minimum wages –

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour

Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

(v)

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

(1) The work to be performed by the classification requested is not

performed by a classification in the wage determination; and

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

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

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

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

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

(2) *Withholding* - City Utilities shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States

Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, City Utilities may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records –

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

(ii)

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

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

(4) Apprentices and trainees –

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll

at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) *Certification of eligibility* –

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

the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

ENERGY CONSERVATION

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

ADA ACCESS

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

SAFE OPERATION OF MOTOR VEHICLES

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

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

PROMPT PAYMENT

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

VETERANS EMPLOYMENT

(1) Pursuant to FTA Circular 4220.1F, this contract shall conform to 49 U.S.C. 5325(k) regarding Veterans Employment. By signing this contract the Contractor agrees that, to the extent practicable, the Contractor shall:

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

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

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

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

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

NOTICE OF LEGAL MATTERS AFFECTING THE FEDERAL GOVERNMENT

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

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

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

(4) *Additional Notice to U.S. DOT Inspector General.* The contractor must promptly notify the City and U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA.

The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the City and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the City. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

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

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

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

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

TRAFFICKING IN PERSONS

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

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

Exhibit D
Special Conditions

1. **PAYMENT:** The Proposer shall invoice the City of Fresno monthly for the completion of each work or task. Invoices shall conspicuously display the City's contract number and shall be submitted to:

ATTENTION:

City of Fresno

Department of Transportation/FAX

Attn: John Turnipseed

2223 G. Street

Fresno, CA 93706

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

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

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

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

4. **CONTRACT ADMINISTRATOR:** The City of Fresno designates the Director, Department of Transportation/FAX, as Contract Administrator, who shall act on behalf of

the City with respect to all aspects of this Contract. The City shall promptly notify Contractor in writing if the Contract Administrator is changed.

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

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

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

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

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

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

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

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

The Contract Coordinator shall coordinate the activities of Contractor and the occupants to minimize any interference or delay to either party. The Coordinator shall submit suggestions regarding revisions of the specifications to the Contract Administrator. The

Coordinator shall receive and respond, with clerical assistance, to requests, complaints, and suggestions concerning the performance of the work directed under the Contract.

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

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

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

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

- a. Adherence to established response times,
- b. Failure to provide reports per schedule and on time, or
- c. Failure to conform to the requirements per Scope of Services in Exhibit A.

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

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

9. NONFEDERAL LABOR STANDARD PROVISIONS GENERAL PROVISIONS: The following Nonfederal Labor Standards Provisions, including the following provisions concerning: maximum hours of work, minimum rates of pay, and overtime compensation, with respect to the categories and classifications of employees hereinafter mentioned are included in the Contract pursuant to the requirements of applicable State or local laws,

but the inclusion of such provisions shall not be construed to relieve the Contractor or any subcontractor from the pertinent requirements

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

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

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

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

13. LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves \$30,000 or more, the Contractor and each subcontractor shall comply with California Labor Code section 1777.5, as it may be amended from time to time, the

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

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

- a. All contract award information (e.g., completed form DAS 140) sent by Contractor and by subcontractors to the State Division of Apprenticeship Standards and each applicable apprenticeship program in accordance with California Labor Code section 1777.5, as may be amended from time to time, including identification of addressee.

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

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

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

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

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

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

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

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

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

this clause. The Contractor is responsible for the submission of certified copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or its agent who pays or supervises the payment of the persons employed under the Contract and shall certify under penalty of perjury under the laws of the State of California each of the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "LABOR CODE SECTION 1776; PAYROLLS AND BASIC" and that such information is true, correct and complete;

(ii) That each employee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions;

(iii) That each employee has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract;

(iv) Contractor has complied with the requirements of California Labor Code sections 1771, 1811, and 1815 for any work performed hereunder by its employees.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b) (2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution.

c. The Contractor or subcontractor shall make certified copies of all the records required under paragraph (a) of this clause available for inspection at all reasonable hours at the principal office of the Contractor by, and furnished upon request to, the Engineer, the Division of Labor Standards Enforcement of the Department of Industrial Relations, the Division of Apprenticeship Standards of the Department of Industrial Relations, and each of their authorized representatives. A certified copy of the employee's record shall likewise be made available for inspection or furnished upon request by the employee or its authorized representative. The Contractor shall provide hereunder the street address, city and county of the location of the payroll records maintained by Contractor and shall provide a notice of any change of location and address within 5 working days of

such change. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or

subcontractor fails to submit the required records within 10 days after each week ending pay period, or to furnish or make them available for inspection within 10 days of request, (Contractor has 10 days to comply) after written notice, the Contractor shall forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, pursuant to California Labor Code section 1776. These penalties shall be withheld from progress payments then due.

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

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

- a. The Contractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, political affiliation, sex, age (over 40), sexual orientation, and denial of family care leave or on any other basis prohibited by law. The Contractor shall ensure that the treatment of employees and evaluation of applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment Practices section.
- b. Contractor and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and

the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the

Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

- c. Contractor assures City that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989) and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Contract as the “anti-discrimination laws”.
- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a written notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the City, State of California, the State Fair Employment and Housing Commission, or any other appropriate agency designated by the City or the State of California, for the purposes of investigation to ascertain compliance with the Fair Employment Practices and Nondiscrimination section of this Contract.
- f. Contractor agrees to collect and maintain information to show compliance with the “anti-discrimination laws” including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.
- g. Contractor agrees to cooperate with City, and any other appropriate agency designated by the City, in all manner necessary to permit City and any such agency to adequately report to the United States Environmental Protection Agency on Contractor's compliance with the “anti-discrimination laws”.
- h. A finding of willful violation of the Fair Employment Practices section of this Contract or of the California Fair Employment and Housing Act shall be

regarded by the City as a basis for determining the Contractor to be not a *responsible bidder* as to future contracts for which such Contractor may submit

bids, for revoking the Contractor's prequalification rating, if any, and for refusing to establish, reestablish, or renew a prequalification rating for the Contractor.

The City will deem a finding of willful violation of the California Fair Employment and Housing Act to have occurred upon receipt of written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the California Fair Employment and Housing Act and has issued an order under California Government Code section 12973, section 12970, or obtained an injunction under California Government Code section 12973.

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

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

of the content of the antidiscrimination clause and their responsibilities under it.

(2) The Contractor shall provide evidence, as required by the City, that it has notified all sources of employee referrals (including unions, employment agencies, advertisement, Department of Employment) of the content of the antidiscrimination clause.

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

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

(i) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.

(ii) Otherwise implement an affirmative antidiscrimination program in terms of the unions; specific areas of skill and geography, to the end that qualified disadvantaged workers will be available and given an equal opportunity for employment.

l. Contractor's signature on this Contract shall constitute a certification under the penalty of perjury under the laws of the State of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.

m. The Contractor will include the provisions of the foregoing paragraphs 1 through 12 in every first tier subcontract so that such provisions will be binding upon each such subcontractor.

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

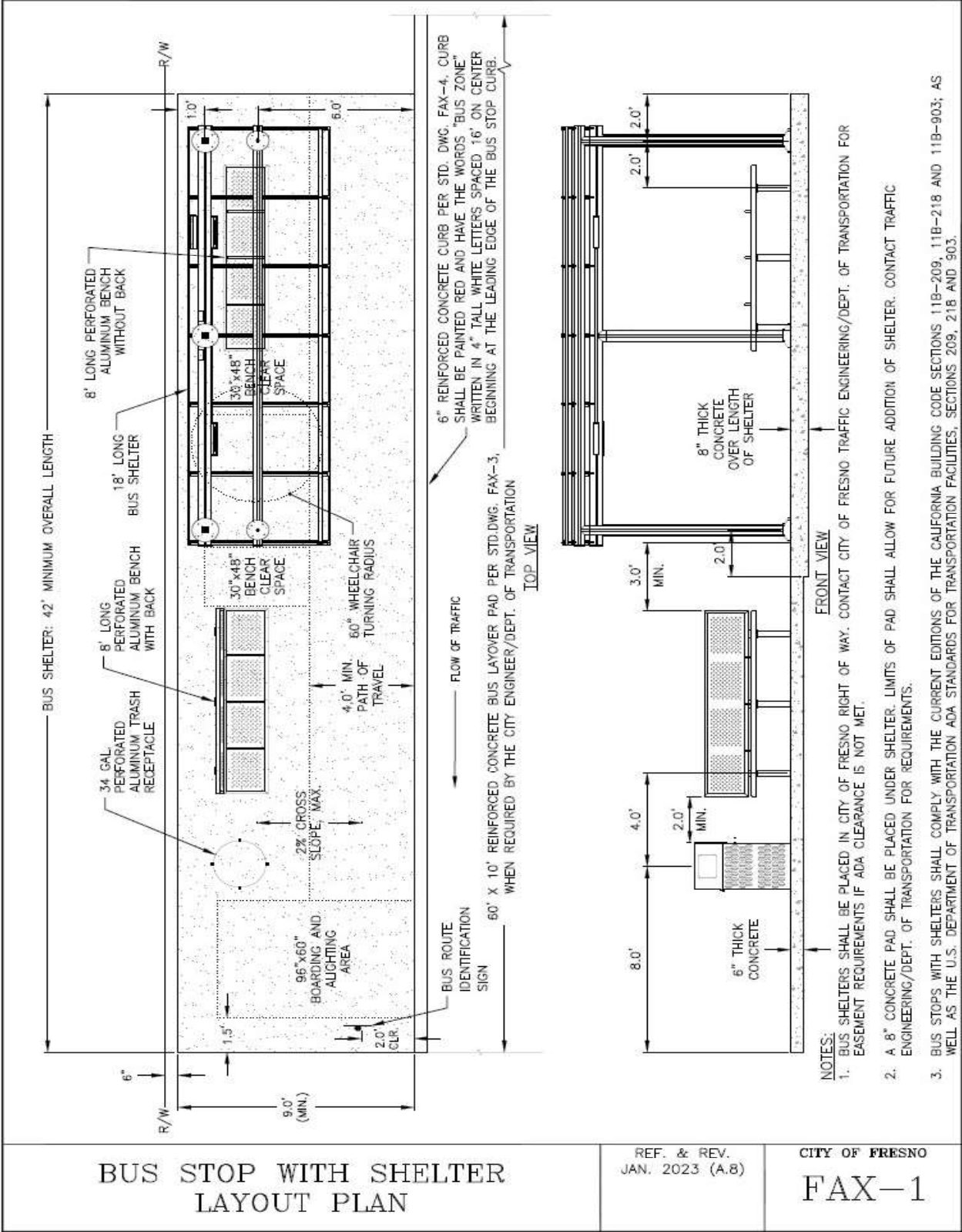
a. Prompt Progress Payment to Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than 7 days of receipt of each

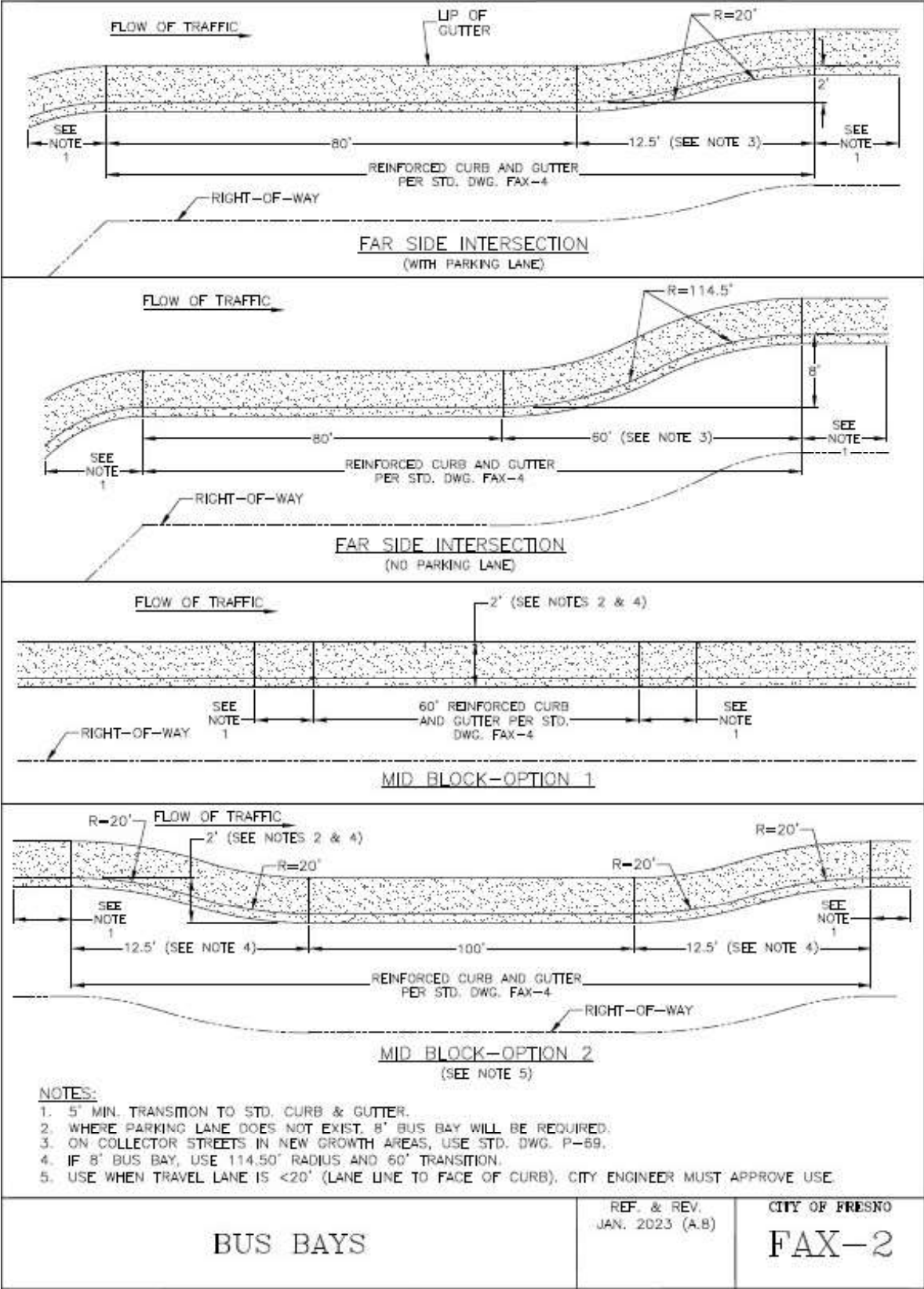
progress payment in accordance with Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. Any

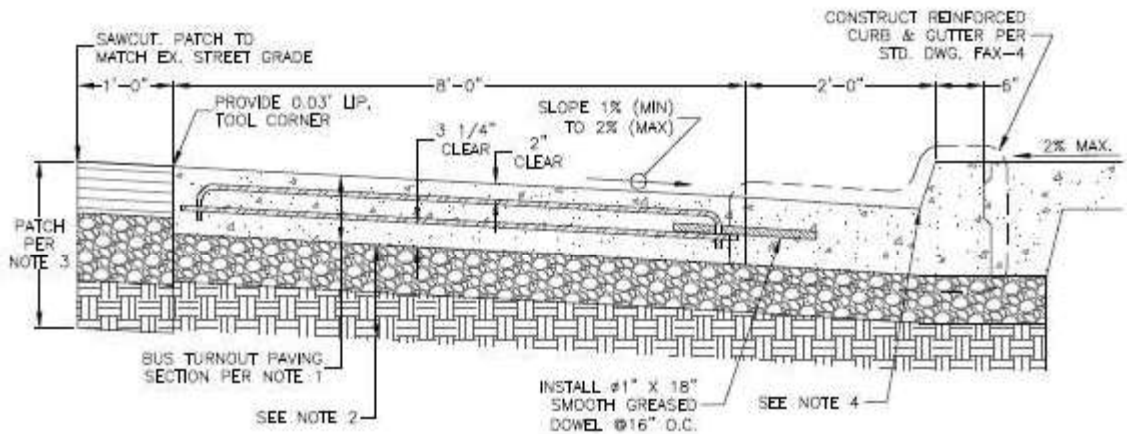
violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

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

Exhibit E – FAX Standard Bus Stop Drawings







NOTES:

1. CONCRETE PAD SHALL BE 10" PCCP WITH #5 GRADE 60 REBAR AT 16" O.C., EACH WAY, TOP AND BOTTOM. USE 3" REBAR SPACERS WITH WIRE TIES (DOBIES). CONCRETE SHALL BE CLASS "A", 6-SACK. ALL FINISH SHALL BE MEDIUM BROOM.
2. PLACE 6" CLASS II AB (95% R.C.) OVER 6" CNS AT 95% R.C.
3. AC PATCH SHALL BE 6.5" AC (TYPE A) OVER 8.5" CLASS II AB ON 6" CNS AT 95% R.C.
OPTIONAL: 12" AC (TYPE A) ON 6" CNS AT 95% R.C. MAY BE USED AS AN ALTERNATIVE
4. PROVIDE GRADE BREAKS PER PLAN. IF SIGNIFICANT FIELD ADJUSTMENTS ARE NECESSARY DUE TO UNFORESEEN CONDITIONS CONTACT CONSTRUCTION MANAGEMENT IMMEDIATELY FOR GUIDANCE AND APPROVAL BY THE PROJECT ENGINEER

BUS LAYOVER PAD
CONSTRUCTION DETAIL & NOTES

REF. & REV.
JAN. 2023 (A.8)

CITY OF FRESNO
FAX-3

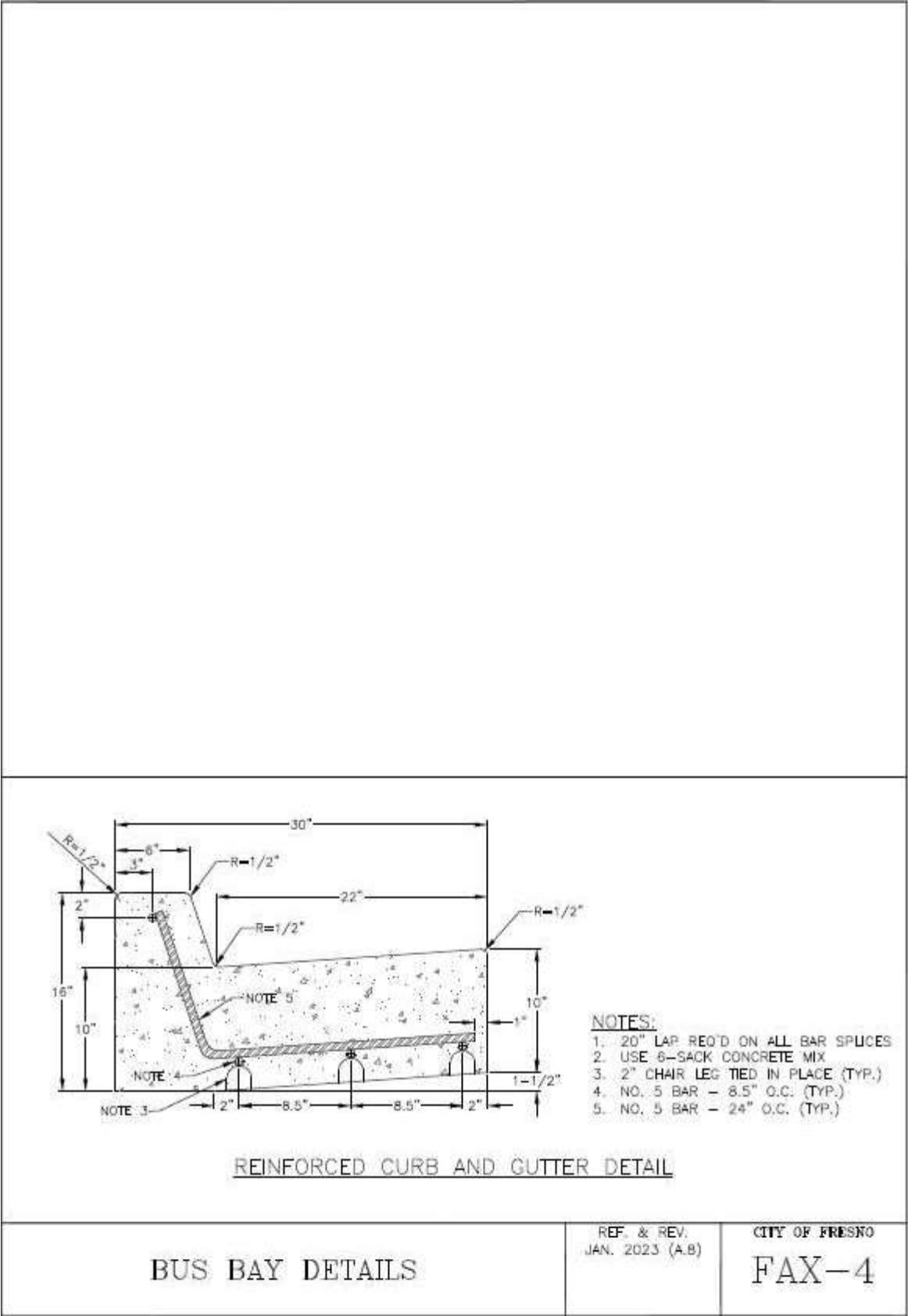


Exhibit F

Cost Proposal

A&E Services for Affordable Housing and Sustainable Communities Dakota Transportation Related Amenities Bus Stop Improvement Design

		Prime Contractor Labor Costs	Prime Contractor Other Direct Cost (Travel)	Prime Contractor Indirect Cost	Subcontractor Labor Cost	Subcontractor Other Direct Costs (Travel)	Subcontractor Indirect Costs
Milestone	Total	Cost	Cost	Cost	Cost	Cost	Cost
1 - Task 1 - SD							
SD.1 Project Management	\$856.50	\$856.50					
SD.2 Kickoff Meeting	\$400.76	\$400.76					
SD.3 Site Investigation	\$5,605.00	\$5,481.75	\$123.25				
SD.4 Meeting #2	\$427.00	\$427.00					
SD.5 Preliminary Plans & EOPCC	\$11,163.50	\$11,163.50					
SD.6 Meeting 3	\$427.00	\$427.00					
2 - Task 2 - CD							
CD.1 Project Management	\$856.50	\$856.50					
CD.2 Construction Documents (PS&E)	\$16,042.00	\$16,042.00					
CD.3 Back-check and Approval	\$1,147.50	\$1,147.50					
3 - Task 3 - BID							
BID.1 Respond to Contractor RFIs	\$1,174.50	\$1,174.50					
BID.2 Prepare Addenda & Clarifications	\$347.00	\$347.00					
4 - Task 4 - CA							
CA.1 Project Management	\$749.00	\$749.00					
CA.2 Precon Meeting	\$347.00	\$347.00					
CA.3 Review Submittals and Shop Drawings	\$1,389.50	\$1,389.50					
CA.4 Respond to Contractor RFIs	\$1,389.50	\$1,389.50					
CA.5 Review Change Order Requests	\$694.00	\$694.00					
CA.6 Prepare Record Drawings	\$1,434.00	\$1,434.00					
SUBTOTAL		\$44,327.00	\$123.25	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL DIRECT COSTS		\$44,450.25					
OVERHEAD COSTS		\$84,026.94					
PROFIT		\$4,445.03					
GRAND TOTAL		\$112,922.22					