

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

THIS AGREEMENT is made and entered into effective the _____ day of _____, 2014, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Kimley-Horn and Associates, Inc. a North Carolina corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional engineering and architectural services for the design of plans and general construction contract documents for livability improvements associated with the Van Ness/Mariposa Bus Rapid Transit ("BRT") station, including roadway improvements, sidewalks and bulb-outs, mid-block traffic signal, pedestrian bridge, renovation of the existing bathrooms in the underground parking structure, and new lighting into the existing pedestrian underpass, hereinafter referred to as the "Project;" and

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

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

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

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

AGREEMENT

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

1. Scope of Services. CONSULTANT shall perform the services described herein in **Exhibit A** to complete the Project. The services of CONSULTANT shall consist of five Parts as described below. A separate Notice to Proceed will be issued for each of the aforementioned Parts. By entry into this Agreement and upon CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in Part One. CONSULTANT shall not perform any other Part of the Agreement, and this Agreement shall not be a contract for any other Part, until further performance is authorized by CITY'S issuance of a written "Notice to Proceed." It shall, however, remain CONSULTANT'S offer to perform all remaining Parts described herein. In the event CONSULTANT performs services without CITY'S prior written authorization, CONSULTANT will not be entitled to compensation for such services.

(a) Part One. Schematic Design Phase.

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

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

(3) CONSULTANT shall provide a preliminary evaluation of the Project taking into consideration CITY'S estimate of the cost of construction ("Construction Budget") of Two Million, Four Hundred Forty-Five Thousand, Three Hundred Dollars and zero cents (\$2,445,300.00), including alternative approaches to design and construction of the Project.

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

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

(6) CONSULTANT shall assist CITY in applying for and obtaining from applicable public agencies any approval permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

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

(8) Services shall be undertaken and completed in a sequence to allow for expeditious completion. All services shall be rendered and deliverables submitted within eighty (80) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within ten (10) calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

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

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

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

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part 1 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the revised estimate and CONSULTANT shall, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by CITY. CITY shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in CONSULTANT'S compensation. If revisions are required for circumstances outside of the Consultants control, then these revisions will be considered additional services.

(4) CONSULTANT shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(5) Services shall be undertaken and completed in a sequence to allow for expeditious completion. All services shall be rendered and deliverables submitted within eighty (80) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within ten (10) calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

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

(1) CONSULTANT shall prepare from the accepted design development documents, detailed plans and specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. CONSULTANT shall also prepare necessary bidding information, general and special conditions of the general construction contract, technical

specifications of the general construction contract, and the bid proposal and general construction contract forms. Such documents shall be subject to the review and acceptance by CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. CITY'S Standard Specifications must be used by CONSULTANT where possible. Final drawings shall be drawn, printed or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by CITY shall be used by CONSULTANT unless the Director determines they would be impractical for this Project. CONSULTANT shall be responsible for checking that the special conditions, technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

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

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

(4) CONSULTANT shall provide CITY with seven (7) sets of completed plans and seven (7) sets of completed specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance. However, if revisions are required for circumstances outside of Consultants control, then these revisions will be considered additional services.

(5) After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one set of accepted reproducible tracings and bid documents for the Project. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: AutoCAD 2012.

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

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part 2 as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the final estimate. If CITY elects to reject the final estimate, CONSULTANT shall, make such design changes as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction

cost previously accepted by CITY. If revisions are required for circumstances outside of Consultants control, then these revisions will be considered additional services.

(8) Services shall be undertaken and completed in a sequence to allow for expeditious completion. All services shall be rendered and deliverables submitted within twenty (20) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within twenty (20) calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

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

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

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

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by CITY, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, CONSULTANT shall, within fourteen (14) calendar days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, provided such bid is received within one hundred eighty (180) calendar days after completion of services in Section 1(c) of this Agreement. CONSULTANT shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to CONSULTANT from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%. If revisions are required for circumstances outside of Consultants control, then these revisions will be considered additional services.

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

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

(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of

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

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

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

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

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

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

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

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

(10) CONSULTANT shall prepare Record Drawings by updating the accepted general construction documents in Part 3 to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the CITY, (iii) CONSULTANT provided Request for Information responses, and (iv) any CONSULTANT bulletins, amendments or clarifications. CONSULTANT shall provide CITY with one set of vellum Record Drawings for the Project within thirty (30) calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within ten (10) calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Director. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of Record Drawings in the following format: AutoCAD 2012.

2. CITY'S responsibilities. CITY will:

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

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

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

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

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

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

(g) Give reasonably prompt consideration to all matters submitted by CONSULTANT for acceptance to the end that there will be no substantial delays in

CONSULTANT'S program of work. For an acceptance, approval, authorization, a request or any direction to CONSULTANT to be binding upon CITY under the terms of this Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by CITY and signed on behalf of CITY by the Director.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of Four Hundred Eleven Thousand, Seven Hundred Fifty-One Dollars and Twenty-two Cents (\$411,751.22). Such fee includes all expenses incurred by CONSULTANT in performance of the services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business. Such statements shall be for an amount no greater than that attributable to the Part upon which CONSULTANT is then engaged as provided in Section 3(c) below.

(c) For purposes of determining the division of the total compensation to CONSULTANT as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by CITY as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of CONSULTANT'S performance as follows: Part 1 - 40%, Part 2 - 40%, Part 3 - 10%, Part 4 - 5% and Part 5 - 5%. Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to CONSULTANT.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

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

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

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

paid for any work or services performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

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

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

object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

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

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

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

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

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

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

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

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

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and

duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

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

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

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

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

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

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

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

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms and Federal Requirements.

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

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

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

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

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

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

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

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

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

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

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

13. Independent Contractor.

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

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

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

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

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

16. Assignment.

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

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

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

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may

be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

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

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

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

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

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

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

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

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

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

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. 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 CITY and CONSULTANT.

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: _____
Brian R. Marshall Date
Director
Fresno Area Express/
Transportation Department

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: _____
Mary Anne B. Tooke Date
Deputy

REVIEWED BY:

John Downs, Planning Manager
Fresno Area Express/ Transportation
Department

Addresses:
CITY:
City of Fresno
Attention: Brian R. Marshall
Director of Transportation
2223 G Street
Fresno, CA 93706
Phone: (559) 621-1454
FAX: (559) 488-1065

Attachments:

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

KIMLEY-HORN AND ASSOCIATES, INC.
a North Carolina corporation

By: _____
Name: _____
Title: _____
(Board Chair, Pres. or Vice Pres.)

By: _____
Name: _____
Title: _____
(CFO, Treasurer, Secretary or
Assistant Secretary)

Any Applicable Professional License:
Number: C 68897
Name: John Pulliam
Date of Issuance: June 24, 2005

CONSULTANT:

Kimley-Horn and Associates, Inc.
Attention: John Pulliam, Associate
6150 Stoneridge Mall Road, Suite 200,
Pleasanton, CA 94588
Phone: (925) 398-4856
FAX: None

Exhibit A

SCOPE OF SERVICES

**Consultant Service Agreement between City of Fresno (“City”)
and Kimley-Horn and Associates, Inc. (“Consultant”)**

**DESIGN AND ENGINEERING SERVICES FOR ASSOCIATED BUS AND BUS LIVABILITY
GRANT WORK FOR THE MARIPOSA/VAN NESS BUS RAPID TRANSIT STATION AREA**
PROJECT TITLE

Van Ness Avenue between Fresno Street and Tulare Street is being revised to accommodate the proposed Fresno Bus Rapid Transit (BRT) project. This proposed additional work includes a new mid-block pedestrian traffic signal, new sidewalks and bulb outs, median islands, new aesthetic railing, and a pedestrian bridge.

The proposed mid-block pedestrian signal for Van Ness Avenue would require new signal pole foundations, possibly supported/anchored to the top of the existing underground parking structure. In addition, it is assumed that the existing railing at Van Ness will be removed and replaced with a more aesthetic railing.

The proposed pedestrian bridge will carry pedestrians from Van Ness Avenue over the existing parking structure access stairs and ramps. For ADA compliance, a 10-foot wide concrete slab bridge with a gentle profile and vertical curves are anticipated. Unlike steel, a concrete slab bridge could be formed to produce slow transition from the roadway surface down to the stair landing. The pedestrian bridge would be connected to the roof of the parking structure with new concrete columns extending through the multi-level to the lowest level. The concrete columns would require new foundations at the lowest level of the parking structure.

The existing parking structure access stairs will likely need to be modified to accommodate the proposed pedestrian bridge.

The existing bathrooms in the parking garage will also be renovated.

TASK 1 – PROJECT MANAGEMENT

Kimley-Horn and Associates, Inc. (Kimley-Horn) will provide project management services for this additional working, following the original Fresno BRT project scope. Kimley-Horn will coordinate with subconsultants PIVOT, LCNA, Biggs Cardosa, AECOM, Quad Knopf, and Blackburn Consulting for design of the revised improvements around the Van Ness BRT station. Kimley-Horn will also work closely with the City to prepare and refine design concepts.

The Kimley-Horn project manager and ITS/Systems/Traffic Lead will meet with the City Public Works Department and others at the City to review the proposed improvements and work to address and incorporate their comments into the final concept.

Kimley-Horn will also perform QC/QA services for this additional work. Our QC/QA will follow the Fresno BRT QC plan.

TASK 2 – DATA GATHERING

Sub-Task 2.1 Site Survey and Record Research

Our subconsultants Quad Knopf and AECOM will gather additional data in an expanded area around the two Van Ness BRT stations. Our team will provide data gathering services as outlined in the original scope. Kimley-Horn will coordinate its effort for efficiently performing field reconnaissance and gathering the required data/information. We will compile copies of these drawings, digitally (when available) and hard copies for the older mapping, and create a list of the archive improvement plans found.

Kimley-Horn will research governing agencies to locate and review readily available record drawings for the additional features around the new BRT station location. The drawings will include street plans, survey plats, Right of way maps, etc.

We will provide additional topographic data collection (mobile LIDAR supplemented by expanded field surveys). We assume we can utilize the existing aerial captured for the BRT project, along with the right-of-way lines resolved for the BRT under the BRT contract.

Our subconsultant Blackburn Consulting will provide geotechnical services for this effort, including completing a Draft and Final Foundation Report for design of the signal-span pedestrian bridge.

Sub-Task 2.2 Coordinate, Obtain Permits, and Mark for USA

Blackburn will coordinate with the client to discuss the project issues and schedule. They will review the site for drill rig access, mark the exploratory boring location and notify Underground Service Alert (USA). Blackburn will obtain an encroachment permit from the City of Fresno for drilling and access through City property. Blackburn assumes that the City will waive any encroachment permit fees and bond requirements. Should these be required, they will be considered additional services.

Sub-Task 2.3 Subsurface Exploration

Blackburn will drill, log and sample one exploratory boring to a depth of about 50 feet below existing grade at the top of the existing stairway near the proposed east abutment.

Blackburn will core the existing concrete flatwork, and then advance the boring with 4-inch to 6-inch diameter solid or hollow stem augers, collecting samples at approximate 5-foot intervals with Standard Penetration Test (SPT) or California Modified samplers. A Blackburn Engineer or Geologist will log the boring and direct the sampling operations. Blackburn will backfill the boring with native cuttings, and patch the upper 10 inches with concrete.

Sub-Task 2.4 Laboratory Testing

Blackburn will perform the following laboratory tests on relatively undisturbed samples or bulk samples obtained from the exploratory borings:

- Moisture Content and Unit Weight for bearing capacity, lateral capacity, and settlement analyses.
- Sieve Analysis and Plasticity Index for classification and soil expansion potential.
- Resistivity, pH, Sulfate Content and Chloride Content for soil corrosivity analysis.

Sub-Task 2.5 Evaluation and Analysis

Blackburn will perform evaluation and engineering analysis (using computer software where applicable) for the following: foundation bearing capacity; lateral earth pressures; site seismicity (distance to nearby faults, peak ground acceleration (ARS curve) and liquefaction

potential); and soil corrosivity in accordance with current Caltrans guidelines and recommendations. Blackburn will also evaluate suitable L-Pile soil parameters for lateral pile analysis to be performed by Biggs Cardosa Associates, Inc.

Sub-Task 2.6 Draft and Final Foundation Report

Blackburn will prepare and submit a Draft Foundation Report. The report will include preliminary recommendations for bridge design in general accordance with current Caltrans guidelines including: Scope of Work; Site Description; Project Description; Field Exploration; Laboratory Testing; Site Geology and Subsurface Conditions; Seismic Data and Evaluation; Liquefaction Evaluation; Foundation Recommendations, L-Pile Soil Parameters, Lateral Earth Pressures; Construction Considerations; Location Map; Log of Test Borings; and Laboratory Test Results.

Blackburn will submit the Draft Foundation Report for distribution to the project review team. Once we receive all draft report comments, we will complete the Final Foundation Report. Blackburn will complete the Draft Foundation Report within 4-6 weeks of receiving a fully signed agreement assuming that encroachment permit restrictions that prevent or delay Blackburn from completing the boring. Blackburn will complete the Final Foundation Report within 1-2 weeks after receiving all draft report comments.

Sub-Task 2.7 Traffic Analysis

Kimley-Horn will evaluate the proposed Van Ness BRT station operation in relation to the adjacent Van Ness Avenue/Fresno Street and Van Ness Avenue/Tulare Street intersections. The operational evaluation will consider near-term and cumulative traffic conditions (without and with the station). The evaluation will also consider the effects of closing the free right turn from the underground parking garage onto Fresno Street (i.e. without and with the driveway closure). Traffic volumes will be obtained from the 2012 traffic impact study prepared by Fehr and Peers for the BRT EIR. The evaluation will be completed using Highway Capacity Manual methodology within Synchro software and a memorandum will be prepared which includes text and tables describing the results. Level of service results will be compared to the significance criteria from the Fehr and Peers report and impacts will be identified if present.

TASK 3 – UTILITY COORDINATION

Utility coordination at this location will be performed in accordance with the original project scope but in an expanded area around the two BRT stations. Subconsultants AECOM and Quad Knopf will request, research, and gather readily available additional utility information to identify those utilities which could be affected by construction of the additional improvements at this location. They will also review utility information and determine additional utility conflicts that arise because of the revised design at this location. Once conflicts have been identified, the wet and dry utility coordinators will work with the respective utility companies and coordinate protect-in-place or relocation designs (assumed to be performed by the impacted utilities). This scope does not include utility relocation design by our team; this would be considered additional services.

Our fee provides for up to 36 hours of wet utility coordination by AECOM and up to 36 hours of dry utility coordination by Quad Knopf.

In addition, Quad Knopf will coordinate with PG&E to facilitate up to two (2) new electrical service points, one for the traffic signal and a second one for street/pedestrian lighting.

TASK 4 – CIVIL DESIGN AND PS&E PACKAGE

This task includes preparation of construction documents (plans, special provisions and estimates) for the additional civil improvements at the Van Ness Ave location. It specifically excludes the design of the two new stations at Van Ness, as those are covered by the existing BRT contract.

Our team will design and create PS&E for the new mid-block bulb-outs and sidewalk, roadway and median design along Van Ness (from Tulare to Fresno, including minor work across each intersection), signing and striping, and cost estimating. We will coordinate with the Structural subconsultant and Traffic Lead to assist in designing the signal pole foundations.

The following 2 submittals will be provided:

- 60% PS&E – stand-alone submittal
- 100 % PS&E – combined with the BRT 100% deliverable

Should additional revisions and submittals be required not due to Consultant's negligence, errors, or omissions, these revisions will be considered additional services.

TASK 5 – TRAFFIC DESIGN

Kimley-Horn will perform traffic signal design for the new pedestrian mid-block traffic signal. This signal will require specialized foundations given their location on top of the existing parking garage. Biggs Cardosa will design those foundations as outlined in Task 6.

Kimley-Horn will also design traffic signal modifications to the signals at Van Ness/Tulare and Van Ness/Fresno to accommodate the revised Van Ness geometry. This may include new detection, new signal poles with signal head realignment, new signal heads on existing poles, and/or new conduit and pull boxes to accommodate new poles.

It is anticipated that the 60% PS&E for the Van Ness traffic signal will be a separate submittal from the BRT 60% due to the Fresno BRT schedule. It is anticipated that at the 100% submittal stage, the Van Ness improvements discussed in this scope would be combined with the BRT project 100% deliverable.

TASK 6 – STRUCTURAL DESIGN AND ARCHITECTURE SERVICES

Sub-Task 6.1 Structural Design Services

The following structural design services will be performed by subconsultant Biggs Cardosa:

General Scope of Work:

- Collaborate with the Traffic Engineer, Architect and Geotechnical to evaluate the new pedestrian signal poles, aesthetic railing, pedestrian bridge, public restrooms, light fixtures/poles and access stair design concepts.
- Prepare Construction Documents in digital format per requirements of local jurisdictions for the structural work related to the construction of new signal pole foundations, aesthetic railing, pedestrian bridge, public restrooms, light fixtures/poles and access stair modifications. Prepare Structural Calculations documenting the structural design. Participate and respond to the plans approval process as required to obtain necessary permits and approvals.

Structural Design Services:

- Collect and review existing data and as-built drawings. Review the existing underground parking structure drawings including post tension shop drawing (if available).
- Conduct a field review of the site, including the underground parking structure.
- Collaborate closely with Architect at all phases of the work to integrate the structural design and structural details with the bridge and railing architectural design. Prepare conceptual structural bridge plans, railing plans and misc detail sketches for the bridge prototype.
- Collaborate closely with the Traffic Engineer and Civil Lead, and design signal pole foundations. The foundations require the analysis of the existing underground parking structure to accommodate the additional loads.
- Collaborate closely with Architect at all phases of the work to integrate the structural design and details of the public restrooms with the architectural design. Prepare conceptual structural plans and misc. detail sketches as required.
- Collaborate closely with Electrical Engineer at all phases of the work to integrate the structural design and details of the light poles and fixtures
- Provide plans at the 60%, 90% and 100% milestones.
- Prepare structural calculations 60%, 90% and 100% milestones (as needed).
- Provide a specification list at the 60% milestone, draft specifications at the 90% milestone, and final specifications at the 100% submittal.
- Perform independent quality control check of structural plans, calculations, and specifications. The check will include the review the structural construction documents for conformance to the design criteria, completeness, and constructability. The check will also include a review of the interfaces with other design disciplines.
- Review of plans and specifications with required agencies to assist FAX in getting plans approval and determining required permits and application procedures related to the stations (3 meetings in Fresno).
- Provide regular informal communication with Architect regarding structural engineering and structural issues related to bridge and railing architecture. Attend meetings with the design team (4 meetings).
- Attend and participate in two workshops: Focus on pedestrian bridge and aesthetic railing design. The Kimley-Horn team to present early design concepts and refined concept workshop. Up to two unique pedestrian bridge designs and unique railing designs are to be investigated.
- The Underground Parking Structure as-built drawings are in bad shape with portions not legible. Since the proposed pedestrian bridge will likely be connected to the roof of the existing parking structure, understanding and having all available information is critical to the project.
- Since better as-built drawings and post tension stand layout record drawings are likely not available, an extended site visit including non-destructive test (NDT) will be performed. During the site visit, information on structure member sizes and locations would be recorded. NDT would be utilized to locate and map post tension stands and reinforcing in the structure roof, floors and walls.

Sub-Task 6.2 Pedestrian Enrichments

Subconsultant PIVOT will work with the City to refine various concepts, meet with FAX and others at the City, in order to solicit their input on the various concepts.

Pedestrian modifications include revisions to the street-side railing and the installation and design of a new pedestrian bridge across the opening to the pedestrian tunnel on the north side of Van Ness. PIVOT will lead a workshop to identify the aesthetic and functional goals for the new bridge and railings. Following the workshop, PIVOT will produce a summary report, refine the concepts (maximum of two concepts), and participate in a review meeting with City staff to determine the preferred design direction. The workshop will also address potential improvements to the streetscape including landscape and lighting opportunities that will be designed by others. PIVOT will work with Biggs Cardosa Associates to review impacts of new columns within the parking garage and assist KHA with revisions to parking striping.

Construction Documents for the bridge and railing will be provided by others. Minor modifications to the typical BRT station will be included in the station Construction Documents to integrate the pedestrian crossing with the station platforms. One additional trip for two PIVOT staff members is assumed in this proposal for the workshop. The travel time and expenses for the review meeting is assumed to be combined with a previously scoped trip.

TASK 7 – REST ROOM ENGINEERING

Sub-Task 7.1 REST ROOM DESIGN

Subconsultant PIVOT will lead the design efforts associated with the restroom design. We will work closely with City Maintenance staff to understand the liabilities of the existing restrooms, their intended maintenance procedures for the upgraded restrooms, and material and equipment preferences. *This proposal assumes a new stand-alone building will not be provided.*

- PIVOT will lead a meeting with City staff to identify the design goals and priorities for the renovated or replacement restrooms
- Visit and document the existing restrooms to determine the viability of renovation and understand current concerns. The original construction documents for the parking garage to be provided by the City.
- Provide Concept Level design for up to four restroom designs including relocation and renovation concepts. The concepts will address accessibility compliance, ease of maintenance, and CPTED principles. These concepts will be reviewed with the City to determine a preferred direction.
- Based on design direction from the City, PIVOT will develop 60% level drawings and outline specifications for the restrooms. Documents will include refined dimensions, preliminary material selections, and preliminary fixture selection. The work will be coordinated with the Mechanical, Electrical,
- Structural, and Civil Engineers. PIVOT will also coordinate with the Mariposa design team to integrate the aesthetics of the restrooms with the Mall design work.
- Provide code compliance review and coordinate with City permitting staff to determine the required permits and the appropriate process.
- Assist cost estimating efforts. Cost estimate to be provided by others.
- Complete architectural 100% construction documents and specifications.
- One trip to Fresno for two people is included in this task.

Sub-Task 7.2 HVAC, PLUMBING, AND FIRE PROTECTION

Subconsultant Lawrence Nye Carlson Associates (LNCA) will provide HVAC, plumbing, and fire protection engineering services for the project. Their work will include renovating or re-locating one set of Men's/Women's rest rooms within the existing parking garage. HVAC and plumbing engineering will include design, CAD produced design plans, specifications prepared for plan check and bidding, and responses to plan check comments.

Normal fire protection engineering required for the bathroom improvements will be provided. This includes design, CAD produced design plans, specifications prepared for plan check and bidding, and responses to plan check comments.

TASK 8 – DESIGN SUPPORT DURING CONSTRUCTION (DSDC)

Kimley-Horn will provide DSDC, including supporting during advertising, bidding, and construction. It is assumed that this work will be performed in conjunction with the BRT project. This fee provides for up to 30 hours for Kimley-Horn to provide DSDC for this project.

The following DSDC services by subconsultant Biggs Cardosa are proposed:

- Provide support services during bidding of project (review proposed substitutions, issue addenda with corrections/clarifications as required).
- Provide Construction Administration support services related to Bridge Design and Signal Foundations; including review of shop drawings and product submittals, responding to Contractor questions and issuing clarifications and corrections as required, and reviewing test reports.
- Assume up to 20 hours of construction site visits.

The following DSDC services by subconsultant PIVOT are proposed:

PIVOT will work with the Kimley-Horn led design team to provide Bidding Support and DSDC. This work is assumed to be concurrent with DSDC services provided as part of the BRT project.

Services include:

- Bidding and Addenda assistance,
- Shop Drawing and Submittal review,
- Clarifications and other Contractor communication,
- One trip to Fresno for one person is included in this task,
- Up to 115 hours are included in this effort.

Exhibit B

INSURANCE REQUIREMENTS

**Consultant Service Agreement between City of Fresno
("City") and Kimley-Horn and Associates, Inc. ("Consultant")**

**DESIGN AND ENGINEERING SERVICES FOR ASSOCIATED BUS AND BUS LIVABILITY GRANT WORK
FOR THE MARIPOSA/VAN NESS BUS RAPID TRANSIT STATION AREA**

PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

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

OR*

PERSONAL AUTOMOBILE LIABILITY insurance with limits of liability not less than:

- (i) \$100,000 per person;
- (ii) \$300,000 per accident for bodily injury; and,
- (iii) \$50,000 per accident for property damage.

3. **WORKER'S 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.

CONTRACTORS POLLUTION LEGAL LIABILITY (*Unless waived in writing by the City's Risk Manager or his/her designee*) shall be written on either an occurrence form, or a claims-made form and is required for all environmental and water remediation work, for all work transporting fuel, demolition renovation, HVAC, plumbing and electrical work (including, without limitation, lighting) on any structure built prior to the year 1990) with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim, and,
- (ii) \$2,000,000 general aggregate per annual policy period.
 - (a) In the event this Contract involves any lead based, mold or asbestos environmental hazard, either the CAL policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability* insurance covering materials to be transported by Contractor pursuant to the Contract.

- (b) In the event this Contract involves any lead-based environmental hazard (e.g. lead based paint), and/or asbestos environmental hazard (e.g. asbestos remediation), and/or mold environmental hazard (e.g. mold remediation) the CPL insurance policy or other appropriate policy shall be endorsed to include coverage for *lead based environmental hazards* and/or *asbestos environmental hazards* and/or *mold environmental hazards* and “*microbial matter including mold*” within the definition of “Pollution” under the policy.

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

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

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

3. For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

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

If the Professional Liability (Errors and Omissions) or Contractors Pollution Liability 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 or, in the alternative for Professional Liability insurance, 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 commencement of work by CONSULTANT, CONSULTANT must purchase "extended reporting" period coverage for a minimum of five (5) years after 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.

The Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards, in the event this Agreement involves any asbestos environmental hazard (e.g., asbestos identification, abatement or remediation).

Either the Contractors Pollution Liability, or the Automobile Liability insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by CONSULTANT pursuant to the Agreement, in the event this Agreement involves any asbestos environmental hazard.

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.

VERIFICATION OF COVERAGE

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

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

DESIGN AND ENGINEERING SERVICES FOR ASSOCIATED BUS AND BUS LIVABILITY GRANT WORK FOR THE MARIPOSA/VAN NESS BUS RAPID TRANSIT STATION AREA

PROJECT TITLE

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

Explanation: _____

Additional page(s) attached.

Signature _____

Date _____

(Name) _____

(Company) _____

(Address) _____

(City State Zip) _____

EXHIBIT D
FEDERAL REQUIREMENTS
Consultant Service Agreement between City of Fresno (“City” or “Purchaser”)
and Kimley-Horn and Associates, Inc. (“Contractor”)
DESIGN AND ENGINEERING SERVICES FOR ASSOCIATED BUS AND BUS LIVABILITY GRANT WORK
FOR THE MARIPOSA/VAN NESS BUS RAPID TRANSIT STATION AREA
PROJECT TITLE

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

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

No Government Obligation to Third Parties

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

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

Program Fraud and False or Fraudulent Statements or Related Acts.

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the contractor, to the extent the Federal Government deems appropriate.

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

Access to Records and Reports

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

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

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

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

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

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

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

Federal Changes

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

Termination

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

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

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

Civil Rights

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

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

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

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

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

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

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

Disadvantaged Business Enterprise (DBE)

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

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

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

Incorporation of FTA 4220.1F Terms

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

provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any City of Fresno request, which would cause the City of Fresno to be in violation of the FTA terms and conditions.

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

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction”

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

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

Resolution of Disputes, Breaches, or Other Litigation

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

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

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

Lobbying

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

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

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

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

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

Clean Air

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

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

Clean Water

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

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

Energy Conservation

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

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

FTA Protest Notification

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