

FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT

This First Amendment to the Consultant Services Agreement for Airport Safety Management System (SMS) is made as of August 17, 2021, (Effective Date) by and between the City of Fresno, California, a Municipal Corporation (Fresno), and Landry Consulting, LLC., (Landry).

RECITALS

WHEREAS Landry desires to perform, and City desires to have Landry perform, consulting services (Services) as an independent contractor to City at and for Fresno Yosemite International Airport (FAT); and

WHEREAS, City and Fresno entered into the Consultant Services Agreement for Airports Safety Management System (SMS), effective March 1, 2020; and

WHEREAS City desires to add implementation of the SMS program at FAT, and City desires to have Landry perform the implementation as a part of the current Agreement at FAT.

NOW THEREFORE, the Parties agree as follows:

1. AMENDMENTS TO THE AGREEMENT

A. Section 1, Services, Exhibit A shall be deleted and replaced with Exhibit A-1

B. Section 2, Term of Agreement and Time for Performance, shall be amended as follows:

2. ...”December 31, 2023” shall be deleted and replaced with “[Month/Day/Year]” until terminated by either party with sixty (60) days written notice.”

C. Section 3(a), Compensation, shall be amended as follows:

(a) CONSULTANT’S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of \$200,000 per year. Such fee includes all expenses incurred by CONSULTANT in performance of the services.

D. Section 7, Indemnification and Insurance, paragraph 7.1 shall be deleted and replaced with:

7.1 General Indemnity. To the furthest extent allowed by law, Landry 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) incurred by City, Landry or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees

and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Landry's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

If Landry should subcontract all or any portion of the work to be performed under this Agreement, Landry 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.

7.2. **Exhibit B** shall be deleted and replaced with **Exhibit B-1**.

2. GENERAL

All other terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms of the Agreement and the terms of this First Amendment, the terms of this First Amendment shall prevail.

[Signatures on following page]

AS WITNESS, this First Amendment has been executed by the duly authorized officers of the parties on the First Amendment Effective Date set above:

CITY OF FRESNO,
A California municipal corporation

By: _____
Kevin Meikle
Director of Aviation

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Brandon Collet 10/15/2021

Brandon Collet Date
Senior Deputy City Attorney

ATTEST:
BRIANA PARRA, CMC
Interim City Clerk

By: _____
Deputy

Addresses:
CITY:
City of Fresno, Airports Department
Fresno Yosemite International Airport
Attention: SMS Manager
4995 E. Clinton Way
Fresno, CA 93727-1525
Phone: (559) 621-4500
FAX: (559) 251-4825

Attachments:

Exhibit A-1 Scope of Services
Exhibit B-1 - Insurance

LANDRY CONSULTING LLC.,
A Washington Limited Liability Company

By: Joanne M. Landry

Joanne M. Landry
Name: _____

Title: Principal

(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: _____
Name: _____

Title: _____

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

REVIEWED BY:

CONSULTANT:
Landry Consulting LLC.,
Attention: Joanne Landry
3801 Edgewood Dr.
Vancouver, WA 98661
Phone: 206-714-7663
FAX: 888-485-2388

Exhibit "A-1"
SCOPE OF SERVICES

Consultant Service Agreement between
City of Fresno ("City") and Landry Consulting LLC ("Consultant")
Airport Safety Management System Development and Implementation
PROJECT TITLE

Phase 1: Pre-Award Support

Assist in the development of project objectives, goals, major milestones; critical path and work breakdown structure; scope and approach; managing Airport expectations; establish roles and responsibilities and review proposed documentation for sign-off.

Phase 2: Post-Award

Assessment of current SMS; Implementation of SMS; implementation of developed Safety Risk Management program under FAA Order 5200.11, Safety Promotion, distribution of detailed SMS manual and manual guide, implementation of performance monitoring and safety quality assurance processes, renewed safety promotion; delivery of second phase program elements.

PRICING ASSUMPTIONS:

Not-to-exceed (NTE) fee is based on a start date in March 2020. The NTE fee is based on the content and implementation of the project with a term continued indefinitely until terminated by either party with sixty (60) days written notice.

Transportation, airfare, and housing will be reimbursable costs to the project. Airport parking passes will be provided and supplied by FAT at no cost to Consultant.

All Consultant personnel will acquire required security badges as required by FAT.

Airport in-house staff will perform Program Management functions and tasks listed in the Consultant proposed task deliverables and scope of services. The role of the Consultant is to provide advisory support to assist the Airport Staff in the facilitation of the SMS process and development of an SMS program.

This contract is a continuing contract with two (2) distinct phases.

The initial Phase 1 will consist of project management by Consultant, Assist in the development of project objectives, goals, major milestones; critical path and work breakdown structure; scope and approach; managing Airport expectations; establish roles and responsibilities and review proposed documentation for sign-off.

Phase 2 will consist of Assessment of current SMS; Implementation of SMS; implementation of developed Safety Risk Management program under FAA Order 5200.11, Safety Promotion, distribution of detailed SMS manual and manual guide, implementation of performance monitory and safety quality assurance processes, renewed safety promotion; delivery of second phase program elements.

It is anticipated that Consultant will include ancillary team members to complete tasks that may require additional support. This timeline also intends to accommodate and align with future FAA requirements for an SMS Manual and Implementation Plan.

Master Program Budget Development. Airport, with guidance from Consultant, will develop a Program Management Plan to track all project costs to ensure funds for efficiency and transparency. The Consultant will advise FAT on best practices to track project costs.

The Consultant will develop a list of FAA standards and approval regulations of an SMS Program and Implementation.

Airport in-house staff, with support from Consultant, will develop policies, procedures, and training to develop and implement a Safety Management System. The Consultant will provide technical support, advice, evaluation of current programs, policies and procedures, and assist in the integration of current Airport practices in a cohesive Safety Management System.

The Consultant will facilitate the selection of incident reporting, data collection and analysis, and Safety Management System software. Pricing does not include any software costs and licenses. Software purchase, installation, licensing, training, and maintenance costs will be addressed in a separate project.

FEE STRUCTURE:

The total fee for this project will be a Not-to-Exceed cost of \$200,000.
\$100,000 for Phase 1 and \$100,000 for Phase 2.

Exhibit “B-1” INSURANCE

MINIMUM SCOPE OF INSURANCE

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the Fresno, 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. Technology Liability (Errors and Omissions) insurance appropriate to Landry’s profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by Landry in this agreement and shall include but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

MINIMUM LIMITS OF INSURANCE

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

the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

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

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

4. **EMPLOYER'S LIABILITY:**

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

5. **TECHNOLOGY PROFESSIONAL LIABILITY** insurance with limits of not less than:

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

UMBRELLA OR EXCESS INSURANCE

In the event Landry 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 Fresno, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

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

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. FRESNO, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. Landry shall establish additional insured status for the Fresno 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 Fresno, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, Landry's insurance coverage shall be primary insurance with respect to the Fresno, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Fresno, its officers, officials, employees, agents and volunteers shall be excess of Landry's insurance and shall not contribute with it. Landry 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: Landry and its insurer shall waive any right of subrogation against Fresno, its officers, officials, employees, agents and volunteers.

If the Technology and Professional Liability insurance policy(ies) are 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 Landry.

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

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to Fresno. Landry is also responsible for providing written notice to the Fresno 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, Landry shall furnish Fresno 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 Fresno, Landry shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

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

The fact that insurance is obtained by Landry shall not be deemed to release or diminish the liability of Landry, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Landry. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Landry, its principals, officers, agents, employees, persons under the supervision of Landry, vendors, suppliers, invitees, consultants, sub-contractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If Landry subcontracts any or all of the services to be performed under this Agreement, Landry shall require, at the discretion of the Fresno Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the Fresno to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by Fresno Risk Manager or designee. If no Side Agreement is required, Landry will be solely responsible for ensuring that its subcontractor maintain

insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

VERIFICATION OF COVERAGE

Landry shall furnish Fresno with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the Fresno's Risk Manager or designee prior to Fresno'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 Fresno, Landry shall immediately furnish Fresno 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.