



FORMAL BID SPECIFICATIONS

CONSTRUCTION FOR:

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT

BID FILE NUMBER: 3839

PROJECT MANAGER: Brian Cetti
PROCUREMENT SPECIALIST: Sandra Gamez
SCHEDULED BID OPENING: February 8, 2022
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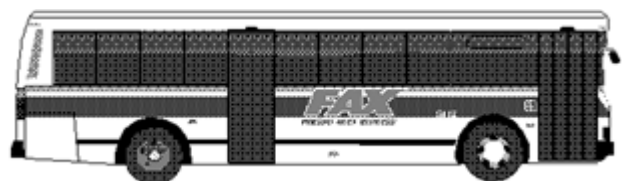


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DIVISION I – INTRODUCTION

Summary:

Division I introduces the bidder to a brief description of the work to be accomplished and instructions on how proposals are to be submitted to the City.

NOTICE INVITING BIDS

Sealed or electronic bids will be received at the office of the Purchasing Manager of the City of Fresno for the following:

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FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT**

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The scope of work includes, but is not limited to: a new single-story 2,500 square feet CMU building to support fuel, bus wash and fare collection activities, modernize bus wash system, modernize bus vacuum system, a reconfigured staff parking lot with new gated driveway, solar parking canopies, landscaping, security improvements, lighting, renovations of existing employee locker rooms, and select areas inside the Administration Building for the Department of Transportation in the Fresno Area Express bus yard.

The Engineer's Estimate of Cost for this project is \$15,000,000.

Bids will be taken on complete work, in accordance with Plans and Specifications on file in the office of the Purchasing Manager, 2600 Fresno Street, Room 2156 Fresno California, 93721-3622, phone number (559) 621-1332.

Specifications for these items can be downloaded at the City's online website at:

<http://www.fresno.gov>. Click on Doing Business (at the top of the screen), then Bid Opportunities

Bids will be accepted electronically via Planet Bids or by paper only.

Bid Proposals must be filed with the Purchasing Manager prior to the bid opening at 3 p.m. on Tuesday, **February 8, 2022** when the bids will be publicly opened and recorded. Electronically filed is defined as by means of electronic equipment or devices. Join the bid opening meeting at <https://zoom.us/j/92047244398> or call (669) 900-9128, meeting ID 920 4724 4398.

The work hereunder constitutes a "public work" as defined in Chapter 1, Part 7, Division 2 of the California Labor Code, and Contractor shall cause the work to be performed as a "public work" in accordance with such Chapter of the California Labor Code. The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of worker needed in the execution of contracts for the City. A copy of the resolution is on file at the Office of the City Clerk. Actual wage schedules are available at Construction Management Office, 1721 Van Ness Avenue, Fresno, California 93721, (559) 621-5600. Copies of Bid Deposits may be submitted electronically, with the exception of a cashier's check, which must be brought to the Purchasing Manager's office and labeled accordingly with bid number.

Contractors and Subcontractors must meet any and all requirements of Labor Code sections 1771.1 and 1771.5 prior to submitting bids.

All proposals must be made on the Bid Proposal Form provided by the Purchasing Manager and

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must be accompanied by a Bid Deposit in the amount of **TEN PERCENT (10%) of the Total Net Bid Amount** in the form of a certified or cashier's check, an irrevocable letter of credit, or a certificate of deposit or a bidder's bond executed by a corporate surety, admitted by the California Insurance Commissioner to do business in California, payable and acceptable to the City of Fresno; or the Bidder shall have registered with the Purchasing Manager of the City an annual bid bond sufficient to provide coverage in such amount. All Bid Deposits will be held until a Contract has been executed with the successful Bidder or all bids have been rejected. Copies of Bid Deposits may be submitted electronically, with the exception of a certified or cashier's check, which must be brought to the Purchasing Manager's office and labeled accordingly with bid file number prior to the bid opening.

The City of Fresno hereby notifies all Bidders that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract 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 or on any other basis prohibited by law.

Furthermore, the City of Fresno hereby notifies all Bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

The City will carry out applicable federal requirements in the award and administration of any contract awarded hereunder. This is a federal project funded in full or in part by the FTA through the U.S. Department of Transportation, Federal Transit Administration (FTA).

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

It is the policy of the Department of Transportation and the City of Fresno that Disadvantaged Business Enterprises ("DBE") as defined in 49 CFR part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The City's overall goal for DBE participation is 15%.

Note: No project specific goals are set for this procurement to comply with FTA Requirements.

The goal is accomplished through the use of race-neutral measures in accordance with 49 C.F.R. Part 26. The City shall take all necessary steps to ensure nondiscrimination in the award of all contracts to meet the objectives of the above cited regulation.

This project is funded in part with financial assistance from the U.S. Department of Transportation, Federal Transit Administration (FTA). The successful proposer shall be knowledgeable of and in compliance with all applicable Federal Third –Party Contract Clauses.

A pre-bid conference will be held at **10:00 a.m., on January 19, 2022**. City Staff will be present to answer any questions regarding the Specifications and bid process, Prospective Bidders are encouraged to attend. Please join my meeting from your computer, tablet or smartphone using the ZOOM link provided: <https://zoom.us/j/4287772187>, you may also join by phone: 1 (669) 900-9128, Meeting ID: 428 777 2187.

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Services of an interpreter and additional accommodations can be made available. Requests for accommodations should be made at least five working days but no later than 48 hours prior to the scheduled meeting/event. Please contact the Procurement Specialist on the cover at 559-621-1169 or Sandra.Gamez@fresno.gov.

In accordance with provisions of section 22300 of the California Public Contract Code, Contractor may substitute securities for any monies withheld by City to ensure performance under the Contract.

A 100 percent Payment Bond and 100 percent Performance Bond for all public works contracts must be filed with the Contract Documents and approved by the City before the Contractor enters upon performance of the Work.

No bid will be considered for award unless the Bidder at the time of bid opening, is licensed with a valid Class "A" or Class "B" Contractor's License issued by the State of California.

The City reserves the right to reject any and all bids.

Bidders are advised that this contract is subject to the City's Community Workforce Agreement, a project labor agreement executed by the City and the Fresno, Madera, Tulare, Kings Building Trades Council. Which includes a local hiring program, wherein the contractor must use best faith efforts to meet the hiring percentage requirements for Journey-level and apprentice level project work hours. A copy of the Community Workforce Agreement is attached to the bid solicitation.

INSTRUCTIONS TO BIDDERS

BID PROPOSALS WILL BE CONSIDERED FOR AWARD ONLY IF THE BIDDER HAS COMPLIED WITH THE FOLLOWING:

1. Bid Proposals shall be submitted on the forms furnished by the Purchasing Manager, with all documents listed on the Bidder's Checklist, completely filled out, properly signed by the Bidder and delivered, under sealed cover and plainly marked:

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to the Office of the Purchasing Manager, 2600 Fresno Street, Room 2156, Fresno, California, 93721, prior to the date and time specified in the Notice Inviting Bids, when all bids will be publicly opened and recorded. Bids received at 3:00 p.m. or after will **not** be accepted. The time stamp in the Finance Department - Purchasing Unit will be the official clock for documenting the time of filing.

2. A Bid Deposit has been made in accordance with either paragraph (a) or paragraph (b), below.
A bid without a proper Bid Deposit will be automatically rejected.

- (a) **BID DEPOSIT.** Bidders must submit a Bid Deposit in the amount of TEN PERCENT (10%) of the Total Net Bid Amount with their Bid Proposal. Such Bid Deposit shall be in the form of a certified or cashier's check, an irrevocable letter of credit or a certificate of deposit payable to the City of Fresno, or a bidder's bond executed by a corporate surety, admitted by the California Insurance Commissioner to do business in California, payable and acceptable to the City of Fresno. Such Deposit shall be retained by the City of Fresno as a guarantee that the Bidder, if awarded all or part of the Contract, will within 10 working days from the date the Notice of Award is mailed to the Bidder, execute and return a Contract furnished by the City. No Bid Deposits will be returned to Bidders until either a Contract has been executed for all items awarded, or all bids have been rejected. Bid bonds will not be returned, except upon bidder's written request. Copies of Bid Deposits may be submitted electronically, with the exception of a certified or cashier's check, which must be brought to the Purchasing Manager's office and labeled accordingly with bid number prior to the bid opening.
- (b) **ANNUAL BIDDERS BOND.** If the Bidder contemplates submitting bids from time to time during a period of one (1) year for the furnishing of certain materials, supplies or services to the City of Fresno, the Bidder may cover all such bids by a single Annual Bidder's Bond instead of a separate bond for each bid. If such an Annual Bidder's Bond is registered with the Purchasing Manager of the City of Fresno, and is currently valid, it shall be deemed to accompany each and every bid submitted, provided such bond is in a sufficient amount to provide the required Deposit for all of the Bidder's proposals then outstanding. It shall be stated upon the Bid Proposal that such an Annual Bidder's bond is registered with the Purchasing Manager of the City of Fresno.

CONTRACT DEFINITIONS

Attention of Bidders is especially directed to all provisions of the Contract Documents, as defined in the GENERAL CONDITIONS.

PREVAILING WAGE

The work hereunder constitutes a “public work” as defined in Chapter 1, Part 7, Division 2 of the California Labor Code, and Contractor shall cause the work to be performed as a “public work” in accordance with such Chapter of the California Labor Code. The Council of the City of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification, or type of worker needed in the execution of Contracts for the City. Information specific to the Work to be done under this Contract can be obtained by contacting the Contract Compliance Officer at the City of Fresno office of Construction Management, (559) 621-5600.

This project is being funded with federal funds administered by the Federal Transportation Authority. This project is subject to the payment of predetermined minimum wages mandated by the Davis-Bacon Act of 1931. A copy of the Federal wage rates is enclosed in Appendix D of these specifications.

This project is subject to the payment of State or Federal wage rates, whichever rate is higher.

FEDERAL IMMIGRATION REFORM AND CONTROL ACT

As a material part of any Contract for a City of Fresno project, every Contractor who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, the Contractor will make any employee documentation required to comply with the Act immediately available to the City upon its request for each individual employee working on a City of Fresno project.

VERIFICATION OF WORK

All dimensions and quantities noted on the Plans, exhibits, etc., are approximate. Before submitting a Bid Proposal, Bidders should inspect the Work site to verify the Work and the conditions under which the Work will be performed. The submittal of a Bid Proposal shall be considered prima facie evidence that the Bidder has reviewed the Specifications, job site and conditions; is fully aware of the required Work and Work conditions and has included within the Bid Proposal the appropriate amounts covering the cost of execution of the Work in accordance with such Specifications, job site and conditions.

SUBCONTRACTORS

The Prime Contractor shall include with the Bid Proposal the name, location and license number of the place of business of each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings

contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

Subcontractor Information – Detail concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name and location of business, shall be submitted by the prime contractor within 1 working day after the time of bid opening.

The Prime Contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his/her bid.

PROMPT PAYMENT TO SUBCONTRACTORS

All Contracts and Subcontracts (all tiers), shall contain the following provisions:

- (a) Prompt Progress Payment to Subcontractors A prime contractor or subcontractor shall pay a subcontractor not later than 7 days of receipt of each progress payment in accordance with Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

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

ASSURANCE

The Contractor shall comply with the following assurance and require that each subcontract include the same assurance by each of its subcontractors:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of contracts hereunder. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy or sanction as may be available. Contractor will contain this paragraph in each of its subcontracts and require the same of its subcontractors.

PRE-BID CONFERENCE

A pre-bid conference may be held at the time and place listed in the Notice Inviting Bids. Prospective Bidders are encouraged to attend. City Staff will be present to answer any questions regarding the Specifications, and there may be an inspection tour of the job site(s).

QUESTIONS, CLARIFICATIONS AND CONCERNS

The Specifications describing this project have been carefully prepared. **Any questions or concerns relating to these Specifications shall be directed in writing via e-mail to Sandra.Gamez@fresno.gov.** Please include the bid file number and the title of the project in the subject heading of your e-mail.

Questions will be accepted only up to 5 working days prior to the bid opening date to allow the City, if necessary, to issue an addendum to all bidders stating revisions, deletions, or additions to be made to the Specifications as a result of any questions. If questions arise after the deadline, please contact the designated Procurement Specialist of the Finance Department - Purchasing Unit, but the City will not guarantee a response.

The City will not be responsible for verbal responses made by parties other than the Purchasing Manager or her/his designee

Any questions concerning Disadvantaged Business Enterprise (DBE) issues shall be addressed to DBE Program staff at Olustee.smith@fresno.gov

CONTACTS WITH CITY STAFF

Before an award is made, any contact with City staff, other than the Purchasing Manager or his/her designee(s), without prior written authorization is strictly prohibited and may render the Bidder non-responsible.

CONSTRUCTION ALLOCATION

The Construction Allocation listed in the Notice Inviting Bids is given for informational purposes only. This amount does not include other Project costs such as design, inspection, contingency and Contract compliance and is not warranted to represent the City's estimated cost of construction for this Project.

LOCAL PREFERENCE

Fresno Municipal Code Section 4-108 LOCAL PREFERENCE IN CONTRACTS REQUIRING COMPETITIVE BIDDING provides for a local preference. That applicable to public work of improvement contracts are paraphrased as follows:

Except for those contracts funded by the federal or state government when such funding would be jeopardized because of this preference, the Council authorizes the Purchasing Manager to extend a preference to a local business as expressly set forth herein. For purposes of this section, "local business" shall mean a business with a fixed primary or branch office either (i) within a twenty-five mile radius of Fresno City Hall, located at 2600 Fresno Street in the City of Fresno, or (ii) within the County of Fresno; and which fixed primary or branch office was established prior to the City inviting bids for the respective purchase.

The Purchasing Manager, in the evaluation of any and all sealed bids for any public works construction pursuant to this section, shall extend a five percent (5%) preference to a local business in award of the Contract whenever the amount of the preference, as determined in subdivision (i) below, is less than or equal to seventy-five thousand dollars (\$75,000).

The preference shall be extended consistent with each of the following:

- (i) The amount of the preference shall be equal to the amount of the percentage applied to the lowest responsive and responsible bid.
- (ii) If the Bidder submitting the lowest responsive and responsible bid is not a local business, and if a local business has also submitted a responsive and responsible bid, and, with the benefit of the preference, the local business' bid is equal to or less than the original lowest responsive and responsible bid, the City shall award the Contract to the local business at its submitted bid price.
- (iii) The Bidder shall certify, under penalty of perjury, that the Bidder qualifies as a local business. The preference is waived if the certification does not appear on the bid.
- (iv) Bidder shall certify, under penalty of perjury, that it will self-perform at least 30% of the contract amount with individuals who reside in Fresno County.
- (v) The Bidder shall certify, under penalty of perjury, that at least 50% of the contract value would be performed by either the bidder or subcontractor meeting the local preference criteria.

For (iv) and (v), in determining compliance with the minimum percentages, work performed by residents of states other than California will be excluded from the calculation

Bidders shall submit the CERTIFICATION FOR LOCAL PREFERENCE form with their bid if they seek the benefit of local preference.

BIDDER'S NAME: _____

(Submit with Bid Proposal, if applicable)

CERTIFICATION FOR LOCAL PREFERENCE

FOR: TITLE

BID FILE NO.

We certify that we qualify as a local business pursuant to Fresno Municipal Code Section 4-108(d), as revised.

Location of Business: _____ Primary Office []

Please provide street address _____ Branch Office []

(No PO Box) _____ (Please mark as applicable)

Address: _____

Phone: _____

And:

The undersigned Bidder hereby declares under penalty of perjury under the laws of the State of California that the information contained on this CERTIFICATION FOR LOCAL PREFERENCE is correct and complete.

The above Certification is part of the Bid Proposal. Signing this Bid Proposal on the signature page thereof shall also constitute signature of this Certification.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

☐ Bidder will self-perform at least 30% of the contract amount with residents of Fresno County

☐ Not applicable.

And:

☐ Bidder affirms at least 50% of the total value of the contract will be performed by either the Bidder or subcontractors meeting the local preference criteria.

☐ Not applicable.

SUBSTITUTION OF MATERIALS

Where specific names are used in conjunction with materials, they are mentioned as standards, but this implies no right upon the part of the Contractor to substitute other materials or methods without permission of the Engineer.

If manufacturers or brands are used or listed in conjunction with products, equipment or materials in these Specifications without the words "or equal," equals are allowed. Except in those instances where the product is designated as "No Substitution Allowed," the Specifications will list at least two brands or trade names of comparable quality or utility followed by the words "or equal." Where "or equal(s)" are allowed for any product, equipment or materials, they must meet all the requirements of the Specifications to the satisfaction of the City and must be in current production.

For all "or equal(s)," Contractor shall make submittals after Notice to Proceed for evaluation. If approval as an equal is denied by the City, Contractor shall provide one of the manufacturers/brands listed in the Specifications without change in the Contract Price.

STATEMENT OF QUALIFICATIONS

Bidders who desire to participate in the formal bidding process of the City of Fresno for public works projects must, (a) have on file with the Office of the Purchasing Manager of the City of Fresno; or (b) must submit with the Bid Proposal, a "Statement of Qualifications," including Schedules "A-1" and "A-2." The Statement must be filed annually. Statements that are older than one year are no longer valid which may render a bid nonresponsive.

EXCEPTIONS

Any exceptions taken at the time of or after bid submittal, may render the bid nonresponsive. Attachments by Bidders which include legal terms and conditions that conflict with the GENERAL CONDITIONS may be considered an exception, and Bidder may, therefore, be considered nonresponsive.

ERRORS AND OMISSIONS

Errors and omissions by the Bidder will be dealt with in accordance with the California Public Contract Code including, but not limited to sections 4107.5 and 5103.

BID APPEAL PROCEDURE

The City has an appeal procedure in place as adopted by the City Council on April 29, 2003 in Resolution No. 2003-129. Any Bidder wishing to file an appeal should refer to that Resolution. A copy of the Resolution may be obtained from the City Clerk's Office, 2600 Fresno Street, Fresno, California 93721.

Once City staff has reviewed and evaluated the bid proposals received and has determined the lowest responsive and responsible Bidder for award, that determination will be posted on a public bulletin board outside the Finance Department - Purchasing Unit Office and the City's website www.fresno.gov, *Departments, Finance, Purchasing, Anticipated Formal Bid Awards*, a minimum of 5 working days prior to Council action to award a Contract for the project/purchase. The bulletin board and website will generally be updated by Monday of each week, no later than 5 p.m. It is

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the sole responsibility of interested bidders to seek this information from either of these sources.

Should bidders wish to appeal the staff determination, appeals must be received in writing and conform to the requirements under Resolution No. 2003-129 within five working days from the time the determination is posted. "Working day" means a City of Fresno regular business day. In no event will appeals be accepted later than 5 p.m. on the day before Council is scheduled to take action on the Contract award. Appeals must be submitted to the following:

City of Fresno Finance Department - Purchasing Unit
2600 Fresno Street, Room 2156
Fresno, California 93721
FAX Number (559) 457-1564

Letters of appeal must clearly state why it is felt the staff's determination of bid award is to someone other than the lowest responsive and responsible Bidder, or outside the procedural requirements for the submission and opening of bids.

Appeals not submitted within the stated time will not be honored and the City will proceed to award the Contract.

REGULATED COMMUNICATIONS IN CITY PROCUREMENT PROCESS ORDINANCE

The Regulated Communications in City Procurement Process Ordinance (Article 6, Chapter 4 of the Fresno Municipal Code) became effective May 7, 2004. With certain specified exceptions, the Ordinance provides that no Respondent, Bidder, Proposer (as the case may be) shall initiate, engage in, or continue any communication to or with any City elected official concerning or touching upon any matter which is the subject of this competitive procurement process.

Any Respondent, Bidder, Proposer or elected official (as the case may be) who initiates, engages in, continues in, or receives any regulated communication shall file the written disclosure required by the Regulated Communications in City Procurement Process Ordinance.

Any Respondent, Bidder, or Proposer violating the Regulated Communications in City Procurement Process Ordinance may be disqualified from participating in this procurement process and/or determined to be non-responsible. Additionally, the City may set aside the award of a contract, prior to its execution, to a party found to have violated the Ordinance.

Note: The full text of Fresno Municipal Code, Chapter 4, Article 6 may be viewed on the City's website at, <http://www.fresno.gov>. Under *Departments, Finance, Municipal Code*, or view the Fresno Municipal Code directly at: https://library.municode.com/ca/fresno/codes/code_of_ordinances

DEBARMENT

A Bidder may be debarred from bidding or proposing upon or being awarded any contract with the City, or from being a subcontractor or supplier at any tier upon such contract, in accordance with the procedures in Fresno Municipal Code Section 4-104 adopted by Council on May 17, 2018. The initial period of any such debarment shall not be less than one year and may be permanent depending on the violation. A Bidder may request a hearing, in accordance with Fresno Municipal Code Section 4-104, upon receipt of a notice of proposed debarment from the City Manager or designee. A copy of the Ordinance may be obtained from the City Clerk's Office,

2600 Fresno Street, Fresno, California 93721.

OUTREACH TO SMALL BUSINESS ENTERPRISES IN SUBCONTRACTING

The City of Fresno hereby notifies all Bidders that it is the City's policy to provide all small business enterprises, including minority, women, and disabled veteran business enterprises, equal access and opportunity for participation in the performance of all construction contracts, professional service contracts, and procurement of supplies, equipment and other services. Therefore, the City requests that a Bidder who intends to subcontract a portion of the work seek out small business enterprises that are potential subcontractors, suppliers, or consultants, and actively solicit their interest, capability and prices.

NATIONAL TARGETED HIRING (NTH)

This project is subject to Fresno Municipal Code section 4-117:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of Fresno Municipal Code section 4-117 in the award and administration of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate. The Contractor shall include these requirements in all subcontracts issued pursuant to this contract.

Contractor shall take necessary and reasonable steps to ensure that NTH have opportunity to participate in the Contract.

VIOLATIONS OF NTH REQUIREMENTS. Contractor shall diligently carry out and adhere to NTH requirements as set forth in the NTH Program and in the Contract. The failure of Contractor to comply with the requirements shall be deemed a material breach of Contract and, after due notice and opportunity to cure the breach is afforded the Contractor; such breach may result in, among other remedies and sanctions, a cancellation of the Contract.

MONETARY SANCTION FOR VIOLATIONS. Upon a final determination by the City that Contractor has materially violated the NTH terms of the Contract, and after due notice of this determination is given to the Contractor, a substantial monetary penalty, on account of the NTH violation, may be withheld and set off by the Finance Department from progress payments, or the final payment, due to the Contractor for work performed under the Contract. Depending upon the seriousness or willfulness of the NTH violation, the amount of money which may be withheld may be up to, but not more than, the full amount of the liquidated damages as allowed under the Contract.

MINIMUM NTH SUBMISSION REQUIREMENTS. Submission of information required under this section shall be on a form provided by the City, or as otherwise directed.

NONLOBBYING CERTIFICATION

As part of the federal requirements, Contractor shall also include the form in its subcontract documents, and comply with 40 CFR Part 34, 49 CFR Part 19, and 49 CFR Part 20.

Certifications forms submitted by subcontractors who are awarded a construction subcontract shall be provided to City and retained for audit purposes.

DUNS REGISTRATION

Contractors and Vendors must have a DUNS (Data Universal Numbering System) number, which can be searched for and/or registered for at: <http://fedgov.dnb.com/webform>. Contractors and direct vendors will be required to provide their DUNS number to Fresno Area Express (FAX).

If your company does not have a DUNS number, you can obtain one by going to the website listed above.

Contractor shall complete and sign the form on page 39– Data Universal Numbering System (D-U-N-S) Number form. This form must be submitted with the executed contract.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)—This project is subject to Title 49 CFR 26.13(b):

Contractor shall take necessary and reasonable steps to ensure that DBE's have opportunity to participate in the Contract (49 CFR 26).

VIOLATIONS OF DBE REQUIREMENTS Contractor, shall diligently carry out and adhere to the DBE requirements as set forth in the DBE Program and in the Contract. The failure of Contractor to comply with the requirements shall be deemed a material breach of Contract and, after due notice and opportunity to cure the breach is afforded the Contractor, such breach may result in, among other remedies and sanctions, a cancellation of the Contract.

MONETARY SANCTION FOR VIOLATIONS, Upon a final determination by the City that Contractor has materially violated the DBE terms of the Contract, and after due notice of this

determination is given to the Contractor, a substantial monetary penalty, on account of the DBE violation, may be withheld and set off by the Finance Department from progress payments, or the final payment, due to the Contractor for work performed under the Contract. Depending upon the seriousness or willfulness of the DBE violation, the amount of money which may be withheld may be up to, but not more than, the full amount of the DBE Subcontract involved in the violation.

MINIMUM DBE SUBMISSION REQUIREMENTS

- (a) Submission of information required under this section shall be on a form provided by the City, or as otherwise directed.
- (b) The DBE information required under this section is in addition to the Subcontractor information required pursuant to the provisions of California Public Contract Code sections 4100 to 4113, inclusive.
- (c) All Bidders must submit the names and location of the place of business of all proposed DBEs with their Bid Proposals, regardless of the dollar amount of the Work they will perform.

REPLACEMENT/SUBSTITUTIONS OF DBE SUBCONTRACTORS The Prime Contractor is required to have a valid arrangement with the DBE(s) designated in the Bid Proposal. The Prime Contractor will be allowed to substitute the originally designated DBE(s) only if it is demonstrated to the City that the DBE is unable or unwilling to perform. The Contractor's ability to negotiate a more advantageous contract with another Subcontractor will not be considered a valid basis for the substitution.

If a DBE is unable or unwilling to perform, the Prime Contractor shall notify the City in writing and include documentation to justify the substitution, (pursuant to the Subletting and Subcontracting Fair Practices Act, California Public Contract Code §4100 et seq.) including a statement from the DBE to be replaced, acknowledging the substitution. The Prime Contractor will also identify the replacement DBE or document good faith effort to replace the DBE with another. The Prime Contractor shall notify the City of instances where the DBE originally designated to perform the work does not agree to the substitution, cannot be located, or fails to respond.

If the City deletes or reduces the DBE's intended work, the Prime Contractor shall not be required to designate other items for DBE participation but is encouraged to do so. Other DBE commitments on the project shall remain in effect.

Under no circumstances will a Prime Contractor be allowed to perform work designated for a DBE, except in those extreme circumstances where it becomes necessary to perform a particular Contract item (such as traffic control, erosion control, etc.) at a moment's notice to protect the public safety or with the approval of the City.

If the Contractor, after exerting documented good faith efforts, is unable to replace the DBE or obtain another DBE to fulfill the goal on another item of work, the Contractor may be allowed to perform the work with its own forces or with another Subcontractor subject to the written approval of the City.

DIVISION II – BIDDING AND CONTRACT DOCUMENTS

Summary:

Division II provides the bidder with a checklist and required documentation to be submitted with their proposal.

BIDDER'S NAME: _____
(Submit with Bid Proposal)

**BIDDER'S CHECKLIST
CITY OF FRESNO
FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT**

BID FILE NUMBER: 3839

SUBMIT THIS BIDDER'S CHECKLIST WITH YOUR BID DOCUMENTS. Bidders shall complete and submit all documents marked with an "X" in the "REQUIRED" column. Documents required on the checklist but not included may render your bid nonresponsive and ineligible for award. Bids received by the City by the scheduled bid opening time will be opened and publicly read but are subject to verification that all the required documents have been submitted. Copies of Bid Deposits may be submitted electronically and separate, with the exception of a certified or cashier's check, which must be brought to the Purchasing Manager's office and labeled accordingly with bid number prior to the bid opening.

REQUIRED

- ☒ 1. **BID PROPOSAL** pages 3 through 6
- ☒ 2. **CONTRACTOR'S LICENSE** information, page 7
- ☒ 3. **BID DEPOSIT** attached to front of Proposal in the form of:
 - ☐ Certified Check ☐ Bidder's Bond
 - ☐ Cashier's Check ☐ Irrevocable Ltr of Credit
 - ☐ Certificate of Deposit ☐ Annual Bidder's Bond
- ☒ 4. **LIST OF SUBCONTRACTORS**, page 8
- ☒ 5. **CERTIFICATION**, (Comptroller General's List), page 10
- ☒ 6. **PLA Addendum – Agreement To Be Bound, Page 14**
- ☒ 7. **DISADVANTAGED BUSINESS ENTERPRISES (DBE) LISTING**, page 15
- ☒ 8. **DBE Data Request** page 17
- ☒ 9. A valid **STATEMENT OF QUALIFICATIONS** including Schedules "A-1 and "A-2" must be on file with the Office of the Purchasing Manager of the City of Fresno at the time of the bid opening, pages 17 through 20.
- ☒ 10. **ACH PAYMENT INITIATIVE – ELECTRONIC FORM**, page 12
- ☒ 11. **DEBARMENT AND SUSPENSION CERTIFICATION**, page 21
- ☒ 12. **EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**, page 22.
- ☒ 13. **NONLOBBYING CERTIFICATION**, page 23
- ☒ 14. **NONDISCRIMINATION CLAUSE**, page 24
- ☒ 15. **NONCOLLUSION AFFIDAVIT**, pages 25
- ☒ 16. **BUY AMERICA REQUIREMENTS**, page 27
- ☒ 17. **SIGNATURE PAGE**, page 28
- ☒ 18. **ADDENDA** - Signature page of all Addenda issued, if applicable.
- ☐ 19. **PRE-BID CONFERENCE** - A company representative attended the pre-bid conference held on January 19, 2022.

If one of the three lowest bidders, submit within one working day from the date of the bid opening:

- ☒ 20. **SUBCONTRACTOR INFORMATION - DETAIL**, If bidder lists subcontractors on page 9, this form is to be submitted to the Finance Department - Purchasing Unit within one working day

SUBMITTED BY:

Name of Company _____ Contact Name _____

Address _____ City _____ State _____ Zip _____

Phone No. _____ Fax No. _____

E-Mail Address: _____

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

BIDDER'S NAME: _____
(Submit with Bid Proposal)

BID PROPOSAL
FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT
BID FILE NUMBER: 3839

TO: THE PURCHASING MANAGER OF THE CITY OF FRESNO:

The undersigned Bidder, having carefully examined the location of the hereinafter described work, plans and/or specifications therefor, hereby proposes to furnish, all, in strict accordance with said plans and/or specifications, the materials, labor, and equipment necessary to complete the project for the prices set forth in the following bid items:

<u>ITEM</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF WORK</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
1.	LUMP SUM	Mediator (Owner's 50% Share, See Page 61 General Conditions)	LUMP SUM	\$ 10,000*
2.	LUMP SUM	Contractor's Pollution Liability Insurance (see page B3 Insurance Requirements)	LUMP SUM	\$ 5,000**
3.	LUMP SUM	Supplemental Work	LUMP SUM	\$ 10,000***
4.	LUMP SUM	Construction Phasing	LUMP SUM	\$ 5,000****
5.	LUMP SUM	Site Demolition	LUMP SUM	\$ _____
6.	LUMP SUM	Site Work	LUMP SUM	\$ _____
7.	LUMP SUM	Entrance Gate and Installation	LUMP SUM	\$ _____
8.	LUMP SUM	Monument Sign	LUMP SUM	\$ _____
9.	LUMP SUM	Site Structure	LUMP SUM	\$ _____
10.	LUMP SUM	Site Wet Utilities	LUMP SUM	\$ _____
11.	LUMP SUM	Landscaping and Irrigation	LUMP SUM	\$ _____
12.	LUMP SUM	Site Electrical	LUMP SUM	\$ _____
13.	LUMP SUM	Telecommunication and Security Distribution System	LUMP SUM	\$ _____
14.	LUMP SUM	Fire Alarm System	LUMP SUM	\$ _____
15.	LUMP SUM	New Fuel & Wash Annex Building	LUMP SUM	\$ _____
16.	LUMP SUM	HVAC Systems	LUMP SUM	\$ _____
17.	LUMP SUM	Plumbing Systems	LUMP SUM	\$ _____

(Continued)

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

BIDDER'S NAME: _____
(Submit with Bid Proposal)

<u>ITEM</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF WORK</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
18.	LUMP SUM	Existing Admin Building Renovation	LUMP SUM	\$ _____
19.	LUMP SUM	Existing Toilet & Locker facility Renovation	LUMP SUM	\$ _____
20.	LUMP SUM	Existing Bus Wash Facility Renovation	LUMP SUM	\$ _____
21.	LUMP SUM	New Vacuum Equipment and Installation	LUMP SUM	\$ _____
22.	LUMP SUM	New Bus Washing Equipment and Installation	LUMP SUM	\$ _____
23.	LUMP SUM	Fire Sprinklers	LUMP SUM	\$ _____
24.	LUMP SUM	Stormwater Filtration System Construction	LUMP SUM	\$ _____
25.	LUMP SUM	SWPPP Planning and implementation	LUMP SUM	\$ _____

TOTAL NET BID AMOUNT \$ _____

The Total Net Bid Amount is _____ Dollars and
_____ Cents.

Completion of Bid Proposal Form to be Eligible for Award. Bidders must bid all bid items (including any Alternates). The Bidder is non-responsive and ineligible for award in the event Bidder fails to initial this paragraph on the line provided and completely fill in this Bid Proposal Form including, without limitation, all dollar amounts and information called for on this Bid Proposal Form. By his/her initials to the right hereof, Bidder represents he/she has read and understands the consequences of not completely filling in this Bid Proposal Form.

Initial

*This item has been determined to be \$10,000.00 as noted in the "Explanation of General Bid Items," page E2.

**This item has been determined to be \$5,000.00 as noted in the "Explanation of General Bid Items," page E2.

***This item has been determined to be \$10,000.00 as noted in the "Explanation of General Bid Items," page E3.

****This item has been determined to be \$5,000.00 as noted in the "Explanation of General Bid items." Page E3.

The Bid Prices set forth herein shall include any and all applicable taxes.

The actual requirement of the City may be more or less than quantities specified. The City will pay for only those items which it actually orders during the contract term.

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

The City reserves the right to reject any or all bids.

BIDDER'S NAME: _____

(Submit with Bid Proposal)

TIME OF COMPLETION/LIQUIDATED DAMAGES

The Contractor shall diligently prosecute the work to completion for all bid items before the expiration of FIVE HUNDRED FORTY (540) CALENDAR DAYS from the date of the Notice to Proceed.

It is agreed that the Contractor shall be liable for and shall pay to the City, as fixed, and agreed, liquidated damages, and not as a penalty, the sum of **TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500.00)** per day for each calendar day of delay in completion of the work from the date for completion as specified herein or in any written extension of time granted by the City.

NOTE: The following shall apply to all bid items:

TIME OF COMPLETION AS SPECIFIED WILL BE ENFORCED.
LIQUIDATED DAMAGES WILL BE DEDUCTED FROM PAYMENTS.

CONTRACT QUANTITIES

The City reserves the right to increase or decrease Contract quantities in accordance with available funds. If the City Council has not appropriated funds, or if sufficient funds are not available to complete the purchase, the City reserves the right to decrease quantities to stay within the budget limitations.

ADDENDA

The City makes a concentrated effort to ensure any addenda issued relating to these Specifications are distributed to all interested parties. It shall be the Bidder's responsibility to inquire as to whether any addenda to the Specifications have been issued. Upon issuance by the City, all Addenda are part of the Bid Proposal. Signing the Bid Proposal on the signature page thereof shall also constitute signature on all Addenda.

PRECEDENCE OF BID PRICES

In the event of discrepancies between the bid total, summaries of totals and unit price extensions, the unit price correctly extended will control over the summaries of totals, and the summaries of totals correctly added will control over the total, whether the summaries of totals are extended unit prices or lump sums.

RIGHT TO REJECT ANY AND ALL BIDS

The City reserves the right to reject any and all bids.

TIME PERIOD TO AWARD/REJECT BIDS

The undersigned Bidder agrees that the City may have **SIXTY-FOUR (64) DAYS** from the date bids are opened to accept or reject this Bid Proposal. It is further understood that if the Bidder to whom any award is made fails to enter into a Contract as provided in the Specifications, award may be made to the next lowest responsive and responsible Bidder, who shall be bound to perform as if he/she had received the award in the first instance. No Bid Proposal may be withdrawn prior to award within that time.

BIDDER'S NAME: _____
(Submit with Bid Proposal)

AWARD OF CONTRACT

When bids are submitted to the Council, the award will be made to the lowest responsive and responsible Bidder, subject to the right to reject any and all bids.

MINOR IRREGULARITIES

The City reserves the right to waive any informality or minor irregularity that does not have a monetary consideration when it is in the best interest of the public and of the City to do so. A discrepancy that offers a Bidder an unfair advantage will cause the bid to be nonresponsive.

CITY ENGINEER'S QUANTITY ESTIMATE

All bids will be compared with the City Engineer's Estimate of the quantities of work to be done.

TIEBREAKER

In the event a tiebreaker is needed to establish the lowest responsive and responsible Bidder, the City shall, unless otherwise agreed upon by all participating parties, utilize a coin toss as a tiebreaker to be administered by a third party chosen by mutual consent of the participants. Such coin toss shall take place within 7 working days from the date of bid opening. If the City determines that a tiebreaker is necessary, each applicable Bidder agrees to participate or to indemnify the City in any litigation resulting from the utilization of the tiebreaker. If a Bidder refuses to timely participate, the City shall conduct the coin toss in a manner determined by the City to be fair to all and the results of such coin toss shall be final.

BIDDER'S NAME: _____
(Submit with Bid Proposal)

BID DEPOSIT

Accompanying this bid proposal is a Bid Deposit in the amount of TEN PERCENT (10%) OF THE TOTAL NET BID AMOUNT in the following form:

<input type="checkbox"/>	Certified Check	<input type="checkbox"/>	Bidder's Bond
<input type="checkbox"/>	Cashier's Check	<input type="checkbox"/>	Irrevocable Letter of Credit
<input type="checkbox"/>	Certificate of Deposit	<input type="checkbox"/>	Annual Bidder's Bond

Note: Company Checks are NOT acceptable

Copies of Bid Deposits may be submitted electronically, with the exception of a certified or cashier's check, which must be brought to the Purchasing Manager's office and labeled accordingly with bid number prior to the bid opening.

Bid Deposit which is deposited by the undersigned Bidder with the City of Fresno as a guarantee that the Bidder, if awarded all or part of the Contract, will, within 10 working days from the date the Notice of Award is mailed to the Bidder, execute and return a Contract furnished by the City. If the Deposit is in the form of an Annual Bidder's Bond, the bond must be heretofore registered with the Purchasing Manager and must be in the amount of not less than the greater of TEN PERCENT (10%) of the Total Net Bid Amount.

Such Deposit is made with the understanding that failure to execute such Contract will result in damage to the City, that the amount of such damage would be difficult to determine and that in the event of such default said Deposit shall become the property of the City; or, if a Bidder's Bond is deposited, the amount of the obligation thereof, but not more than the above stated amount, shall thereupon be due and payable to the City of Fresno as liquidated damages for such default, payment of said amount to be the joint and several obligation of the Bidder and the corporate surety.

CONTRACTOR'S LICENSE

The undersigned Bidder holds a valid Class _____ State of California Contractor's License. The License Number is _____ and was issued on _____.
Expiration date: _____.

BUSINESS LICENSE

() The undersigned bidder has a current City of Fresno Business License
Number: _____.

If the successful bidder does not have a City of Fresno Business license, he/she shall obtain such a license prior to the issuance of a Notice to Proceed for the Work and maintain in effect throughout the term of this Contract.

DEPARTMENT OF INDUSTRIAL RELATIONS (DIR)

Registration Number: _____ and Expiration Date: _____

BIDDER'S NAME: _____
(Submit with Bid Proposal)

CALIFORNIA LABOR CODE SECTION 1777.5

PLEASE ANSWER YES OR NO: Was the undersigned Bidder in the last six months determined to have willfully failed to comply with the provisions of California Labor Code Section 1777.5 relating to apprentices on Public Works?

YES _____ NO _____

SUBLETTING OR ASSIGNING THE CONTRACT

Pursuant to Required Contract Provisions Federal-Aid Construction Contracts, Appendix C, **the Contractor shall perform with its own organization Contract work amounting to not less than 30 percent of the original total Contract Price (i.e., the total net bid amount)** and not less than 30 percent of each possible combination of the Base Bid plus Add Alternate(s), if applicable, excluding specialty items designated by the City on the bid proposal.

LIST OF SUBCONTRACTORS

Pursuant to the provisions of California Public Contract Code **sections 4100 to 4113 inclusive**, the undersigned hereby designates below, for the Project, opposite various portions of work, the names, locations and license numbers of the places of business of each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater. **All work not listed below shall be performed by the undersigned Bidder.** It is understood that the Bidder, if awarded the Contract, shall not substitute any Subcontractor in place of the Subcontractors herein designated, or sublet or subcontract any of the work as to which a Subcontractor is not herein designated, without the written consent of the City. The subletting or subcontracting of any work for which there was no Subcontractor designated in the original bid may be permitted only in case of public emergency or necessity, and only after the City Council makes findings in a Resolution setting forth facts constituting the emergency or necessity.

List one firm only for each portion of work.

<u>NAME AND LICENSE NUMBER</u>	<u>LOCATION</u>	<u>WORK TO BE SUBLET</u>	<u>DIR NUMBER</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SUBCONTRACTOR INFORMATION - DETAIL
(To be submitted by the three lowest Bidders within
one working day from the date of the bid opening.)

Complete and attach as many sheets as necessary.

Name of Project: _____

Date bids were submitted: _____

Subcontractor's Name: _____ City _____

Work to be performed on Project: _____

California State License No: _____ Class: _____

Expiration Date: _____

Name of License Bonding Company: _____

Bond Number: _____

Subcontractor's Name: _____ City _____

Work to be performed on Project: _____

California State License No: _____ Class: _____

Expiration Date: _____

Name of License Bonding Company: _____

Bond Number: _____

Subcontractor's Name: _____ City _____

Work to be performed on Project: _____

California State License No: _____ Class: _____

Expiration Date: _____

Name of License Bonding Company: _____

Bond Number: _____

Subcontractor's Name: _____ City _____

Work to be performed on Project: _____

California State License No: _____ Class: _____

Expiration Date: _____

Name of License Bonding Company: _____

Bond Number: _____

Signed: _____, 20__

Name of Bidder: _____

Contractor's License Number: _____

SIGNED UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA BY:

Name of Authorized Official: _____

Signature: _____

Date: _____

BIDDER'S NAME: _____
(Submit with Bid Proposal)

CERTIFICATION

The Bidder certifies under penalty of perjury under the laws of the State of California that his or her business or the corporation is not listed on the Comptroller General's list of ineligible bidders/contractors.

The above Certification is part of the Bid Proposal. Signing this Bid Proposal on the signature page thereof shall also constitute signature of this Certification.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

BIDDER’S NAME: _____
(Submit with Bid Proposal)

UPDATE OF STATEMENT OF QUALIFICATIONS

TO: Purchasing Manager, City of Fresno

The undersigned Bidder filed with the Purchasing Manager of the City of Fresno a STATEMENT OF QUALIFICATIONS on _____, 20____. The Statement is valid for one year and must be refiled after that time.

In connection with the submission of a bid for this project, it is desired to advise the City regarding any changes in the information contained in the STATEMENT and its schedules or attachments.

The Contractor hereby declares under penalty of perjury under the laws of the State of California that the information contained in the STATEMENT OF QUALIFICATIONS (and its schedules and attachments) currently on file with the City of Fresno is correct and complete, except as stated below:

(If the information is all correct and complete, state “No Change.” Otherwise, indicate the portion of the STATEMENT involved and the nature of the change or correction. Attach additional sheets if necessary.)

The required “Subcontractor Information - Detail” sheet will be filed with the Purchasing Manager within one working day following the opening of bids, provided the undersigned Contractor is the apparent low, second low, or third low Bidder.

The above Statement is part of the Bid Proposal. Signing this Bid Proposal on the signature page thereof shall also constitute signature of this Statement.

Bidders are cautioned that making a false declaration may subject the certifier to criminal prosecution.

CITY OF FRESNO
FINANCE DEPARTMENT
ACCOUNTS PAYABLE SECTION

AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS
(ACH PAYMENT)

Company Name _____ Contact Email Address _____
(Required)

Contact Name _____ Telephone Number _____

The City of Fresno, Finance Department, (FINANCE DEPARTMENT), is authorized to initiate credit entries to the company above, (COMPANY), in the account below at the depository financial institution named below, (DEPOSITORY), and to credit the same to such account. Company acknowledges that the origination of ACH transactions to its account must comply with the provisions of U.S. law.

Depository Name _____ Branch _____

City _____ State _____ Zip Code _____

Routing Number _____ Account Number _____

☐ ACH Authorization Agreement Form already on file with City.

This authorization is to remain in full force and effect until FINANCE DEPARTMENT has received written notification of its termination. The FINANCE DEPARTMENT and DEPOSITORY have a reasonable time to process the termination.

Name(s) _____
(Please print)

Signature _____ Date _____

Title _____

Addendum A

AGREEMENT TO BE BOUND

[Date]

[Addressee]

[Address]

Re: City of Fresno Community Workforce Agreement

Agreement to be Bound

Dear _____:

The undersigned confirms that it agrees to be a party to and bound by the City of Fresno Community Workforce Agreement ("Agreement") as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Agreement to be Bound, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust fund documents as set forth in Section 10.1 of the Agreement, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate subscription agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by the Agreement shall extend to all work covered by the Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of the Agreement by signing an identical Agreement to be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: _____

California Contractor State License No. or Motor carrier (CA) Permit No.: _____

Name of Authorized Person (print):

Signature of Authorized Person:

Title of Authorized Person:

Telephone Number of Authorized Person:

Address of Authorized Person:

State Public Works Registration Number:

BIDDER'S NAME: _____
(Submit with Bid Proposal)

DISADVANTAGED BUSINESS ENTERPRISES (DBE) LISTING

Bidders are advised that, as required by federal law, the City is required to report Federal Transit Administration on DBE participation for all Federal-aid contracts each year so the attainment efforts may be evaluated. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 15%

This information is being gathered for informational purposes only and failure to provide this information will have no impact whatsoever on the evaluation of your bid or proposal.

List all Disadvantaged Business Enterprises including, without limitation, DBE's that will perform any portion of the work or provide any products for this project, even if the dollar amount of the work the DBE will perform is less than one half ($\frac{1}{2}$) of one percent (1%) of the total bid amount.

1. Name: _____
Address: _____
Category of Work: _____ Est. Amount: \$ _____
2. Name: _____
Address: _____
Category of Work: _____ Est. Amount: \$ _____
3. Name: _____
Address: _____
Category of Work: _____ Est. Amount: \$ _____
4. Name: _____
Address: _____
Category of Work: _____ Est. Amount: \$ _____

NOTE: Use additional sheets of paper if necessary

BIDDER'S NAME: _____
(Submit with Bid Proposal)

DBE DATA REQUEST

This information is being gathered for informational purposes only and failure to provide this information will have no impact whatsoever on the evaluation of your bid or proposal

All information submitted on this form is subject to review by the DBE Coordinator

Commitment Percentage: _____

I certify that the information contained in this good faith effort documentation form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation could make this bid non-responsive.

Bidder/Authorized Representative Signature _____

Title: _____ Date: _____

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

BIDDER'S NAME: _____
(Submit within 3-days After Bid opening)

DBE GOOD FAITH EFFORT DOCUMENTATION

Work Type Number	Description of Work, Service or Material	DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method		
1.				
2.			Contact Results	Bid Amount
3.				
Comments:				
Work Type Number	Description of Work, Service or Material	DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method		
1.				
2.			Contact Results	Bid Amount
3.				
Comments:				
Work Type Number	Description of Work, Service or Material	DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method		
1.				
2.			Contact Results	Bid Amount
3.				
Comments:				

EXAMPLES OF GOOD FAITH EFFORT DOCUMENTATION

The following is a list of types of actions a bidder should take when documenting good faith efforts. This list is not intended to be, exclusive or exhaustive, nor is the actions mandatory. Other factors or types of efforts may be relevant in appropriate cases.

SOLICITATION /ADVERTISEMENT EFFORTS - should include your efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The bidder should ensure that the requests are made within sufficient time to allow DBE firms to respond. The contractor should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.

NEGOTIATION EFFORTS - should include your efforts to make a portion of the project work available consistent with the availability and capabilities of our DBE firms in order to facilitate DBE participation. Your effort could include breaking out contract work items into smaller economically feasible subcontracts to ensure DBE participation. As a part of your negotiation plans/specifications should be available to the DBE firms which have shown an interest in participating. When negotiating with DBE firms a contractor should use good business judgment by considering price and capability, as well as, project goals. A contractor is not expected to accept a price that is not reasonable and is excessive. Comparison figures should accompany your good faith effort submittal which supports the price differential.

ASSISTANCE EFFORTS - should include efforts to assist DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project related assistance. Contractors could offer to assist firms with independently securing/obtaining these resources. A contractor may not provide these resources to the DBE firm, except in certain instances where joint checks are permissible. The level of assistance should be limited to referral sources, introductions, and making initial contacts with industry representatives on the DBE firm's behalf.

ADDITIONAL EFFORTS - could include any additional efforts to utilize the services of minority/women organizations, groups; local, state and federal business offices which provides assistance in the recruitment and placement of DBE firms. Utilizing the services offered by the department's DBE supportive services consultant for assistance with advertisement and recruitment efforts. Again, these efforts are for informational purposes only due to no individual goals have been established,

BIDDER'S NAME: _____
(Submit with Bid Proposal if valid, unexpired
forms are not on file with Purchasing)

STATEMENT OF QUALIFICATIONS

TO: CITY OF FRESNO
Finance Department/Purchasing Division
2600 Fresno Street, Room 2156
Fresno, California, 93721-3622

ATTENTION: Purchasing Manager

The undersigned presents this STATEMENT OF QUALIFICATIONS to the City of Fresno in conjunction with proposed participation in the following City program(s) (check):

- A. _____ Construction Bids

B. _____ Redevelopment/Urban Renewal

C. _____ Mortgage Revenue Bonds

D. _____ Industrial Revenue Bonds

The appropriate schedule(s) has/have been completed and is/are attached. The undersigned understands that any changes from the information provided in the schedule(s) will be documented in an "UPDATE OF STATEMENT OF QUALIFICATIONS" and filed in accordance with City requirements applicable to the particular program(s). The undersigned further understands that this STATEMENT OF QUALIFICATIONS, (and its schedules), hereinafter collectively known as the "STATEMENT", will expire one (1) year from the date of filing, and that completion and filing of a new STATEMENT will be required to continue participation in the subject program(s).

Name of Participant: _____

Business Address: _____

City, State, Zip: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Type of Business:

_____ Corporation _____ Partnership _____ Joint Venture

_____ Individual _____ Other (specify):

_____ DBE Certification No. _____

by Agency _____

"I certify under penalty of perjury under the laws of the State of California that the information provided herein and on the attached schedules is true and correct and Schedule A-1 has been read and considered in the completion of Schedule A-2":

Name of Participant: _____

SIGNED UNDER PENALTY OF PERJURY BY: _____

Name and Title of Authorized Official: _____

Signature: _____ Dated: _____

NOTE: 1. This form and the schedules must be printed or typed.
2. For each program, the applicable Schedule A-1 and Schedule A-2 must be completed and filed with this form.

BIDDER'S NAME: _____
(Submit with Bid Proposal if valid, unexpired
forms are not on file with Purchasing)

SCHEDULE A-1
CONSTRUCTION BIDS

POLICIES OF THE CITY OF FRESNO

1. "Responsible" and "Responsive" Bids. The following definitions of "responsible" and "responsive" apply to construction projects to be awarded by the City of Fresno.

Responsible - A responsible Bidder possessing the skill, judgment, integrity, and financial ability necessary to timely perform and complete the Contract being bid.

Responsive - A Bidder whose Bid Proposal meets all of the Specifications set forth in the request for bids.

2. The City retains the right to consider the following factors in determining whether a Bidder can be expected to perform satisfactorily on a particular project:
 - a. Whether the Contractor is duly licensed to undertake the Work involved.
 - b. Whether the Contractor maintained a valid City of Fresno business license throughout the term of previous contracts with the City.
 - c. Whether the Contractor has defaulted on a Contract within the two-year period immediately prior to filing of the **STATEMENT** or update thereof.
 - d. Whether the Contractor has been found to be in violation of Apprenticeship requirements under a State Business and Professions Code or Labor Code within the two-year period immediately prior to filing of the **STATEMENT** or update thereof.
 - e. Whether the Contractor has been found guilty of failure to pay required prevailing wages on a public contract within the two-year period immediately prior to filing of the **STATEMENT** or update thereof.
 - f. Whether the Contractor has been found to be in violation of affirmative action requirements by the Office of Federal Contract Compliance Programs within the two-year period immediately prior to filing of the **STATEMENT** or update thereof.
 - g. Whether the Contractor has been formally found to be a non-responsible Bidder, for reason other than being non-responsive, by a public agency within the two-year period immediately prior to filing of the **STATEMENT** or update thereof, and the reasons for such finding.
 - h. Representative projects constructed by the Contractor within the five-year period immediately prior to filing of the **STATEMENT** or update thereof. (Note: This information may include experience by the Contractor or a principal who will be responsible for the Work. New Contractors without projects to list should provide any information that will demonstrate the ability of the Contractor to perform work for the City of Fresno.) Please fill in the form or limit your submission to one additional page (if necessary).

BIDDER'S NAME: _____
 (Submit with Bid Proposal if valid, unexpired
 forms are not on file with Purchasing)

SCHEDULE A-2
 CONSTRUCTION BIDS

CONTRACTOR'S STATEMENTS

The following information is provided in response to Section 2a. through 2h. of the POLICIES OF THE CITY OF FRESNO as contained in the applicable Schedule A-1. Where there is no information applicable, "None" or "No" has been entered. In each case where there is more than one (1) basis to say "yes", detail each such basis.

2a. Contractor's license number(s): _____
 Class(es) of license(s): _____
 Valid through: _____

2b. City of Fresno business license number: _____
 If there is no current City of Fresno business license, the undersigned certifies that such a license will be obtained prior to the issuance of a Notice to Proceed for the Work.

2c. Has the Contractor defaulted on a construction contract within the two-year period immediately prior to filing of this **STATEMENT**? _____ If the answer is "yes", attach a sheet giving the following information: Name of owner(s), title of project(s), contract amount, location of project(s), date of contract(s), date of default(s), name of bonding company(ies).

2d. Has the Contractor been found by an appropriate authority to be in violation of Apprenticeship requirements under a State Business and Professions Code or Labor Code within the two-year period immediately prior to filing of this **STATEMENT**? If the answer is "yes", attach a sheet giving the following information: Date of the finding(s), name of authority(ies), name of project(s) involved, location of project(s), name of owner(s), sanction(s) imposed.

2e. Has the Contractor been found by an appropriate authority to be in violation of prevailing wage laws on a public contract within the two-year period immediately prior to filing of this **STATEMENT**? _____ If the answer is "yes", attach a sheet giving the following information: Name of project(s), name of owner(s), name(s) of authority(ies) making the finding(s), date(s) of the finding(s), sanction(s) imposed.

2f. Has the Contractor been found by the Office of Federal Contract Compliance Programs to be in violation of affirmative action requirements within the two-year period immediately prior to filing this **STATEMENT**? _____ If the answer is "yes", attach a sheet giving the following information: Date of finding(s), name of project(s), and project owner(s), and sanction(s) imposed.

2g. Has the Contractor been formally found to be a non-responsible Bidder, for reason other than being non-responsive, by a public agency within the two-year period immediately prior to the filing of this **STATEMENT**? _____ If the answer is "yes", attach a sheet giving the following information: Name of body making the finding, name of project involved, reasons stated for making the finding, date of the finding.

BIDDER'S NAME: _____
(Submit with Bid Proposal if valid, unexpired
forms are not on file with Purchasing)

SCHEDULE A-2
CONSTRUCTION BIDS
(cont'd.)

2h. Representative projects: Please fill in the form or limit your submission to one additional page (if necessary).

1. Project Name: _____
Owner: _____
Name of Owner's Contact Person: _____
Telephone Number: _____
Contract Amount: _____
Date of Final Completion: _____
General Description of Work: _____

2. Project Name: _____
Owner: _____
Name of Owner's Contact Person: _____
Telephone Number: _____
Contract Amount: _____
Date of Final Completion: _____
General Description of Work: _____

3. Project Name: _____
Owner: _____
Name of Owner's Contact Person: _____
Telephone Number: _____
Contract Amount: _____
Date of Final Completion: _____
General Description of Work: _____

BIDDER'S NAME: _____

(Submit with Bid Proposal)

DEBARMENT AND SUSPENSION CERTIFICATION

Contractor and all subcontractors shall meet debarment, suspension, ineligibility, and voluntary exclusion requirements pursuant to Executive Order 12549. A list of excluded parties may be found at the following website: <https://sam.gov/SAM/pages/public/searchRecords/search.jsf>.

Note: Providing false information may result in criminal prosecution or administrative sanctions.

The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

Date _____

Signature _____

BIDDER'S NAME: _____
(Submit with Bid Proposal)

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The Bidder hereby certifies under penalty of perjury under the laws of the state of California that he/she has , has not _____, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he/she has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

The above Equal Employment Opportunity Certification is part of the Bid Proposal. Signing this Bid Proposal on the signature page thereof shall also constitute signature of this Equal Employment Opportunity Certification.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

BIDDER'S NAME: _____
(Submit with Bid Proposal)

NONLOBBYING CERTIFICATION

LOBBY RESTRICTIONS

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, 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 an 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 making lobbying contacts to an officer or employee of any 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 Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

BIDDER'S NAME: _____
(Submit with Bid Proposal)

NONDISCRIMINATION CLAUSE

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, age (over 40) or denial of family care leave. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900 (a-f), set forth in Chapter 5 of Division 4 of Title 2 or the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

THE UNDERSIGNED CERTIFIES THAT THE CONTRACTOR WILL COMPLY WITH THE ABOVE REQUIREMENTS.

CONTRACTOR OR
SUBCONTRACTOR NAME: _____

CERTIFIED BY:

NAME: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

BIDDER'S NAME: _____
(Submit with Bid Proposal)

NONCOLLUSION AFFIDAVIT

In accordance with Title 23 United States Code, Section 112 and Public Contract Code, Section 7106, the Bidder declares under penalty of perjury under the laws of the State of California that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder, or to secure any advantage against the City of anyone interested in the proposed Contract; that all statements contained in the Bid Proposal are true; and, further, that the Bidder has not, directly or indirectly, submitted his/her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

The above Noncollusion Affidavit is part of the Bid Proposal. Signing this Bid Proposal on the signature page thereof shall also constitute signature of this Noncollusion Affidavit.

Bidders are cautioned that making a false declaration may subject the certifier to criminal prosecution.

This affidavit is to be filled out and executed by the Bidder; if a corporation makes the bid, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked "Name of Affiant." The affiant's capacity, when a partner or officer of a corporation, should be inserted on the line marked "Capacity." The representative of the Bidder should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal.

Affidavit Next Page ⇒

(Submit with Bid Proposal)

<p>– State of _____, County of _____</p> <p>I, _____, being first duly sworn, do hereby state that (Name of Affiant)</p> <p>I am _____ of _____ (Capacity) (Name of Firm, Partnership or Corporation)</p> <p>whose business is _____</p> <p>and who resides at _____</p> <p>and that _____ (Give names of all persons, firms, or corporations interested in the bid)</p> <p>is/are the only person(s) with me in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any bid or Bid for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, or employee therein, or any employee of the City, is directly or indirectly interested therein.</p>	
<p>_____ Signature of Affiant</p>	<p>_____ Date</p>
<p>Sworn to before me this _____ day of _____, 20____.</p> <p>_____ Notary public My commission expires</p>	<p>– Seal</p>

BIDDER'S NAME: _____
(Submit with Bid Proposal)

BUY AMERICA CERTIFICATION

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

NOTE: Signature on both certificates will render the bidder/proposer non-responsive.

Certificate of Compliance with 49 U.S.C. section 5323(j)(1)

The bidder or offeror hereby certifies that it **will** meet the requirements of 49 U.S.C. section 5323(j)(1) and the applicable regulations in 49 C.F.R. section 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it **cannot** comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

BIDDER'S NAME: _____
(Submit with Bid Proposal)

SIGNATURE PAGE

By my signature on this Bid Proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing statements, pages 2 through 27 and those contained herein are true and correct.

BID SUBMITTED BY:

(Please follow the instructions for each line, as explained below.)

(1) _____ () _____ () _____
Bidding Firm Phone Fax

(2) ☐ Corp: State of Incorporation: _____
☐ Individual
☐ Partner
☐ Other: _____

(3) _____
Business Address

City State Zip Code

(4) By: _____
Signature of Authorized Person

Type or Print Name of Authorized Person and Title

Federal Tax I.D. No.: _____ Date: _____

INSTRUCTIONS FOR SIGNATURE PAGE

LINE 1: The name of the Bidder must be the same as that under which a license is issued, if a license is required. If the Bidder is a corporation, enter the exact name of the corporation under which it is incorporated; if Bidder is an individual, enter name; if Bidder is an individual operating under a trade name, enter name and dba (trade name in full); if a partnership, enter the correct trade style of the partnership; if a joint venture, enter exact names of entities joining in the venture.

LINE 2: Identify here the character of the name shown under (1), i.e., corporation (including state of incorporation), individual, partnership, or joint venture.

LINE 3: Enter the address to which all communications and notices regarding the Bid Proposal and any Contract awarded thereunder are to be addressed.

LINE 4: (a) If the Bidder is a corporation, the Bid Proposal must be signed by an officer or employee authorized to sign Contracts on behalf of the corporation evidenced by inclusion of one of the following certified by the secretary of the corporation, authorizing the officer or employee to sign Contracts (sample certification attached): a copy of the Articles of Incorporation, a copy of the Bylaws, a copy of the Board Resolution or Minutes.

(b) If Bidder is an individual, he/she must sign the Bid Proposal, or if the Bid Proposal is signed by an employee or agent on behalf of the Bidder, a copy of a power of attorney must be on file with the

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

City of Fresno prior to the time set for the opening of the bids or must be submitted with the Bid Proposal.

(c) If the Bidder is a partnership, the Bid Proposal must be signed by all general partners; or by a general partner(s) authorized to sign Contracts on behalf of the partnership evidenced by inclusion of either a copy of the Partnership Agreement or a recorded Statement of Partnership.

(d) If the Bidder is a joint venture, the Bid Proposal must be signed by all joint venturers; or by a joint venturer(s) authorized to sign Contracts on behalf of the joint venture evidenced by inclusion of either a copy of the Joint Venture Agreement or a recorded Statement of Joint Venture; and if the joint venturer(s) is a corporation or a partnership signing on behalf of the Joint Venture, then Paragraphs (a) and (c) above apply respectively.

Where Bidder is a partnership or a corporation, the names of all other general partners, or the names of the president and secretary of the corporation, and their business addresses must be typewritten below:

<u>NAME</u>	<u>ADDRESS</u>
_____	_____
_____	_____
_____	_____

NOTE: All addresses must be complete with street number, City, State and Zip Code.

SAMPLE CERTIFICATION

I, _____, certify that I am the secretary
Name
of the corporation named herein; that _____ who signed this
Name
Bid Proposal on behalf of the corporation, was then _____ of
Title
said corporation; that said Bid Proposal is within the scope of its corporate powers and was
duly signed for and on behalf of said corporation by authority of its governing body, as evidenced
by the attached true and correct copy of the _____
Name of Corporate Document

By: _____
Name: _____
Title: Secretary
Date: _____



CITY OF FRESNO
COMMUNITY WORKFORCE AGREEMENT
PRE-APPRENTICE/APPRENTICE COMPLIANCE

This form is to be completed monthly and submitted (electronically/hard copy) to:

City of Fresno
Attn: Contract Compliance Officer
Construction Management Division
1721 Van Ness Avenue
Fresno, CA 93721

Project Title:

Project ID:

Bid File Number:

Contractor Name:

Contractor Address:[illegible]

Prepared by:

Approved by:

Date:

Date:



CITY OF FRESNO
COMMUNITY WORKFORCE AGREEMENT
JOURNEY LEVEL COMPLIANCE
 submitted (electronically/hard copy) to:
 City of Fresno
 Attn: Contract Compliance Officer
 Construction Management Division
 1721 Van Ness Avenue
 Fresno, CA 93721

Project Title: _____
Project ID: _____
Bid File Number: _____
Contractor Name: _____
Contractor Address: _____

Employee Name	Employee Address	Employee City, State, Zip

Prepared by: _____ **Date:** _____
Approved by: _____ **Date:** _____

DIVISION III – AWARDEE REQUIRED DOCUMENTS

Summary:

Division III provides a sample contract and required documents to be filed after award by a successful bidder.

SAMPLE CONTRACT
CITY OF FRESNO, CALIFORNIA
PUBLIC WORK OF IMPROVEMENT
FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT

THIS CONTRACT is made and entered into by and between CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "City"), and [Contractor Name], [Legal Identity] (hereinafter referred to as "Contractor") as follows:

1. Contract Documents. The "Notice Inviting Bids," "Instructions to Bidders," "Bid Proposal," and the "Specifications" including "General Conditions," "Special Conditions," and "Technical Specifications" for the following: [Title] (Bid File No. [Bid File No.]) [Alternates (if any)] copies of which are annexed hereto, together with all the drawings, plans, and documents specifically referred to in said annexed documents, including Performance and Payment Bonds, if required, and are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. Price and Work. For the monetary consideration of [Written Dollar Amount] dollars and [Written Cents Amount] cents (\$[Amount]), as set forth in the Bid Proposal, Contractor promises and agrees to perform or cause to be performed, in a good and workmanlike manner, under the direction and to the satisfaction of the City's "Engineer," and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.

3. Payment. City accepts Contractor's Bid Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents.

4. City Performance Contingent upon Grant Funding. Contractor acknowledges that City anticipates funding this project with grant funding from the U.S. Department of Transportation, Federal Transit Administration. In the event that CITY anticipates funding for the project will not be appropriated and received by CITY, CITY in its sole discretion may suspend Contractor's performance without any liability of City to Contractor. Further, in the event that City does not receive grant funds sufficient to meet its obligations hereunder during any City fiscal year of this Contract, City in its sole discretion may terminate the Contract without any liability of City to Contractor. Contractor shall invoice CITY for all approved work completed prior to receiving notice to suspend or terminate work plus any mutually agreed upon expenses resulting from suspension and termination of the agreement.

5. Indemnification. To the furthest extent allowed by law including California Civil Code Section 2782, Contractor 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, Contractor 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 Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole

negligence, or willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

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

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

6. Trench Shoring Detailed Plan. Contractor acknowledges the provisions of Section 6705 of the California Labor Code and, if said provisions are applicable to this Contract, agrees to comply therewith.

7. Worker's Compensation Certification. In compliance with the provisions of Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this Contract and will make my subcontractors aware of this provision. IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by City shall be subsequent to that of Contractor's, and this Contract shall be binding and effective upon execution by both parties.

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by City shall be subsequent to that of Contractor's, and this Contract shall be binding and effective upon execution by both parties.

[Contractor Name],
[Legal Identity]

CITY OF FRESNO,
a California municipal corporation

By: _____

By: _____

Name: _____
(Type or print written signature.)

[Name], [Title]
Department of Public Works

Dated: _____

Title: _____

Dated: _____

By: _____

[Name], [Title]
Department of Transportation

Dated: _____

By: _____

Name: _____
(Type or print written signature.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

Title: _____

By: _____ Deputy

Dated: _____

APPROVED AS TO FORM:
Douglas Sloan
City Attorney

Contractor address:
[Contractor Name]
Attention: [Contact], [Title]
[Street Address]
[City], [State] [Zip]

By: _____
Kristi Costa, Deputy Date

CITY address:

City of Fresno
Attention: [Contact], [Title]
[Street Address]
[City], [State] [Zip]

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

Job of File No. _____
 Name or Title of Job. _____
 Department No. _____



FAIR EMPLOYMENT PRACTICES COMPLIANCE REPORT

1. Name and Address of Contractor		PRIME []	SUB []			
				Yes	No	
2.	Have you established a company-wide employment policy to assure that equal employment opportunity is given to all persons without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law?					
3.	Have you notified all supervisors, foreman and other personnel officers in writing of the contents of the anti-discrimination clause and their responsibilities under it?					
4.	Have notices setting forth the provisions of the Fair Employment Practice Section used in City of Fresno Contracts been posted in conspicuous places available to employees and applicants for employment on this Project?					
5.	Have each of the Company's employee referrals including unions, employment agencies, advertisements, Department of Employment, etc, been notified of the contents of the anti-discrimination clause?					
5a.	Has this been done in writing?					
6.	Has each employee referral advised the Company that it will refer all qualified applicants for employment to the Company without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law?					
7.	Has a collective bargaining agreement or other contract or understanding been made with a labor union (or unions) which covers the performance of any work or supplying of any materials under this Contract?					
7a.	Do you operate under an Association Master Labor Agreement? If your answer is "yes", state the name of the Association. Are copies of those agreements on file with the City? [] Yes [] No With whom? _____					
7b.	If you do not operate under an Association Master Labor Agreement then indicate what steps you have taken to attempt to develop an agreement which will: (1) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training. (2) Otherwise implement an affirmative anti-discrimination program in terms of the unions' specific area of skill and geography, to the end that qualified minority workers will be available and given an equal opportunity for employment. In addition, if you have reached such an agreement, attach a copy of the provisions thereof which bear on (1) and (2) above.					
8.	Have you encountered any opposition to the anti-discrimination clause by individuals, firms or organizations?					
If your answer to No. 8 is "Yes", identify the individual, firm or organization and briefly describe the nature of the opposition.						
9.	Check principal sources for employee referrals.	DEPT OF EMP.	EMP. AGENCIES	DIRECT HIRING	UNION	OTHER
	a. Const. Workers	_____				
	b. Other Workers	_____				
10. The following person or persons are responsible for determining whom to hire or whether or not to hire workers on this particular Project:						
QUESTIONS 11 THROUGH 13 TO BE FILLED OUT BY PRIME CONTRACTOR ONLY:						
11. Have you awarded any subcontracts for work covered by your Contract?						
12. Have the anti-discrimination provisions been included in each of said subcontracts?						
13. Have all such Subcontractors been instructed to file compliance reports and have they been furnished with report forms?						
14. Dated this _____ day of _____, 20____, at _____ (City and State)						
15. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. _____ (Contractor)						

**FAIR EMPLOYMENT PRACTICES COMPLIANCE REPORT
(continued)**

INSTRUCTIONS TO CONTRACTORS

This Compliance Report is required by the Fair Employment Practices provisions of City of Fresno Contracts for the supplying of work, materials, or both.

This report is to be completed in its entirety for each prime Contract and all first tier subcontracts. The reports shall be submitted to the City after award of the Contract and prior to Notice to Proceed.

Additional sheets of paper may be attached if necessary to submit explanations or further information.

If the answers to any of the questions indicate non-compliance with the anti-discrimination provision of the Contract, a brief explanation of such answer must accompany the report.

It shall be the further responsibility of the Contractor to keep the information contained in the compliance report current and should there be changes in the Contractor's agreements with employee referrals, including unions or in the individuals responsible for hiring, etc., which would change the answers submitted by the Contractor in his/her original questionnaire, the Contractor should file a supplementary report containing revised answers to the applicable questions. Such changes from the original report are to be submitted in duplicate.

Upon completion of the Contract the Contractor must submit a final statement of compliance including statements that the original compliance report was submitted, that any changes in the original report were reported, and that the requirements of the Fair Employment Practices section were complied with during the Contract. If such a statement cannot be submitted in its entirety, a statement along the same lines with the exceptions noted must be submitted.

The City may require submission of additional information or reports on compliance at any time.

FINAL STATEMENT OF FAIR EMPLOYMENT PRACTICES COMPLIANCE

Name of Job or Contract

The undersigned is responsible to see that the Contractor has complied with the Fair Employment Practices section of the City of Fresno Contract indicated above. The original compliance report was submitted and no changes or additions to the original report became known to the Contractor or the undersigned except as noted below. The Contractor, in performance of the Contract, to the best of my knowledge, complied with said section of the Contract, except as noted below.

Dated this _____ day of _____, 20____, at _____
City and State

Changes or additions to the original compliance report _____
City

By _____

Deviations from compliance _____
Title _____

Contractor

By _____

Title _____

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

CITY OF FRESNO

PAYMENT BOND
PUBLIC WORK

KNOW ALL MEN BY THESE PRESENTS: That [NAME OF CONTRACTOR]

as Principal (herein called 'Principal') and _____
as Surety (herein called 'Surety') are held and firmly bound onto the City of Fresno (herein called 'Obligee') in the just and full sum of
[WRITTEN \$ AMOUNT] DOLLARS AND [WRITTEN CENTS AMOUNT] CENTS (\$[DOLLAR AMOUNT])

lawful money of the United States of America (said sum being equal to 100 percent of the estimated amount payable by the terms of the hereinafter
described contract), for the payment of which, well and truly to be made, we hereby bind ourselves and ours, and each of our, heirs, executors,
administrators, successors, and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

WHEREAS, Principal has been awarded a contract for the following described work of improvement and is required by Obligee to give this bond
in connection with the execution of the written contract therefor (*insert brief description of work of improvement*):

[TITLE AND WORK]
(Bid File No. [BID FILE NO.]) [ALTERNATES (if any)]

NOW, THEREFORE, if Principal or subcontractors of Principal shall fail to pay any of the persons named in the Section 9100 of the Civil Code,
or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or prevailing wages due and
penalties incurred pursuant to Sections 1774, 1775, 1813, or 1815 of the Labor Code, or for any amounts required to be deducted, withheld, and paid over
to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the
Unemployment Insurance Code, with respect to the work and labor, the Surety will pay for the same, in an amount not exceeding the sum specified above,
and also, in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including
reasonable attorney's fees, incurred by Obligee in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs
and to be included in the judgment therein rendered.. The benefit of this bond shall inure to any of the persons named in Section 9100 of the Civil Code
so as to give the right of action to those persons or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force
and effect.

No extension of time granted to the Principal and no change, alteration or addition in any of the terms of the contract or any of the contract
documents or the work to be performed thereunder, whether made after notice or not, shall release or otherwise affect the obligations of the Surety
hereunder, and the Surety waives notice of any such extension, change, alteration or addition. The Surety, by the execution of this bond, represents and
warrants that this bond has also been duly executed by the Principal and proper authority, and the Surety hereby waives any defense which it might have
by reason of any failure of the Principal to execute or properly execute this bond.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on the ____ day of _____, 20__.

[NAME OF CONTRACTOR] _____

PRINCIPAL

SURETY

**No signature of City Attorney required.
Standard Document #DPW 32.0 has been used
without modification, as certified by the undersigned.**

APPROVED:
City Manager, or his/her designee

By: _____

By: _____

Title: _____
Department of Public Works

Title: _____

Date: _____

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

CITY OF FRESNO

PERFORMANCE BOND
PUBLIC WORK

KNOW ALL MEN BY THESE PRESENTS: That [NAME OF CONTRACTOR]

as Principal (herein called 'Principal') and _____

as Surety (herein called 'Surety') are held and firmly bound onto the City of Fresno (herein called 'Obligee') in the just and full sum of [WRITTEN \$ AMOUNT] DOLLARS AND [WRITTEN CENTS AMOUNT] CENTS (\$[DOLLAR AMOUNT])

lawful money of the United States of America (said sum being equal to 100 percent of the estimated amount payable by the terms of the hereinafter described contract), for the payment of which, well and truly to be made, we hereby bind ourselves and ours, and each of our, heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

WHEREAS, Principal has been awarded a contract for the following described work of improvement and is required by Obligee to give this bond in connection with the execution of the written contract therefor (*insert brief description of work of improvement*):

[TITLE AND WORK]
(Bid File No. [BID FILE NO.]) [ALTERNATES (if any)]

NOW, THEREFORE, if Principal shall well and truly do and perform each and all of the covenants, conditions, and agreements of said contract on the Principal's part to be done and performed, and any and all alterations thereof made as therein provided, at the time and in the manner therein specified, and shall indemnify and save harmless the Obligee, its officers, officials, agents, employees and volunteers, as therein stipulated, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by Obligee in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

No extension of time granted to the Principal and no change, alteration or addition in any of the terms of the contract or any of the contract documents or the work to be performed thereunder, whether made after notice or not, shall release or otherwise affect the obligations of the Surety hereunder, and the Surety waives notice of any such extension, change, alteration or addition. The Surety, by the execution of this bond, represents and warrants that this bond has also been duly executed by the Principal and proper authority, and the Surety hereby waives any defense which it might have by reason of any failure of the Principal to execute or properly execute this bond.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on the ____ day of _____, 20__.

[NAME OF CONTRACTOR] _____

PRINCIPAL

SURETY

No signature of City Attorney required.
Standard Document #DPW 22.0 has been used
without modification, as certified by the undersigned.

APPROVED:
City Manager, or his/her designee

By: _____

By: _____

Title: _____

Title: _____

Department of Public Works

Date: _____

DPW 22.0/03-31-11

BIDDER'S NAME: _____
(Submit After Award with Contract)

CITY OF FRESNO

DATA UNIVERSAL NUMBERING SYSTEM (D-U-N-S) NUMBER

Submit this form with the Executed Contract. If you fail to submit your D-U-N-S Number, the Department will not approve the contract

CONTRACT NUMBER:

CONTRACTOR NAME:

BUSINESS ADDRESS (D-U-N-S Number Location):

STREET: _____

CITY: _____

STATE: _____

ZIP CODE: _____

D-U-N-S Number: _____

Contact Name: _____

Telephone No: _____

**DIVISION IV –
GENERAL CONDITIONS**

Summary:

*Division IV describes the framework for the entire relationship
between the parties in connection to a project.*

DEFINITIONS (NONFEDERAL)

Wherever used in the Specifications, including the Instructions to Bidders and the Bid Proposal, or any of the Contract documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

1. "Bidder" shall mean and refer to each person or other entity submitting a bid proposal, whether or not such person or entity shall become a Seller by virtue of award of a Contract by the Procurement Specialist.
2. California Building Code (CBC), Latest Edition; California Plumbing Code (CPC), Latest Edition; California Mechanical Code (CMC), Latest Edition; National Electrical Code (NEC), Latest Edition; California Fire Code (CFC), Latest Edition; California Health and Safety Code (as applicable). For purposes of this definition, "Latest Edition" shall mean the edition, and to the extent, adopted by the City through the City of Fresno Municipal Code.
3. "City," "Buyer," "Procurement Specialist," "Owner," "Vendee," "City of Fresno" shall each mean and refer to the City of Fresno, California.

"City Standard Specifications" - City of Fresno, Standard Specifications, Department of Public Works, dated March 2021,

<https://www.fresno.gov/publicworks/developer-doorway/#tab-8>

4. Construction Manager shall mean and refer to the Owner's authorized representative at the Job Site, in responsible charge of administering the Contract. The Construction Manager has hired a construction management firm ("Project Manager") which shall be the single point of contract for all correspondence, submittals, progress payment requests, and contacts ("Communications") to and from the Contractor. The Project Manager shall report any and all Communications with the Contract to the Construction Manager.
5. "Contract," "Contract Documents" shall mean and refer to these Specifications, including the Instructions to Bidders, the Bid Proposal and any addenda thereto, the Agreement and all other standard Specifications, Procurement Specialist's Specifications and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
6. "Contractor," "Seller," "Vendor," "Supplier" shall each mean and refer to each person or other entity awarded a Contract hereunder and named or to be named in the Agreement with the Procurement Specialist to furnish the goods or services, or both, to be furnished under the Contract.
7. "Council," "City Council" shall each mean and refer to the Council of the Procurement Specialist.
8. "Engineer," "City Engineer," shall mean and refer to the City Engineer and any duly authorized representative.

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9. "Goods," "Merchandise" shall each mean and refer to the equipment, material, article, supply or thing to be furnished by the Seller under the Contract.
10. "Purchasing Manager" shall mean and refer to the Purchasing Manager of the Procurement Specialist.
11. "Specifications" shall mean and refer to all of the Contract Documents.
12. "State Standard Specifications" - State of California, Department of Transportation, Standard Specifications, Latest Edition.
13. "Working day" shall mean and refer to City regular business day.

PERFORMANCE AND PAYMENT BONDS

The Contractor shall provide two good and sufficient surety bonds from a corporate surety admitted by the California Insurance Commissioner to do business in the State of California, on forms as those provided by the City in these Specifications, and approved by the City.

- (a) The "Payment Bond" shall be for not less than 100 percent of the Contract price, to satisfy claims of material suppliers and of mechanics and laborers employed by Contractor on the work. The bond shall be maintained by the Contractor in full force and effect until the work is completed and accepted by the City, and until all claims for materials and labor are paid, and shall otherwise comply with Chapter 5, Title 3, Part 6, Division 4 of the California Civil Code.
- (b) The "Faithful Performance Bond" shall be for 100 percent of the Contract price to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the City, and that all materials and workmanship will be free from original or developed defects.

INDEMNIFICATION

To the furthest extent allowed by law including California Civil Code section 2782, Contractor 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, Contractor 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 Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

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

GENERAL GUARANTY

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the City shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of 1 year from the date of final acceptance of work unless a longer period is specified. The Engineer will give notice of observed defects with reasonable promptness.

PRECEDENCE OF CONTRACT DOCUMENTS

The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Permits from other agencies as may be required by law; (3) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (4) Special Conditions; (5) General Conditions; (6) Technical Specifications; (7) Plans; (8) Standard Specifications; (9) Standard Plans.

Detailed Plans shall have precedence over general Plans.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order of precedence.

CONTRACT DOCUMENTS

The Contractor shall submit the required contract documents in a form acceptable to the Public Works Department (Construction Management Division, 1721 Van Ness, Fresno, California 93721) within 15 calendar days (except in the event federal funding is applicable to this Contract, then 10 working days) from the Notice of Award of Bids. Failure to provide said documents within the designated period shall be sufficient cause to forfeit the Contractor's Bid Deposit and initiate a departmental recommendation to the Council to award project to the next lowest responsive and responsible Bidder.

NOTE: Contract Documents consist of the following: Contract, Labor and Materials and Faithful Performance Bonds, Insurance Certificates, Workers' Compensation Insurance Certificate, Fair Employment Form and any other information which may be required by these Specifications.

PRE-CONSTRUCTION MEETING AND SCHEDULE OF WORK

Prior to the start of construction, the Construction Management Division will call a meeting with all affected City Departments, governmental agencies or utility companies to coordinate the construction with the Contractor so that no delays will be encountered due to conflicts of operations.

The Contractor will be called upon to indicate, at this meeting, the proposed operations to

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accomplish the work. The Contractor's attention is called to Section 6-1, City Standard Specifications and the following requirements:

- The Contractor shall submit a written tentative schedule of work to the Engineer at the pre-construction meeting (Refer to Sec. 6 for schedule requirements). See Section 2-03, 2-04 of Technical Specifications.
- The final schedule of work shall be submitted no later than 5 working days after the pre-construction meeting.

If the Contractor delays the submittal of the final work schedule, the City may deduct the number of calendar days beyond the 5 working days allowed for submittal from the number of working days allowed for completion of the project.

Contractor's proposed schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the project including, but not limited to, estimated starting and completion dates of various activities, procurement of materials, and scheduling of equipment. The construction schedule shall reflect completion of all work under the Contract within the specified time and in accordance with these Specifications. . Once submitted to the Engineer for review and approval, the Engineer shall either approve or reject said Project Schedule. If rejected, it shall be revised to incorporate the necessary changes, deletions or additions and resubmitted to the Engineer. If the Project Schedule is approved by the Engineer, the Project Schedule shall become the baseline schedule for the Project. The Project Schedule is subject to change during construction, and will be continually updated and adjusted throughout the Project by Contractor on at least a monthly basis.

The City will use the Project Schedule for planning, executing and monitoring Project progress.

The Contractor will prepare a monthly schedule update. The Contractor, at each weekly Project meeting shall provide City with two week look-ahead schedules identifying its planned prosecution of the Work.

Contractor will exchange scheduling information with subcontractors and suppliers. Contractor will order work, equipment and materials with sufficient lead-time to avoid interruption of the Work.

OVERTIME INSPECTION FEES

The Contractor shall promptly pay the City for all overtime inspection in accordance with existing resolutions or fee schedule of the City, unless the charges for such inspection have been specifically waived elsewhere within this Contract. Overtime inspection charges will be made for all inspections on Saturdays, Sundays, and City Holidays, and hours worked by the inspector other than those of the normal City working days. If charges are not paid within 15 days of invoice, City may elect in its sole discretion to withhold unpaid charges from any progress payments.

SUBSTITUTION OF MATERIALS

(After Award)

See City of Fresno Standard Specifications, Section 4-1.5 entitled "Trade Names or Equals," which shall prevail.

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Where the Contractor has good and sufficient reason to suggest a substitution after bidding, he/she will within 14 days after the signing of the Contract, submit his or her request for substitution in writing and shall indicate all information required thereof including reasons for substitution, difference in price or cost, difference in size, difference in color, etc., and it will be approved or disallowed within 30 days.

No consideration shall be given to request for substitution not in accordance with the above conditions. The Engineer will be the sole judge in matters concerning equality of proposed substitutions and the decision shall be final. The burden of proof as to the quality of any proposed substitutions shall be upon the Contractor.

Supplier must submit a letter to guarantee the replacement of any material that appears defective on the job for a period of 1 year after acceptance of the project.

ASSIGNMENT OF PAYMENT

Contractor hereby agrees he/she will not assign the payment of any monies due it (him/her) from the City under the terms of this Contract to any other individual(s), corporation(s) or entity(s). The City retains the right to pay any and all monies due Contractor directly to Contractor.

PATENTS

For the purchase of equipment and material, the Vendor shall hold the City of Fresno, its officers and employees, harmless from any and all liability for damages arising out of the use of any patented material, equipment, device or process incorporated into or made a part of or required by the manufacturer's Specifications to be used on or in connection with the material, equipment or supplies purchased by the Procurement Specialist pursuant to these Specifications, and Vendor agrees, by submission of a proposal hereunder, to defend the Procurement Specialist, at Vendor's sole expense, in any action or suit for damages or injunctive relief on account of any allegedly unauthorized use of or infringement of patent rights on any patented material, equipment, device or process, if the Procurement Specialist is named as a defendant in any such action or suit.

CODES AND ORDINANCES

Nothing in these Specifications is to be construed to permit work not conforming to applicable codes.

MAINTENANCE OF RECORDS

Contractor and its subcontractors are required to maintain books, records, and other documents pertinent to the work of this Contract in accordance with Generally Accepted Accounting Principles. All such books, records, and other documents pertaining to the Contract shall be available to City or its authorized representatives upon request during regular business hours throughout the life of the Contract and for a period of 5 years after final payment or, if longer, for any period required by law or any State or Federal funding agreement applicable to this Contract. In addition, all books, documents, papers and records of Contractor and its subcontractors pertaining to the Contract shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time by City or its authorized representatives, (and, in the event State or Federal funding is applicable to this Contract, then the respective State of California, State of California Department of Transportation (Caltrans), the State of California

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State Auditor, the United States, the Federal Highway Administration (FHWA), or any authorized representatives of the aforementioned), and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records must be retained until such action is resolved, or until the end of said time period whichever shall later occur. Failure or refusal by Contractor or its subcontractors to comply with this provision shall be considered a substantial failure to comply with this Contract, and City may declare Contractor in default as set forth in these Specifications, withhold payment to Contractor, or take any other action it deems necessary to protect its interests. This provision shall survive expiration or termination of this Contract.

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The accounting system shall enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by the City.

Contractor and its subcontractors shall make the Contract and any State or Federal funding agreement materials applicable to this Contract available at their respective offices at all reasonable times during the entire Project period and 5 years from the date of final payment to Contractor. This provision shall survive expiration or termination of this Contract.

NONFEDERAL LABOR STANDARD PROVISIONS

GENERAL PROVISIONS: The following Nonfederal Labor Standards Provisions, including the following provisions concerning: maximum hours of work, minimum rates of pay, and overtime compensation, with respect to the categories and classifications of employees hereinafter mentioned are included in the Contract pursuant to the requirements of applicable State or local laws, but the inclusion of such provisions shall not be construed to relieve the Contractor or any subcontractor from the pertinent requirements of any corresponding Federal Labor-Standard Provisions of this Contract. In cases the minimum rates of pay set forth below shall be higher than the minimum rates of pay required by or set forth in the Federal Labor-Standards Provisions of this Contract for corresponding classifications, the minimum rates of pay set forth below shall be deemed, for the purpose of this Contract, to be the applicable minimum rates of pay for such classifications. The limitations, if any, in these Nonfederal Labor Standards Provisions upon the hours per day, per week or month which employees engaged on the work covered by this Contract may be required or permitted to work thereon shall not be exceeded.

SCHEDULE OF WAGES AND SALARIES: In accordance with the provisions of sections 1770 to 1781, inclusive of the Labor Code of the State of California and/or section (1)(b) of the United States Labor Code, the Director of Industrial Relations and/or the United States Secretary of Labor shall ascertain the general prevailing rate of wages applicable to the work to be done under this Contract to be included in these Specifications by reference. (Copies of the wage rates or specific wage rate determinations may be obtained from the Contract Compliance Officer at City of Fresno Public Works Department, Construction Management Division, 1721 Van Ness, Fresno, California 93721, (559) 621-5600.)

LABOR CODE SECTION 1775: PENALTIES FOR UNDER-PAYMENT OF WAGES: The Contractor and each subcontractor shall comply with California Labor Code section 1775 and pay not less than the wages established by the Director of the Department of Industrial Relations and/or the Federal government. In accordance with such section 1775, Contractor or such subcontractor shall, as a penalty to the City, forfeit up to \$200.00, as determined by the Labor

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Commissioner, for each calendar day or portion thereof for each worker under this Contract paid less than the established wage rates. These penalties shall be withheld from progress payments then due. The Contractor shall contain in each subcontract the requirements hereunder.

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

LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves \$30,000 or more, the Contractor and each subcontractor shall comply with California Labor Code section 1777.5, as it may be amended from time to time, the entire provisions of which are incorporated by this reference as if fully set forth herein, and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations for all apprenticeable occupations applicable to the work as defined in such laws and regulations. Contractor shall be responsible for the compliance with such Labor Code section for all apprenticeable occupations and shall contain in each subcontract the requirements hereunder. In accordance with section 1777.5 of the California Labor Code and the rules and regulations of the California Apprenticeship Council, properly indentured apprentices shall be employed in the execution of this Contract in at least the ratio of not less than 1 hour of apprentice work for every 5 hours of journeyman work (unless the respective contractor or subcontractor has been exempted from such ratio) and paid the prevailing rate of per diem wages for apprentices in the trade to which he/she is registered. The employment and training of each apprentice shall be in accordance with either the apprenticeship standards and apprentice agreements under which he/she is training, or the rules and regulations of the California Apprenticeship Council. Prior to commencing work on the Contract, Contractor and each subcontractor shall submit contract award information to the City, if requested, and to an applicable apprenticeship program that can supply apprentices to the job site. The information shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. Within 60 days after concluding work on the Contract, the Contractor and each subcontractor shall submit to the City, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract. Contractor shall employ apprentices for the number of hours computed before the end of the Contract or, in the case of the subcontractor, before the end of the subcontract and endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site.

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

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- (i) All contract award information (e.g., completed form DAS 140) sent by Contractor and by subcontractors to the State Division of Apprenticeship Standards and each applicable apprenticeship program in accordance with California Labor Code section 1777.5, as may be amended from time to time, including identification of addressee.
- (ii) All requests by Contractor and by subcontractors for approval, and all responses and certificates from any applicable apprenticeship program disapproving or approving Contractor or subcontractor(s), to train apprentices; if any.
- (iii) All requests by Contractor and by subcontractors for dispatch of apprentices from any applicable apprenticeship program (e.g., completed form DAS 142); and all responses thereto, if any.
- (iv) All certifications, if any, of Contractor and of subcontractor(s) as an individual employer apprenticeship program by the State Division of Apprenticeship Standards or the California Apprenticeship Council.
- (v) All apprenticeship agreements of apprentices employed by Contractor and by subcontractor(s) and performing work under the Contract.
- (vi) A verified statement by the Contractor and by the subcontractor within 60 days after concluding the work of the respective journeyman and apprentice hours performed on the Contract or subcontract.
- (vii) All certificates of any exemption by the State Division of Apprenticeship Standards, California Apprenticeship Council or any apprenticeship program of Contractor or subcontractor from any requirements of California Labor Code section 1777.5, as may be amended from time to time.
- (viii) Other documentation as may be requested by City.

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

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

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

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

any subsequent Act of Congress.

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

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

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

(a) Accurate payroll records and basic records relating thereto shall be maintained by the Contractor and each subcontractor during the course of the work and preserved for a period as required by law for all journeymen, apprentices, workers, and other employees employed in connection with the work. Such records shall contain information as on the payroll record forms provided by the Division of Labor Standards of the Department of Industrial Relations, the name, address, social security number, work classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents), daily and weekly number of hours worked, deductions made and actual per diem wages paid. The Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to all employees affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly (7 days after each week ending pay period) for each week in which any Contract work is performed a certified copy of all payrolls to the Engineer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The Contractor is responsible for the submission of certified copies of payrolls by all subcontractors.

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

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

- (ii) That each employee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions;
 - (iii) That each employee has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract;
 - (iv) Contractor has complied with the requirements of California Labor Code sections 1771, 1811, and 1815 for any work performed hereunder by his or her employees.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b) (2) of this clause.
- (4) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution.
- (c) The Contractor or subcontractor shall make certified copies of all the records required under paragraph (a) of this clause available for inspection at all reasonable hours at the principal office of the Contractor by, and furnished upon request to, the Engineer, the Division of Labor Standards Enforcement of the Department of Industrial Relations, the Division of Apprenticeship Standards of the Department of Industrial Relations, and each of their authorized representatives. A certified copy of the employee's record shall likewise be made available for inspection or furnished upon request by the employee or his or her authorized representative. The Contractor shall provide hereunder the street address, city and county of the location of the payroll records maintained by Contractor and shall provide a notice of any change of location and address within 5 working days of such change. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records within 10 days after each week ending pay period, or to furnish or make them available for inspection within 10 days of request, (Contractor has 10 days to comply) after written notice, the Contractor shall forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, pursuant to California Labor Code section 1776. These penalties shall be withheld from progress payments then due.

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

FAIR EMPLOYMENT PRACTICES AND NONDISCRIMINATION

In connection with the performance of work under this Contract, the Contractor agrees as follows:

1. The Contractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, political affiliation, sex, age (over 40), sexual orientation, and denial of family care leave or on any other basis prohibited by law. The Contractor shall ensure that the treatment of employees and evaluation of applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment Practices section.
2. Contractor and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
3. Contractor assures City that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989) and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Contract as the “anti-discrimination laws”.
4. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a written notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will permit access to his or her records of employment, employment advertisements, application forms, and other pertinent data and records by the City, State of California, the State Fair Employment and Housing Commission, or any other appropriate agency designated by the City or the State of California, for the purposes of investigation to ascertain compliance with the Fair Employment Practices and Nondiscrimination section of this Contract.
6. Contractor agrees to collect and maintain information to show compliance with the “anti-discrimination laws” including a list of discrimination complaints, reports of any compliance

reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.

7. Contractor agrees to cooperate with City, and any other appropriate agency designated by the City, in all manner necessary to permit City and any such agency to adequately report to the United States Environmental Protection Agency on Contractor's compliance with the "anti-discrimination laws".

8. A finding of willful violation of the Fair Employment Practices section of this Contract or of the California Fair Employment and Housing Act shall be regarded by the City as a basis for determining the Contractor to be not a *responsible bidder* as to future contracts for which such Contractor may submit bids, for revoking the Contractor's prequalification rating, if any, and for refusing to establish, reestablish, or renew a prequalification rating for the Contractor.

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

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

9. The Contractor agrees, that should the City determine that the Contractor has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code sections 1735 and 1775, the Contractor shall forfeit, as a penalty to the City, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from the Contractor. The City may deduct any such damages from any monies due the Contractor from the City. Furthermore, Contractor agrees that the City shall have the right to terminate this Contract either in whole or in part, and any loss or damage sustained by City in securing the goods or services thereunder shall be borne and paid for by Contractor and by the surety under the performance bond, if any, and City may deduct from any moneys due or thereafter may become due to Contractor, the difference between the price named in the Contract and the actual cost thereof to City to cure Contractor's breach of the Contract.

10. Nothing contained in this Fair Employment Practices section shall be construed in any manner or fashion so as to prevent the City from pursuing any other remedies that may be available at law.

11. After award of the Contract, the Contractor shall certify to the City that he/she has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by the City:

- (a) The Contractor shall provide evidence, as required by the City, that he/she has notified all supervisors, foremen, and other personnel officers in writing of the content of the antidiscrimination clause and their responsibilities under it.
- (b) The Contractor shall provide evidence, as required by the City, that he/she has notified all sources of employee referrals (including unions, employment agencies, advertisement, Department of Employment) of the content of the antidiscrimination clause.
- (c) The Contractor shall file a Fair Employment Practices compliance report, as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire. The compliance report shall be kept current throughout the Contract in that the Contractor shall report any changes in or additions to the answers therein, including changes in agreements with others. After the work or supplying materials is complete, and before final payment, the Contractor shall submit a final statement of compliance.
- (d) Personally, or through his or her representatives, the Contractor shall, through negotiations with the unions with whom he/she has agreements, attempt to develop an agreement which will:
 - (1) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.
 - (2) Otherwise implement an affirmative antidiscrimination program in terms of the unions; specific areas of skill and geography, to the end that qualified disadvantaged workers will be available and given an equal opportunity for employment.

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

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

GENERAL MISCELLANEOUS

Independent Contractor. In the furnishing of the work provided for herein, the Contractor is acting as an independent contractor. Neither the Contractor, nor any of its officers, associates, agents or employees shall be deemed an employee, joint venturer, partner or agent of the City for any purpose. However, the City shall retain the right to verify that the Contractor is performing its respective obligations in accordance with the terms of the Contract.

Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor 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

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under this Contract, Contractor shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Contractor'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 Contract, Contractor may be providing services to others unrelated to City or to this Contract.

Notices. Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally 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 the Bid Proposal in the case of the Contractor and at the address set forth on the signature page of the Contract in the case of the City, 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.

Binding. Subject to the following section, once this Contract 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.

Assignment. The Contract is personal to the Contractor and there shall be no assignment, transfer, sale, or subcontracting by the Contractor of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale or subcontracting by the Contractor, its successors or assigns, shall be null and void unless approved in writing by the City.

Compliance with Law. In providing the services required under this Contract, Contractor and its subcontractors 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 Contract.

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

Headings. The section headings in this Contract 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 Contract.

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

Interpretation. The parties acknowledge that this Contract in its final form is the result of the combined efforts of the parties and that, should any provision of this Contract be found to be

ambiguous in any way, such ambiguity shall not be resolved by construing this Contract in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

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

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.

No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties other than expressly identified within this section. The parties do intend that in the event that the State of California is funding the Project being constructed hereunder, that the State of California be a third party beneficiary under this Contract and all rights, interest and benefits of this Contract accrue to the State.

Funding. This Contract is contingent on the appropriation of funds by City. Should funds not be appropriated, this Contract may be terminated by City upon prior written notice to Contractor.

Governing Law and Venue. This Contract 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 Contract and any rights and duties hereunder shall be Fresno County, California.

Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract 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 Contract may be modified only by written instrument duly authorized and executed by both City and Contractor in accordance with City's current contract change order resolution for public works of improvement as may be revised.

CLAIMS FOR ADDITIONAL TIME

Extension of time, when granted, will be based upon the effect of delays to the project as a whole and will not be granted for noncontrolling delays to minor included portions of the Work unless it can be shown that such delays did, in fact, delay the progress of the project as a whole. The Contractor shall not be entitled to damages or additional payment due to these delays except to the extent the delay exceeds the original Contract duration for Substantial Completion, and any extension hereunder other than any extension granted due to Owner caused delay, when Owner is responsible for the delay, the delay is unreasonable under the circumstances involved, not within the contemplation of the parties, and such delay causes actual damage to the Contractor. The Owner shall not be entitled to liquidated damages for Contractor delays unless the delay by Contractor exceeds the original Contract duration for Substantial Completion and any extension of time to which the Contractor is entitled to under the Specifications.

If delays are caused by unforeseen events beyond the control of the Contractor, such delays will entitle the Contractor to an extension of time as provided herein. War, governmental regulations, priorities, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of Work, other similar action of the elements, inability to obtain materials, equipment or labor because of Federal Government restrictions arising out of the National Defense or War Program, required *Extra Work*, action or inaction by the Owner, or other specific reasons as may be further described in the Specifications may constitute such a delay.

If the Contractor is delayed by the failure of the Owner to furnish necessary rights of way or materials agreed to be furnished by it, or by failure to supply necessary plans or instructions concerning the Work, after written request therefore, the Contractor shall be entitled to an extension of time as provided herein.

CLAIMS AND DISPUTES

(a) General

The Contractor and Owner shall make good faith efforts to resolve any and all Claims and disputes in a timely manner that may from time to time arise during Contractor's performance of the Work. Claims, including those alleging an error or omission shall be directed to the Owner's Construction Manager for action as provided in the "Resolution of Claims and Disputes," below.

It shall be a condition precedent to Claims review by the Public Works Director or his or her designated representative and to mediation or litigation between the Contractor and Owner as to all such matters arising prior to the date final payment is due, that a formal decision on all Contractor Claims be made by the Construction Manager. It shall be a condition precedent that the Contractor appeal any disputed Claim to the Public Works Director prior to initiating mediation or litigation. It shall be a condition precedent that the Contractor mediate any disputed Claim through non-binding mediation as provided herein, prior to initiating litigation. Unless mutually waived in writing by both parties, these provisions apply regardless of 1) whether such matters relate to execution and progress of the Work, or 2) the extent to which the Work has been completed.

Notice of Intent to Claim by Contractor must be made within 72 hours after occurrence of the event giving rise to such Claim, or within 72 hours after the claimant first discovers or should have reasonably discovered the condition giving rise to the Claim, whichever is later. Notice of Intent to Claim and Claims must be made by written notice.

At all times during the course of the dispute resolution process pursuant to the "Resolution of Claims and Disputes," the Contractor shall continue with the Work as directed, in a diligent manner and without delay, or shall conform to the Owner's decision or order, and shall be governed by all applicable provisions of the Contract. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in the Contract, if this should become necessary.

The making of final payment shall not constitute a waiver of Claims by the Owner including, but not limited to, the following:

- (i) liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

- (ii) failure of the Work to comply with the requirements of the Contract Documents; or
- (iii) terms of special warranties required by the Contract Documents.

Contractor shall promptly provide an unconditional waiver and release upon final payment in accordance with California Civil Code section 3262 and these Contract Documents. Except to the extent of any Claim arising from City's sole or active negligence, and except to the extent Contractor expressly describes any other disputed Claims for which prior written notice has been given the City and lists the respective dollar amounts in an unconditional waiver and release, the making of final payment shall constitute a waiver of Claims by the Contractor pertaining to any and all costs, expenses, changes or other Claims related to Contract Price or Contract Time, including any synergistic effects attributed to multiple Change Orders. In the event of any disputed Claims between the City and Contractor, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

(b) Resolution of Claims and Disputes

(1) Decision of Construction Manager:

- a. If the Contractor believes any Work or demand to be outside the requirements of the Contract or believes that omissions, conflicts, errors, or discrepancies will cause or have caused the Contractor additional costs or delays in the performance of the Work, he/she shall file a written Notice of Intent to Claim with the Construction Manager within 72 hours after occurrence of the event giving rise to the Claim, or within 72 hours after the Contractor or its subcontractor first discovers or should have reasonably discovered the condition giving rise to the Claim, whichever is later. If a written Notice of Intent to Claim is not submitted within this time period, the Contractor shall waive his or her right to further Claims on the issue and any synergistic effects related to such Claim.
1. Within 10 working days following the Notice of Intent to Claim, the Contractor shall provide a Notice of Claim with complete supporting data for the Claim of the cost and delay related to such omissions, conflicts, errors, discrepancies, or Work alleged to be outside the requirements of the Contract. Notwithstanding the foregoing, if all supporting data cannot reasonably be made available within said 10 working days, then Contractor shall provide all then available supporting data along with a request for additional time, stating a time certain, to obtain the remainder of supporting data along with both an explanation of the nature of such supporting data and the reason why additional time is necessary to provide same to the Construction Manager.
 2. If a written Notice of Claim, along with complete supporting data or all then available supporting data and reasonable request for additional time with explanation as required above, is not submitted within 10 working days following the Notice of Intent to Claim, the Contractor shall waive his or her right to make further Claims on the issue and any synergistic effects related to such Claim.
 3. The Contractor's request for additional time to provide the remainder of its supporting data shall be deemed acceptable to Owner unless the Construction Manager rejects in writing Contractor's request within 5 working days from

receipt of Contractor's request. If the Construction Manager rejects Contractor's request for additional time, then Contractor shall either provide complete supporting data immediately upon receipt of such rejection or within any time acceptable to the Construction Manager as stated in his or her written rejection, whichever is later (unless otherwise mutually agreed upon in writing by Contractor and Construction Manager).

- b. The Construction Manager will review any and all Claims and take one or more of the following preliminary actions in writing within 10 working days of receipt of written Notice of Claim and complete supporting data: 1) request additional supporting data from the Contractor; 2) reject the Claim in whole, or in part, stating reasons for rejection; or, 3) recommend approval of the Claim. In the event the Construction Manager has not taken any preliminary action within 10 working days, then the Claim is deemed rejected unless the Contractor and the Construction Manager mutually agree in writing to extend the time period for taking preliminary action. The Construction Manager will make his or her decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the dispute. The Construction Manager may also, but is not obligated to, notify the surety on Contractor's performance bond of the nature and amount of the Claim.
- c. If the Construction Manager requests additional supporting data from the Contractor, the Contractor shall supply the additional information to the Construction Manager within 10 working days unless the Contractor and the Construction Manager mutually agree in writing to extend the time period for supplying such information. The Construction Manager will have 10 working days from the receipt of additional supporting data to provide a written decision, unless the Contractor and the Construction Manager mutually agree in writing to extend the time period for providing such decision. In the event the Construction Manager has not provided a written decision within 10 working days, or any extended time period agreed to in writing by Construction Manager and Contractor, then the Claim is deemed rejected and this shall constitute Contractor's automatic request for an appeal meeting with the Public Works Director unless the Contractor submits a written withdrawal of its Claim.
- d. If the Claim is rejected in whole or in part by a written decision of the Construction Manager, the Contractor shall notify the Construction Manager in writing within 10 working days after receiving the written decision that either: 1) the decision is accepted and the Claim is amended accordingly; or 2) the Contractor requests an appeal meeting with the Public Works Director. Failure to timely request an appeal meeting with the Public Works Director following receipt of the written decision constitutes acceptance by the Contractor of the Construction Manager's decision. If the Owner and Contractor are able to resolve their dispute, the Owner will promptly process any required Contract changes.

(2) Decision of Public Works Director

- a. The Public Works Director, or his or her designee, shall meet with the Contractor and the Construction Manager within 15 working days (unless necessary to accommodate the Public Works Director's schedule, or that of his or her designee, but in no event longer than 20 working days; or unless otherwise mutually agreed

upon in writing by Contractor and Construction Manager) from the Contractor's timely submittal of his or her request, or any automatic request hereunder, for a meeting. The Contractor may make a presentation in support of his or her Claim. No attorney may take part in the presentation or defense of the Claim in the meeting with the Public Works Director, or his or her designee. Nothing herein shall prevent an attorney from providing advice to a party either before or after the meeting. In the event the meeting with the Public Works Director, or his or her designee, has not been conducted within the time provided herein or as agreed upon in writing by Contractor and Construction Manager, then the Claim is deemed rejected and, unless the Contractor submits a written withdrawal of its Claim, the parties shall proceed to mediation as provided herein.

- b. Within 10 working days (unless otherwise mutually agreed upon in writing by Contractor and Construction Manager) from the meeting with the Contractor and the Construction Manager, the Public Works Director, or his or her designee, shall render a written decision and a copy thereof shall be personally delivered, or mailed return receipt requested, to the Contractor. In the event the Public Works Director, or his or her designee, has not provided a written decision within 10 working days, or any extended time period agreed to in writing by Construction Manager and Contractor, then the Claim is deemed rejected and, unless the Contractor submits a written withdrawal of its Claim, the parties shall proceed to mediation as provided herein.
- c. If the Claim is rejected in whole or in part by a written decision of the Public Works Director, or his or her designee, the Contractor shall notify the Construction Manager in writing within 10 working days after receiving the written decision that either: 1) the decision is accepted and the Claim is amended accordingly; or 2) the Contractor rejects the decision of the Public Works Director, or his or her designee. Failure to timely notify the Construction Manager of either following receipt of the Public Works Director's written decision, or that of his or her designee, shall constitute acceptance by the Contractor of the Public Works Director's decision, or that of his or her designee. If the Owner and Contractor are able to resolve their dispute, the Owner will promptly process any required Contract changes. If the Contractor rejects the written decision of the Public Works Director or his or her designee, the parties shall proceed to mediation as provided herein.

(3) Mediation

- 1) In the event that the Claim is not resolved after exhausting all aforementioned administrative measures, then the Contractor must participate in non-binding mediation with City before the Contractor may initiate litigation.
- 2) The parties shall mutually select, in writing, a mediator with at least 5 years experience in the construction industry. In the event that the parties are unable to agree on a mediator within 15 working days of Contractor's rejection of the decision of the Public Works Director or his or her designee, the City may select the mediator. Mediation, including at least one session requiring physical attendance by all parties, shall begin within 15 working days of selection of the mediator, unless necessary to accommodate the mediator's schedule. The parties shall share the mediator's fees and any administrative costs of mediation

equally. The mediation shall be held in Fresno, California, unless another location is mutually agreed upon by the parties in writing. In the event the parties are unable to reach a mutually acceptable resolution of the Claim within 20 working days of the start of mediation, unless extended or otherwise terminated by written mutual agreement of the parties, mediation shall terminate.

- c. If the Owner and Contractor are able to resolve their dispute the Owner will promptly process any required Contract changes. Any settlement reached in principal must be in writing and is subject to approval by the City Manager or City Council consistent with City laws and policies. Should the dispute remain unresolved, the parties may resort to other dispute resolution procedures.
 - d. All statements made during the mediation shall be confidential and subject to sections 703.5, 1119 and 1152 of the California Evidence Code.
- (4) Government Claims Act. Nothing herein is intended by the parties to waive any requirements of the Contractor to comply with the Government Claims Act including, without limitation, California Government Code section 905; and Contractor agrees that it shall remain responsible for complying with said section regarding any Claim. The parties agree, however, that the timeline for the Contractor to file a claim under the Government Claims Act is tolled until exhaustion of the Contractor of its administrative remedies hereunder (i.e., either upon termination of mediation, or upon written mutual waiver of mediation by the parties, whichever first occurs).

(5) Litigation

- a. If the Contractor continues to dispute the Work demanded of him/her after exhausting all aforementioned administrative measures, the Contractor may institute legal proceedings, but only after final acceptance of the project by the Owner.
Unless specifically waived by the Owner, in writing, the submission of a dispute for mediation in accordance with the above provisions shall be a condition precedent to the Contractor's right to initiate a suit, action or other proceeding against the Owner for damages.
- b. In the event Owner initiates suit, action, or other proceeding against the Contractor for damages, the prevailing party in such suit or action shall be entitled to recover reasonable attorney's fees and costs of suit.
- c. In the event Contractor initiates suit, action, or other proceeding against the Owner, the Owner shall be entitled to recover reasonable attorneys' fees and engineering defense costs if the Contractor is not awarded, by the arbitrator or court, a dollar amount greater than 50 percent of the Contractor's original Claim for damages.
- d. The Contractor shall include, or cause to be included, a requirement in all subcontracts of all tiers of Subcontractors for this project that whenever the Subcontractor disputes the Work demanded of him/her, he/she shall cooperate and comply with the Claims and Dispute procedures contained herein including, without limitation, exhausting all administrative measures prior to instituting legal proceedings, and instituting legal proceedings only after final acceptance of the

project by the Owner.

MEDIATOR

The bid proposal includes a bid item "Mediator" which is provided to account for compensation by Owner for Owner's share of costs of the Mediator as provided in these Specifications. The dollar amount listed in the bid item is an estimate only and will be included in each Bidder's Proposal. Invoices of the Mediator shall be paid by Contractor only upon direct written authorization from the Owner.

Final payment to Contractor will be based on fifty percent (50%) of the total amount of Owner approved invoices of the Mediator actually billed to Owner by Contractor. The Contractor shall include the specified lump sum bid item on the Bid Proposal for payment of Owner's share of costs for the Mediator. Payment will be made under this bid item by issuance of a Change Order approved by the Owner and charged against this lump sum allocation.

This bid item may be increased, decreased, or deleted in its entirety and is not to be construed as additional money owed the Contractor. If no Change Order is issued against this bid item, the Contract Price shall be reduced by the full amount of the bid item included in the Bid Proposal for the Mediator.

The Contractor shall have no claim for anticipated overhead or profit should the Owner fail to issue any Change Orders against this bid item.

PROGRESS PAYMENTS AND RETENTION

The Construction Manager will, after award of a Contract, establish a monthly payment date. This date will be the date during the life of the Contract, which will terminate each working month. Each month, the Construction Manager will make an approximate measurement of the Work performed to that date and estimate its value based on the Contract Unit Prices. When the Work has been satisfactorily completed, the Construction Manager will determine the quantity of Work performed and prepare the final estimate of its value.

Progress payments for lump-sum items or amounts will be in accordance with a well-balanced, detailed program of payment-apportioning in the Schedule of Values, prepared by the Contractor and submitted to the City for approval. Such payment-apportioning may require modifications during the Contract term, as determined by the City.

The Schedule of Values for each lump-sum item shall show fixed definable and measurable quantities where possible and unit prices developed and assigned by the Contractor to the different features of the Work and major subdivisions thereof. The summation of extensions of quantities and unit prices and related costs shall equal the amount of the lump-sum price in the Contract Schedule of Quantities and Prices. The Schedule of Values shall also provide the Indirect Markup Rates for Overhead and Profit associated with each bid item.

Applications for progress payments will be based on the approved Schedule of Values and from the approved progress schedule, reflecting the progress which occurred during the payment period as approved by the City.

Unless a greater percentage of retention is otherwise specified in the Contract Documents to be withheld from progress payments, 5% will be deducted from each progress estimate and retained by the City; and the remainder, less the amount of any previous payment for the Work performed, will be paid to the Contractor subject to other provisions of this section. The City retains the option, at its discretion, to reduce any retained amount by payment to the Contractor upon conditions or otherwise.

Under no circumstance shall any provision of this section be construed to limit the ability of the City to withhold 150 percent of the value of any disputed amount of Work from the final payment. In the event of a good faith dispute, nothing in this section shall be construed to require the City pay for Work that is not approved or accepted in accordance with the Plans and Specifications.

The payment of progress payments by the City shall not be construed as an absolute acceptance of the Work done up to the time of such payments.

If within the time fixed by law, a properly executed stop notice is filed with the City due to Contractor's failure to pay for labor or materials used in the work, all money due for such labor or materials will be withheld from payment to the Contractor in accordance with applicable laws.

Notwithstanding any other provision of the Contract, the City reserves the right to off-set any payment due the Contractor against any debt due from the Contractor to the City, pursuant to this Contract.

COMPLETION

When Contractor considers the Work ready for its intended use, the Contractor shall notify the City in writing that the Work is substantially complete. The Contractor shall attach to this request a list of all work items that remain to be completed and a request that the City prepare a Certificate of Substantial Completion. Within a reasonable time thereafter, the City and Contractor shall inspect the Work to determine the status of completion and to the extent that City agrees the Project is substantially complete. If the City does not consider the Work substantially complete, the City will notify Contractor in writing of the reasons therefore and Contractor shall promptly correct all items identified by the City. The City and Contractor shall repeat the above-referenced procedure until all items are completed to the City's satisfaction, whereupon City shall issue a Certificate of Substantial Completion.

On the date that the City issues the Certificate of Substantial Completion, the City shall provide Contractor with the final punch list identifying the remaining minor corrective items to be completed for final completion of the Project.

When the Contractor considers the final punch list work to be complete, it shall request City to perform a final walk through of the Project to determine if said punch list work is complete and whether Contractor has otherwise completed all of its obligations under the Contract Documents.

The City shall record the Notice of Completion when the entire Work including, but not limited to Contractor's closeout document obligations are fully satisfied, Contractor's punch list(s) and work shall have been completed to the satisfaction of the City.

However, the City, at its sole option, may accept completion of the Contract and have the Notice of Completion recorded when the entire Work including individual portions of the Work shall have been completed to the satisfaction of the City, except for minor corrective items, as distinguished from incomplete items.

Regardless of the cause therefore, the Contractor may not maintain any claim or cause of action against the City for damages incurred as a result of its failure or inability to complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within which to perform the work on the Project.

EXTENSION OF TIME - LIQUIDATED DAMAGES

The Contractor and City hereby agree that the exact amount of damages for failure to complete the work within the time specified is extremely difficult or impossible to determine. Contractor shall be assessed the sum as set forth in the Contract, as liquidated damages for each and every day the work required under the Contract Documents remains unfinished past the time for completion, as set forth in the Contract Documents, and any extensions of time granted by the City to the Contractor under the terms of the Contract Documents. The Contractor will pay to the City or City may retain from amounts otherwise payable to the Contractor, said amount for each day after failure to meet the requirements of the contract completion as scheduled in the Contract. For purposes of this Item, section Work shall be considered *complete* in accordance with the provisions of the foregoing section entitled "COMPLETION" and issuance of a Certificate of Substantial Completion.

Contractor shall not be charged for liquidated damages, as set forth above, because of any delays in completion of Work which are not the fault or negligence of Contractor, or its subcontractors, or persons or entities for which it is responsible, including, but not restricted to acts of God, as set forth herein.

FINAL APPLICATION FOR PAYMENT AND FINAL PAYMENT

After Contractor has completed all of the remaining Work items, and delivered all maintenance and operating instructions, schedules guarantees, bonds, certificates of inspection, and As-Built drawings, marked up Record documents, and any other close out documents required by the Contract Documents, and after the City has indicated that Contractor has achieved Final Completion (including, without limitation, all final punch list work), Contractor may make application for final payment following the City's procedure for progress payments. The final application for payment shall be accompanied by all documentation called for in the Contract Documents for making of progress payments together with complete and legally effective releases and waivers of all encumbrances arising out of or related to the Work.

After Contractor has satisfied all of the conditions of the preceding paragraph, Contractor shall submit its application for final payment and release of retention. Said application shall set forth the following information, at a minimum:

(1) Cost of the Work in permanent place as of the end of the immediately preceding month as shown on the updated Project Schedule and Schedule of Values submitted with the Contractor's application;

(2) Less amounts previously paid and previously withheld as retention;

- (3) The amount currently due; and
- (4) An itemized list of disputed amounts, if any.

Contractor's application for final payment shall also be accompanied by Conditional Waivers and Releases Upon Final Payment executed by Contractor and by all subcontractors for whom payment is requested.

If the Contractor fails to complete the punch list work or corrective items prior to the expiration of 35 calendar days immediately following issuance of a Certificate of Substantial Completion, the City shall withhold from the final payment an amount equal to 150% of the estimated cost, as determined by the City, of each item until such time as the item is completed. Alternatively, at the end of such 35-day period, if there are items remaining to be corrected, the City may elect to proceed to withhold a sufficient amount, which in City's judgment may be necessary to cover the cost of incomplete and defective work. In the event of a dispute between the City and Contractor over the amount due, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

Subject to the provisions of the Contract Documents, City shall make final payment of undisputed amounts to Contractor no later than 45 calendar days after City's receipt of Contractor's properly submitted application for final payment.

PAYMENTS WITHHELD

In addition to any amount which City may retain under the Contract Documents, City may withhold a sufficient amount of the Contract price otherwise due to Contractor, which in City's judgment may be necessary to cover:

- (1) Payments which may be past due and payable for just claims against Contractor or any subcontractors, or against and about the performance of work on the Project.
- (2) The cost of defective work, which Contractor has not remedied.
- (3) Liquidated damages assessed against Contractor.
- (4) Penalties for violation of any labor laws or deficient certified payroll.
- (5) The cost of materials or equipment ordered by the City as it may deem advisable (this right is reserved by City in the event of any neglect by Contractor in furnishing materials in ample quantities and at such times as to ensure uninterrupted progress of the Work) in order that the Work may be completed by the date specified in the Contract documents.
- (6) The cost of completion of this Contract if there exists a reasonable doubt that this Contract can be completed for the balance then unpaid to Contractor.
- (7) Damage caused by Contractor or its subcontractors and the parties for whom they are responsible.
- (8) Site clean-up including, but not limited to, removal from site and disposal of debris, if Contractor fails to provide such final cleaning after construction has been completed.

(9) Payments to indemnify, defend, or hold harmless the City.

(10) Any payments due to the City including but not limited to payments for failed tests, utilities or imperfections.

(11) Extra services for the Construction Manager or any City agents, including but not limited to, services rendered in the evaluation of Contractor substitution requests, Requests for Information (RFI's), Change Order Requests and Claims.

(12) Extra services for any inspector including, but not limited to, re-inspection required due to Contractor's failed tests or installation of unapproved or defective materials and Contractor's requests for inspection and Contractor's failure to attend the inspection.

(13) Costs to complete or submit to City Project Record Documents and other closeout documents required under the Contract Documents.

(14) Submission of daily reports and completeness thereof.

(15) Breach of any provision of the Contract Documents.

If the above grounds are in the opinion of the City removed by or at the expense of Contractor, payment shall be made for amounts withheld because of them.

City may apply, but is not obligated to apply, such withheld amount or amounts to payment of such claims or obligations at its sole discretion. In so doing, City shall make such payments on behalf of Contractor. If any payment is so made by City, then such amount shall be considered as a payment made under contract by City to Contractor and City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. City will render Contractor an accounting of such funds disbursed on behalf of Contractor.

As an alternative to payment of such claims or obligations, City, in its sole discretion, may reduce the total Contract price or set-off the amount against payments due.

WAIVER AND RELEASE FORMS

Consistent with the provisions of California Civil Code section 3262, the Contractor and its subcontractors shall promptly furnish the City with a release of all claims against the City arising by virtue of the Contract Documents related to amounts to be paid or which have been paid. This section shall survive expiration or termination of the Contract. Contractor shall include these requirements in all subcontracts for this project. The Contractor and subcontractors from the operation of the release may specifically exclude disputed contract claims in stated amounts.

Neither the City nor the Contractor by any term of this Contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the Contract to that effect shall be null and void. Any written consent given by any claimant pursuant to this section shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. Such a waiver and release shall be binding and effective to release the City, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the

forms set forth in California Civil Code section 3262 and this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

No oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless:

- (1) It is pursuant to a waiver and release prescribed herein, or
- (2) The claimant had actually received payment in full for the claim.

This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the stop notice or bond claims.

The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances. Each waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

(Example 1.) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior

to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
Date(s) of waiver and release: _____
Amount(s) of unpaid progress payment(s): \$ _____
- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Exclusions: Listing of Claims, of which prior written Notice has been given to the City of Fresno:

- | | |
|---------------------|----------------------------|
| 1. Claim for: _____ | In the amount of: \$ _____ |
| 2. Claim for: _____ | In the amount of: \$ _____ |
| 3. Claim for: _____ | In the amount of: \$ _____ |

(Example 2.) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$ _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

Exclusions: Listing of Claims, of which prior written Notice has been given to the City of Fresno:

1. Claim for: _____ In the amount of: \$ _____
2. Claim for: _____ In the amount of: \$ _____
3. Claim for: _____ In the amount of: \$ _____

(Example 3.) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT

NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____
Amount of Check: \$ _____
Check Payable to: _____

***Exceptions**

This document does not affect any of the following:
Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

*Listing of Claims, of which prior written Notice has been given to the City of Fresno:

- | | |
|---------------------|----------------------------|
| 1. Claim for: _____ | In the amount of: \$ _____ |
| 2. Claim for: _____ | In the amount of: \$ _____ |
| 3. Claim for: _____ | In the amount of: \$ _____ |

(Example 4.) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the following form with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN,

STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

***Exceptions**

This document does not affect the following:
Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

*Listing of Claims, of which prior written Notice has been given to the City of Fresno:

- | | |
|---------------------|----------------------------|
| 1. Claim for: _____ | In the amount of: \$ _____ |
| 2. Claim for: _____ | In the amount of: \$ _____ |
| 3. Claim for: _____ | In the amount of: \$ _____ |

SECURITIES IN LIEU OF RETENTION PERMITTED AND ESCROW AGREEMENT
(PUBLIC CONTRACT CODE SECTION 22300)

Pursuant to provisions of section 22300 of the California Public Contract Code, Contractor may substitute securities for any monies withheld by Owner. Procedures shall be as provided in section 22300 of the California Public Contract Code.

a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839

United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

2) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency. The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract. For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

3) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor. (2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid. (3) No contractor shall require any subcontractor to waive any provision of this section.

4) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.

5) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____

whose address is _____ hereinafter called

“Owner,” _____ whose address is _____

hereinafter called “Contractor” and _____ whose address is _____

_____ hereinafter called “Escrow Agent.”

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the “Contract”). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be

withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner: On behalf of Contractor: On behalf of Escrow Agent:

Title	Title	Title
Name	Name	Name
Signature	Signature	Signature
Address	Address	Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Contractor

Title

Title

Name

Name

Signature

Signature

INCORPORATED APPENDICES

The following documents are appended to this Agreement and are incorporated by reference:

- Appendix A – Special Conditions
- Appendix B – Insurance Requirements
- Appendix C – Federal Conditions
- Appendix D – Federal Davis-Bacon Wage Rates
- Appendix E – Explanation of Bid Items
- Appendix F – PLA General Conditions**

APPENDICES

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**APPENDIX A
SPECIAL CONDITIONS**

Summary:

Appendix A provides clarification, specificity, and added content in addition to the General Conditions that are to be followed during the life of a contract.

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839
Appendix A – Special Conditions

1. **PLANS, SPECIFICATIONS AND CONTRACT ADMINISTRATION**

The location of the work, together with profiles and special construction details are illustrated on the accompanying Plans consisting of sheet(s) numbered as follows:

<u>Sheet</u>	<u>Title</u>
G-001	Cover Sheet
G-002	Sheet Index & Project General Notes
G-010	General Code Information
G-011	Site- Code Analysis/Accessibility Plan
G-012	Administration Building Life Safety/Occupancy Plan
G-013	Fuel & Wash Annex Life Safety/Occupancy Plan
G-014	Cal Green Checklist
G-501	Typical Mounting Heights & Accessibility Details
G-502	Typical Accessibility Details
G-503	Typical Details & General Regulatory Signage

CIVIL

C-000 – C-300

LANDSCAPE ARCHITECTURE

I-100 – I-501

STRUCTURAL

S-001 – S-700

ARCHITECTURE

A-001 – A-741

INDUSTRIAL

ID-121 – I-121

MECHANICAL

M-000 – M-502

PLUMBING

P-000 – P-400

ELECTRICAL

E-001 – E-502

TECHNOLOGY

T-001 – T-502

The work embraced herein shall be done in accordance with applicable provisions of the most current version of the Standard Specifications and drawings of the City of Fresno, Department of Public Works and with the special conditions contained herein.

The Standard Drawings and Specifications can be found on the City's website:

<https://www.fresno.gov/publicworks/developer-doorway/#tab-8>

Inspection and other construction review shall be provided by the City of Fresno, except where specified otherwise in Specifications or required permits.

2. PERMITS AND FEES

The Contractor shall secure all permits required to complete the items of this Contract. No fees will be charged for any City permits, other than for a water meter, if required. Water meter permit and fee shall be obtained and paid for at the Fresno City Water Division Office at 1910 East University Avenue. CalTrans encroachment permits are required for work at or near a State highway.

3. NOTIFICATION OF PROPERTY OWNERS

The Contractor shall notify all property owners in writing along the public right-of-way 96 hours (7 days notification prior to any street closure) in advance of construction as to when, how, and how long they will be affected. The Letter of Notification shall also give the name of the person representing the Contractor and his or her telephone number. The letter shall be prepared and delivered by the Contractor.

4. CONTRACTOR'S RESPONSIBILITIES

Contractor agrees that he or she shall assume sole and complete responsibility for job site conditions during the course of construction of this project, including safety of all persons and property; that this requirement shall apply continuously and not be limited to normal working hours.

5. **TEMPORARY SUSPENSION OF WORK**

The Engineer shall have the authority to suspend the work wholly or in part, for such period as deemed necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as he or she may deem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the Contract.

If the Engineer orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to such other conditions as are considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days. If a portion of the work at the time of such suspension is not a current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

If a suspension of work is ordered by the Engineer, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract, the days on which the suspension order is in effect shall be considered working days if such days would otherwise have been considered working days had not the work been suspended.

6. **TESTING**

All first compaction tests shall be performed at no expense to the Contractor. The cost of each subsequent retest shall be paid for by the Contractor if the first tests fail to meet the required relative compaction.

7. **DUST CONTROL**

Dust control shall conform to Section 7-8 of the Standard Specifications and the cost of labor and equipment required for the work shall be included in the various bid items and no separate payment will be allowed. The cost of water will be paid by the Contractor.

Reference to and incorporation of the provisions of Sections 23113, 23114, 23115 and 40,000.16 of the California Vehicle Code regarding containment and transportation of any aggregate material upon public roadways is made to these Specifications.

8. **DISPOSAL OF CONCRETE AND A. C. SURFACING**

All concrete, A.C. and pavement removed from the project site shall be disposed of at a site obtained by the Contractor and approved by the Engineer. **No recyclable material shall be disposed of at any landfill. All disposable recyclable materials shall be disposed in a manner that facilitates recycling.** Payment for disposal, including all costs of hauling, shall be as specified in the Technical Specifications or Explanation of Bid Items. The Contractor shall report quantities of disposed material in a manner that enables the City to utilize diverted quantities as diversion credits pursuant to California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 et seq.)

9. **DISPOSAL OF OIL CAKE, VEGETATION, WOOD DEBRIS, STRUCTURE DEMOLITION AND OTHER DEBRIS**

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All oil cake, wood debris, structure demolition, vegetation and any other debris removed from the project site shall be legally disposed of at a site(s) obtained by the Contractor ("Disposal Site(s)") with prior written permission of the Engineer. Contractor shall identify the proposed Disposal Site(s) at the pre-construction conference. Such Disposal Site(s) shall be a properly licensed and permitted facility pursuant to state and local regulations for purposes of accepting delivery of the respective materials. No recyclable material shall be disposed of at any landfill. All disposable recyclable materials shall be disposed in a manner that facilitates recycling. In addition to the following, a certificate of compliance stating disposal location and manner of disposal of recyclable materials shall be submitted to the Engineer.

Contractor shall make arrangements for disposing of the materials at the Disposal Site(s) and pay all costs involved. Arrangements shall include, but not be limited to, obtaining written authorization from the property owner of the Disposal Site(s) and before disposing of any material off the project site, Contractor shall furnish to the Engineer the authorization or a certified copy thereof together with a written release from the property owner absolving the City of Fresno from any and all responsibility in connection with the disposal of material on the property of the Disposal Site(s). Before any material is disposed of on the Disposal Site(s), the Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in the authorization.

It is expressly understood and agreed that the City of Fresno assumes no responsibility to the Contractor whatsoever by the granting of such permission and Contractor shall assume all risks in connection with the use of the Disposal Site(s). The Contractor is cautioned to make such independent investigation and examination as the Contractor deems necessary to be satisfied as to the quantity and types of materials which may be disposed of on the Disposal Site(s) and the status of any permits or licenses in connection therewith.

Within 24 hours of removing the respective material from the project site for disposal, Contractor shall provide Engineer with a certified copy of the weight slip from the Disposal Site obtained by Contractor upon delivery of such debris, and a certified statement from Contractor identifying the material constituting the debris and that it was disposed of at the Disposal Site (identifying the facility and name of the owner) in accordance with all laws and applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies.

Payment for disposal, including all costs of hauling, shall be as specified in the Technical Specifications or Explanation of Bid Items. The Contractor shall report quantities of disposed material in a manner that enables the City to utilize diverted quantities as diversion credits pursuant to the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 et seq.)

10. CLEAN UP

Clean up shall be in accordance with Section 7-8 of the City Standard Specifications, which is referred to in full and contained herein as part of these Specifications.

11. PARKING PERMITS

All Contractors using vehicles, necessary for the performance of work for the City of Fresno, that require parking off the job site in an area subject to a parking violation shall obtain a special parking permit issued by the City Traffic Engineer. Contractors not possessing such a valid

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parking permit shall be required to otherwise comply with the parking requirements of Chapter 14 of the Fresno Municipal Code, and will be subject to fines for violation of the Code.

12. TRAFFIC CONTROL

Any additional project specific requirements are outlined in Div. VI Technical Specifications.

Access to all local streets, businesses and residences shall be maintained at all times, except as noted. Turn lanes are not to be considered as travel lanes. Provide a minimum of one 12-foot travel lane in each direction at all times.

Intersections:

Intersections may not be closed. A detour and barricading plan must be submitted to the City of Fresno Traffic Engineering Division at least 48 hours in advance of any work being done. Written approval shall be obtained from the Traffic Engineering Division prior to the beginning of work.

Public Notification:

The Contractor will ensure the public is given at least 7 days notification prior to street closure, and 96 hours notification prior to trail and lane closure. Method of notification must be approved in writing by the Engineer.

Any deviation from these requirements must have prior written approval of the Engineer and the Traffic Engineering Division.

Traffic Control Systems:

The *California Manual on Uniform Traffic Control Devices* (MUTCD) is hereby referred to and incorporated herein as though set forth in full. Special attention is directed to Section 7-10 of the City Standard Specifications.

The Contractor shall be responsible for removal of any traffic markings and/or signing that may conflict with detour channelization and the placement and removal of any temporary traffic markings and/or signing as may be required by the City Traffic Engineer or his or her designee, or desired by the Contractor. Any removal of traffic markings shall be accomplished by burning off or sandblasting of the existing markings.

It is the responsibility of the Contractor to prepare a traffic control, traffic detour and temporary lane delineation plan for use during construction.

It is also the responsibility of the Contractor to obtain the City Traffic Engineering Division's written approval of the Traffic Control plan prior to the beginning of any work.

Approval of the Traffic Control Plan may be rescinded at any time if all necessary signing and barricading is not placed and maintained as required.

Should it become necessary to rescind approval of the Traffic Control Plan, the City shall place and maintain all necessary signing and barricading. Payment for this work shall be deducted from the Contractor's *final payment*. Furthermore, non-compliance with any of the stated conditions in this section by Contractor will result in public inconvenience and/or exposure of the public to a dangerous condition, and such inconvenience and exposure is difficult to determine. Therefore, the Contractor agrees that liquidated damages of \$1,000.00 per calendar day for

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each and every calendar day not in compliance with the stated conditions in this section shall be applied during the period whereby approval for the plan has been rescinded. Such liquidated damages shall be in addition to any other liquidated damages withheld from payments under these Specifications due to any delay by Contractor. In the event that the total liquidated damages exceeds the final payment due the Contractor, the excess amount shall be due and payable immediately by the Contractor to City.

Construction Management with the assistance of the Traffic Engineering Division will be observing and directing the Contractor on proper traffic signing and barricading through the construction zone. The Contractor shall provide safe access for the City inspection staff to make their observation.

The Contractor shall strictly comply with, and will be solely responsible for, all required traffic control and devices as per City approved plan and any revisions thereof. The Contractor shall inspect the traffic control setup at two hour intervals at the least and correct all problems immediately.

The Contractor shall be responsible for providing all necessary flagging and maintaining traffic control facilities, 24 hours per day, 7 days per week for the entire duration of the project.

13. REMOVAL OF PAVEMENT MARKERS

Existing pavement markers, when no longer required for traffic lane delineation, shall be removed and disposed of as directed by the Engineer.

Full compensation for removing and disposing of pavement markers shall be included in the various bid items and no separate payment will be made.

14. SURVEY MONUMENTS AND CONSTRUCTION STAKING

The Engineer shall provide horizontal and vertical controls which consist of control stakes at 50-foot intervals, angle points, and beginning and ending of curves only for proposed concrete improvements, edge of pavement, proposed underground facilities to be constructed under this Contract, and areas as required by Engineer.

All requests for staking shall be in writing and signed by the Contractor. All requests for staking shall be submitted to the Engineer at least two working days prior to the need for such staking. The Project Inspector or Chief Surveyor will accept verbal requests for staking provided the Contractor signs a written request prior to commencement of the staking. Any stakes disturbed or removed prior to completion and inspection of the work controlled by said stakes shall be replaced by the Engineer at the expense of the Contractor. The cost of restaking or replacement of stakes so disturbed shall be charged to the Contractor at the rate as shown in the Master Fee Schedule in effect at the time the Contract is awarded. Said cost will be deducted from monies owed the Contractor under progress payments or fixed payment. Execution of the request for staking shall be prima facie evidence that the Contractor is responsible for all stakes set pursuant to the request.

The Contractor shall pay overtime rates when staking is required and performed at other than normal working hours. The hourly overtime rate for staking, as shown in the Master Fee Schedule in effect at the time the Contract is awarded, shall be paid when such overtime

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services are required on City observed holidays, Saturdays, Sundays, or before or after the normal 8 hours of a normal working day.

15. LOCATION OF THE WORK FOR INSTALLATIONS

The exact location for installation purposes will be indicated by the Engineer with location stakes and the Contractor will not commence any work hereunder without such stakes in place.

Full compensation for all costs involved in the above shall be included in the amount bid for the various items of work and no separate payment shall be made therefore.

16. PROJECT SITE MAINTENANCE

Reference is made to Section 7.8 of the City Standard Specifications, which is referred to in full and contained herein as part of these Specifications together with the following addition:

The Contractor shall furnish and operate a self-loading motor sweeper with spray nozzles at least once each working day to keep paved areas acceptably clean as directed by the Engineer.

Full compensation of clean up during construction and for final clean up shall be included in the prices bid for the various items of work, and no separate payment will be made.

17. UTILITIES

Reference is made to Section 5 of the City Standard Specifications contained herein as part of these Specifications with the following additions:

As directed by the Engineer, and as set forth in these Specifications, the Contractor shall expose, prior to construction staking, all existing utilities which may control proposed facility grades, so that the Engineer may verify the grades prior to staking. Two working days notice shall be given the Engineer.

The Contractor is responsible for protection of all utility services and facilities within the limits of work. Responsible diligence has been exercised in locating all lines, but the Contractor is responsible for checking in the field the locations as shown and is further responsible for any and all utilities whose presence or location is unknown.

All existing utility mains and service lines shall be kept in constant service during the construction of this project. Hand excavating shall be employed where necessary to safely expose existing utilities.

All utility services and facilities damaged or broken by the Contractor shall be repaired or replaced in accordance with the requirements of the owner of said utility. The Contractor will be permitted to sever a sanitary sewer house branch, provided an approved temporary conduit for the missing portion is installed immediately.

The cost of verifying the locations of said utility facilities indicated on the Plans, including exposing them prior to construction, and the full cost of protection, repair, or replacement of utilities shall be included in the various bid items of work with no separate payment thereof.

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The Contractor should be aware that, because of the depth of certain facilities and their close proximity to existing utilities, it may be necessary for the Contractor to protect and support adjacent or crossing utilities and improvements. If utility poles require bracing during storm drain construction, the Contractor shall contact the effected utility companies and have their forces brace the pole. The Contractor shall reimburse the utility company for all costs associated with bracing utility poles. The Engineer has made a diligent attempt to show on the Construction Drawings all pertinent intersecting utilities which may affect the work. Utilities shown in profile view are shown at their most probable location, based upon available as-built drawings and known construction custom. The Contractor shall exercise extreme caution in excavating for this project and shall protect existing utilities from damage, inasmuch as their exact location is unknown until exposed by the excavation.

18. HAZARDOUS MATERIAL AND UNFORESEEN CONDITIONS

In the event any Work hereunder involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the Engineer, in writing, of any: (i) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; and (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in these Specifications. The Procurement Specialist will promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, it will issue a change order under the procedures described in these Specifications. In the event that a dispute arises between the Procurement Specialist and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Procurement Specialist and Contractor shall retain any rights provided by Contract or law which pertain to the resolution of disputes and protests between the parties.

Full compensation for all costs involved in locating, verifying, protecting, exposing, bracing, and otherwise providing for utilities, and compliance with preceding paragraph shall be included in the amounts bid for Miscellaneous Facilities and Operations or the various items of work, and no separate payment shall be made therefor.

19. ACCESS TO PROPERTY

Pedestrian and vehicular access to properties shall be provided and maintained at all times, unless arrangements are made with the property owners, their tenants, renters, or lease holders along the streets and alleys, to deviate from this requirement. Exceptions include during the actual placing of concrete or for very short periods during paving operations. Access shall be safe and reasonable for pedestrians and motor vehicles used by the property owners and emergency vehicles (fire, police, and ambulance). The Engineer will make the sole determination of what is safe and reasonable.

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The Contractor's failure to provide safe and reasonable pedestrian and vehicular access shall provide just reason to issue a stop work order to the Contractor with no additional working days added to the Contract.

20. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY

If the previous pedestrian facility was accessible to pedestrians with disabilities, the path provided during construction and/or temporary traffic control shall also be accessible.

This will consist of a continuous, unobstructed 48" wide pedestrian path of travel adjacent to the work site, preferably parallel to the same sidewalk that has been obstructed. There shall not be any abrupt changes in grade or terrain that could cause a tripping hazard or could be a barrier to wheelchair use. The Contractor shall install and maintain temporary concrete, asphalt or wood ramps to provide a safe path of travel for mobility-impaired pedestrians at locations where ramps have been temporarily removed or are needed to route pedestrians. Barriers and channelizing devices shall be detectable to pedestrians who have visual disabilities. These considerations include, but are not limited to, the following:

- The path of travel shall not have abrupt changes in grade, elevation, or terrain. The path of travel shall have a cross slope of 2% or less; running slope may be equal to that of the topography of the adjacent street.
- Any changes in level in a path of travel that is over ¼" – ½" height shall be beveled at a 45 degree angle to provide a smooth transition.
- Temporary ramps shall be a minimum of 48" wide, with a running slope ratio not to exceed 1:12 (one foot run for every inch of the curb). Sides of a ramp shall be protected where there is a drop off. For all ramps not meeting the definition of a *curb ramp*, handrails will be provided in conformance with Title 24 and the Americans with Disabilities Act Design Standards.
- For walkways in the pedestrian path that have less than 5' of clear width, there shall be provided passing spaces 5' wide every 200 ft. to provide adequate space for two pedestrians in wheelchairs to pass each other.
- Signposts, scaffolding and fencing and other supports shall be placed to provide an unobstructed path of travel that is 48" wide and 80" high.
- Closed trenches, temporary paving surfaces, walking surfaces, steel plates, etc. shall have a smoothly finished, firm walking surface made even with surrounding walkways. If plywood is used as a temporary walking surface, it will be a minimum of ¾" in thickness and it will be anchored using either a mechanical fastener, cold mix or asphalt so that it is stable and level with surrounding surfaces.
- When a sidewalk is closed and pedestrian traffic detoured, sidewalk signs indicating that the sidewalk, curb ramp, or both the sidewalk and curb ramp are closed are required. These signs shall be placed so as to provide ample warning of the detour to people with mobility impairments and minimize backtracking. Signs shall be placed so that they are visible from the sidewalk before the detour begins.

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- When a sidewalk is completely closed, a barrier that is detectable by a person with a visual disability traveling with the aid of a long cane shall be placed across the full width of the closed sidewalk.
- During detours, access shall be provided by directing all pedestrian traffic to the unaltered side of the street where marked crossings and usable curb ramps exist; if such elements do not exist, temporary marked crosswalks and temporary ramps shall be provided. Any plan proposing temporary marked crosswalks and ramps shall be approved in writing by the City Traffic Engineer or his or her designee.
- To protect pedestrians with visual disabilities using a mobility cane and to serve as a wheelchair stop, barriers shall have brightly contrasting colors marking each end and a ground rail running the length of each side of the barrier that is attached to the base.
- A-frames and other devices used for defining path of travel shall be connected and maintained to provide a stable guide to help a pedestrian with a visual disability negotiate a safe path while using a cane. These devices shall provide a continuous detectable edge at least 6" above the surface of the sidewalk or pathway, with the bottom of the edge a maximum of 2" above the ground or walkway surface. This edge should be firmly attached to the ground or to other devices.
- The bottom 3" of fencing material (e.g. chain link, plastic, etc.) shall be solid to provide a guide for pedestrians with visual disabilities and limit the likelihood that a long cane will be caught in the fence. This may be achieved by attaching a solid material to the bottom portion of the fence.
- During working hours, open excavations will not be allowed to adjoin or interrupt the pedestrian path. No open excavations will be permitted in pedestrian access areas overnight.
- Caution tape or its equivalent shall NOT be used by itself to delineate the path of travel or create a barricade.
- The Contractor shall provide notice to Fresno Area Express (FAX) at (559) 621-1424 twenty-four hours before engaging in work that will impede access to a FAX bus stop to allow the relocation of the bus stop to a temporary, accessible location.

Each project is unique and the Contractor is responsible for and will conduct a thorough review to ensure complete, safe, usable and accessible paths of travel.

Full compensation for all costs involved shall be included in the amount bid for the various items of work and no separate payment will be made.

21. COORDINATION BETWEEN CONTRACTORS

The Contractor shall coordinate his or her work at the site with work which may be done concurrently by other Contractors as required by Section 5-1.20 of the State Standard Specifications.

Full compensation for all costs involved shall be included in the amount bid for the various items of work and no separate payment will be made.

22. ADJUSTMENT OF EXISTING UTILITY FACILITIES

The following are for estimating purposes only, and the Contractor should field verify the exact number of facilities to be adjusted to finish pavement elevation.

The following facilities shall be adjusted to grade by the Contractor unless otherwise directed by the Engineer:

- (a) Sanitary Sewer Manhole
- (b) Storm Drain Manhole
- (c) Water Valve Casings and Lids

All other utilities shown on the Plans which may need adjustment to grade shall be done by their respective owners. All adjustments will be done after the paving operations. Contractor shall be responsible to identify the location with a physical marker and notifying the respective utility companies concerned; for PG&E, contact Mr. Dale Overbay at (559) 263-7373, for AT&T, contact Ms. Geneva McJunkin at (559) 454-4697 or Mr. David Scott at (559) 228-7020, and for FMFCD, contact Mr. Mark Will at (559) 456-3292.

23. HANDLING OF WATER MAIN

For projects that include installation of a water main, all pipe, fittings, valves and accessories shall be loaded and unloaded with hoists or skidding in order to avoid shock or damage. Under no circumstances shall such material be dropped. Pipe handled on skidways shall not be rolled or skidding against pipe on the ground.

Gaskets for push on joints to be stored shall be placed in a cool location out of direct sunlight.

24. CONSTRUCTION SCHEDULE

If included in the project, the first order of work shall be the installation of the water main. Contractor shall trench through existing pavement and no additional pavement areas beyond the normal trench width shall be removed. The contractor may commence remaining work after obtaining satisfactory results for the pressure test(s) on the water main.

25. ASPHALT CONCRETE MIX DESIGN APPROVAL

The Contractor shall submit to the Engineer a proposed mix design for each asphalt concrete mixture to be used at least two weeks prior to production of that asphalt concrete mixture. The proposed mix designs shall conform to the asphalt concrete mixture quality requirements specified in Section 39-2 of the State Standard Specifications.

The Contractor shall furnish test data in support of each proposed mix design including asphalt concrete quality requirements for California Test 305, Swell; California Test 307, Moisture Vapor Susceptibility; and, California Test 366, Stabilometer Value. The test data furnished shall be for an asphalt concrete mixture that conforms to the proposed target values for the asphalt binder content. The Contractor shall submit the following for each asphalt concrete mixture proposed for use under the contract:

- A. Aggregate and mineral filler:

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1. Target values for percent passing each sieve size for the aggregate blend. The proposed target values, for the specified type and aggregate size, shall conform to the aggregate gradation limits specified in Section 39-2.02, *Aggregate*, of the State Standard Specifications.

2. Results of tests for aggregate quality requirements specified in Section 39-2.02, *Aggregate*, of the State Standard Specifications.

3. Source of each aggregate to be used.

4. Percentage of each aggregate stockpile or hot bin to be used.

5. Gradation of each aggregate stockpile or hot bin to be used.

B. Asphalt binder:

1. Target value for asphalt binder content for each proposed asphalt concrete mixture.

2. Results of the asphalt binder quality tests as specified in Section 92, *Asphalts*, of the State Standard Specifications.

Asphalt concrete production for this project shall not begin until the Contractor has received written notification that the proposed mix design has been accepted by the Engineer.

Adjustments from one mix design to another shall not be made during the progress of the work, unless permitted in writing by the Engineer. The Contractor shall submit to the Engineer a proposed mix design for each new asphalt concrete mixture to be used at least two weeks prior to production of that mixture. Changes in stockpile or hot bin proportions to conform to aggregate grading requirements will not be considered changes in the approved mix design.

26. ARCHEOLOGICAL AND HISTORICAL FINDINGS

Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior.

Should the Contractor encounter, during his or her operations, any building, part of a building, structure, or object which is incongruous with its surroundings, he or she shall immediately cease operations in that location and notify the Construction Manager. The Construction Manager will immediately investigate the Contractor's finding and will direct the Contractor to either resume his or her operations or to suspend operations as directed.

Should the Construction Manager order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract modification (change order or supplemental agreement) as provided in the General Conditions.

27. SALVAGED ITEMS

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See Plans for locations of specific items to be salvaged. All salvaged material shall be delivered by the Contractor to the City Corporation Yard, located at 2101 “G” Street or to a location directed by the Engineer.

28. PERFORMANCE AND ASSURANCES

Contractor agrees to faithfully and expeditiously perform or cause to be performed all work as described in the plans and specifications, or as later amended and approved by City under this Contract, and to perform in accordance with applicable provisions of the law.

29. CHANGE ORDERS

Approval of any change order by the City is subject to Resolution No. 2017-158 and adopted by the City Council. Notwithstanding the inclusion of the City Standard Specifications, Section 3 entitled, “Changes in Work”, if this project is federally funded, the change order markup rates shall be based on the contractor’s overhead rates as negotiated in the base agreement or as agreed to in the Contractor’s Schedule of Values. If no agreement has been reached between the Contractor and the City, Overhead and Profit shall be negotiated with each change order. The City’s evaluation of profit shall be based on technical, cost, schedule and/or performance risk. Profit may be based on the base agreement if the nature of the work poses similar risks to those in the base agreement. However, in no case shall the value of the total mark-up exceed the mark up rates in the base agreement.

30. DUST CONTROL AND STORM WATER POLLUTION PREVENTION

It shall be the responsibility of the Contractor to prepare, obtain approval and implement all of the requirements of the latest Fugitive Dust Control Plan (FDCP) in accordance with the San Joaquin Valley Air Pollution Control District (District) Regulation VIII. Also it shall be the responsibility of the Contractor to prepare, obtain approval and implement all of the requirements of the latest State National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ and industry standards according to the State Water Quality Control Board (SWQCB).

Dust Control

The FDCP and maps must be prepared utilizing the latest requirements of the District. Once the FDCP and maps have been prepared, it shall be the responsibility of the Contractor to submit and obtain written approval by the District. Until a written approval has been obtained by the District, no construction activity shall commence on the project site. Once a written approval has been obtained, the Contractor shall submit to Construction Management a copy of the approved FDCP with all maps. The Contractor shall keep the FDCP current as required by the District. The Contractor shall keep a copy of the approved FDCP, and amendments thereto, at the job site and in the general business office of the Contractor. In addition, the Contractor shall make available to Construction Management copies of all amendments to the FDCP as prepared by the Contractor. The FDCP shall be made available upon request of a representative of the District or U.S. Environmental Protection Agency. Requests by the public shall be directed to the Engineer.

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Contractor must provide written notification to the District at least 48 hours in advance of any earthmoving activity. Record keeping is required by the District and must be kept for each day any dust control measure is used. Copies of record keeping forms and the Construction Notification form are available on the District's website at www.valleyair.org under Compliance Assistance/Dust Control. The Contractor shall be familiar with and shall have a copy of the District's *Regulation VIII – Fugitive Dust Control at Construction Sites*. Copies of the regulation may be obtained on line at the above mentioned web site.

Storm Water

It shall be the responsibility of the Contractor to comply with all of the requirements of the latest NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ according to SWQCB and standard industry practice. This includes, but is not limited to, preparing plans and application, maps as well as all necessary reporting on the SWQCB's Storm Water Multiple Application and Report Tracking System (SMARTS System). The Contractor, working with their certified Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer (QSD), will determine what would be the best course of action to comply with the latest State NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ. If the Contractor's QSD determines a SWPPP is the best course of action, it shall be the responsibility of the Contractor and their QSD to submit to Construction Management a completed SWPPP for review. Upon acceptance of the SWPPP document by Construction Management, the QSD shall prepare a Notice of Intention (NOI) application in the SWQCB's SMARTS System and upload all necessary documents and maps to be approved by the Legally Responsible Person (LRP). Until a written approval of the SWPPP has been obtained from the SWQCB, no construction activity shall commence on the project site. Upon obtaining written approval of the SWPPP, it shall be the responsibility of the Contractor to implement the SWPPP. Throughout the course of the project, the Contractor's certified Quality SWPPP Practitioner (QSP) shall conduct periodic inspections, testing, any reporting on the SMARTS System as well as coordinate with the QSD to update the SWPPP as necessary. At the conclusion of construction, it shall be the responsibility of the Contractor and his or her QSD/QSP to ensure the annual report has been updated on the SMARTS System as well as prepare the Notice of Termination (NOT) for City's approval. The Contractor shall keep a copy of the approved SWPPP, and amendments thereto, at the job site and in the general business office of the Contractor. In addition, the Contractor shall make available to Construction Management copies of all amendments to the SWPPP as prepared by the Contractor. The SWPPP shall be made available upon request of a representative of the Fresno Metropolitan Flood Control District, Regional Water Quality Control Board, State Water Resources Control Board or U. S. Environmental Protection Agency. Requests by the public shall be directed to the Engineer.

If the Contractor and/or his/her QSD determines that a SWPPP is not necessary, then it shall be the responsibility of the Contractor to provide a list of Best Management Practices (BMP) that are to be implemented during the Work to Construction Management. The Contractor shall implement the BMP in a timely manner and maintain throughout the duration of the project. The Contractor shall keep a copy of the BMP list and any modification to the list at the job site and in the general business office of the Contractor. In addition, the Contractor shall make available to the City copies of all modifications to the BMP list. The BMP list shall be made available upon request of a representative of the Fresno Metropolitan Flood Control District, Regional Water Quality Control Board, State Water Resources Control Board or U. S. Environmental Protection Agency. Requests by the public shall be directed to Construction Management.

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Notice of violation and/or fines for any non-compliance will be the responsibility of the Contractor.

**APPENDIX B
INSURANCE REQUIREMENTS**

Summary:

*Appendix B describes type and coverage amount required of a
successful bidder.*

INSURANCE REQUIREMENTS

- (a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than “A-VII” in the Best’s Insurance Rating Guide, or (ii) as may be authorized in writing by CITY’S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.
- (b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, 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 CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

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

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Appendix B – Insurance Requirements

Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

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

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

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

4. **BUILDERS RISK** (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. **(Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)**

5. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

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

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR 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

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR 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) CONTRACTOR shall provide a financial guarantee, satisfactory to CITY’S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General, Contractors Pollution Liability and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. CONTRACTOR shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General

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Appendix B – Insurance Requirements

- endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) All such policies of insurance shall be endorsed so the CONTRACTORS' insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.
 - (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
 - (vi) For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
 - (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
 - (viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.

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

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

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONTRACTOR.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, CONTRACTOR must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

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Appendix B – Insurance Requirements

MAINTENANCE OF COVERAGE - If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately 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 hereunder shall in any way relieve CONTRACTOR 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.

The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, 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 CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, its principals, officers, agents, employees, persons under the supervision of CONTRACTOR, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS -If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONTRACTOR shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONTRACTOR shall ensure that CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONTRACTOR, and CITY, prior to commencement of any work by the subcontractor.

**APPENDIX C
FEDERAL CONDITIONS**

Summary:

*Appendix C describes the federal conditions required of
Federal Transit Administration (FTA) funded projects.*

**FEDERAL CONDITIONS
FOR CONSTRUCTION
GREATER THAN \$250,000**

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

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

U.S.C. § 5323(l) on the contractor, to the extent the Federal Government deems appropriate.

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

ACCESS TO RECORDS AND REPORTS

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

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

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

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

FEDERAL CHANGES

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

TERMINATION

(1) Termination for Convenience: The City of Fresno may terminate this contract, in whole or in part, at any time by written notice to the contractor. The contractor shall be paid its

costs, including contract close out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to be paid by contractor. If the contractor has any property in its possession belonging to the City of Fresno, the contractor will account for the same, and dispose of it in the manner the City of Fresno directs.

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

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

CIVIL RIGHTS

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

(1) Nondiscrimination – In accordance with 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, religion, national origin, sex, disability, or age. 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 et seq., 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) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(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.

SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

DOL Goals for Minority Participation for Each Trade by Region	DOL Goals for Female Participation in Each Trade Nationwide
------------------------------------------------------------------	----------------------------------------------------------------

26.1% (Fresno, CA)	6.9%
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(1) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

(2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

(3) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(4) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the city limits of Fresno, California.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION
CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

(1) As used in these specifications:

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839
Appendix C – Federal Conditions

(a) “Covered area” means the geographical area described in the solicitation from which this contract resulted;

(b) “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(c) “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

(d) “Minority” includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in

an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the "FEDERAL REGISTER" in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

(f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- (h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- (n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

(11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

(14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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 applies 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 13%. A separate contract goal has not been established for this procurement.

INCORPORATION OF FTA 4220.1F TERMS

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

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

SUSPENSION AND DEBARMENT

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

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

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

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

compliance in its lower tier covered transactions.

BUY AMERICA (FOR AWARDS EXCEEDING \$150,000)

(1) The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

(2) A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

The certificate titled *Buy America Certification* must be completed and returned with your bid. This certificate is located on page 27.

RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

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

(2) Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s Maintenance Manager. This decision shall be final and conclusive unless 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 in hereunder, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the City's decision.

LOBBYING

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

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839
Appendix C – Federal Conditions

(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.

The certificate titled *Non Lobbying Certification* must be completed and returned with your bid. This certificate is located behind the bid form page 23.

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.

CARGO PREFERENCE REQUIREMENTS

Use of United States-Flag Vessels. The contractor agrees:

(1) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

(2) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C. 20590 and the FTA recipient (through the contractor in the case of a subcontractor’s bill-of lading).

(3) To include these requirements in all subcontracts issued pursuant to the contract when the subcontract may involve the transport of equipment, materials, or commodities by ocean vessel.

FLY AMERICA

Fly America Requirements:

(1) Definitions. As used in this clause- “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas. “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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

necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

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

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

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

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

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) Minimum wages –

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

between the contractor and such laborers and mechanics.

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

(ii)

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the

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

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

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

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

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

(v)

(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be

employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

(2) *Withholding* - City Utilities shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld

from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States

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

(3) Payrolls and basic records –

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

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to City Utilities for transmission to the Federal Transit Administration as requested. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This

information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

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

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

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

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

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

or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are

employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility –

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

BONDING REQUIREMENTS

For Bonding requirements, refer to City Utilities' bonding requirements for bid guaranty and performance bond, including the required performance bond form, found in the contract bid documents.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor

and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - City Utilities shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

SEISMIC SAFETY {If Required}

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

ENERGY CONSERVATION

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

RECYCLED PRODUCTS

(1) The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource

Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE {If Required}

(1) Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

ADA ACCESS

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

SAFE OPERATION OF MOTOR VEHICLES

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

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

PROMPT PAYMENT

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

Note: Review “Instruction to Bidders” for State of California’s prompt payment requirements.

VALUE ENGINEERING

The Contractor is encouraged to develop, prepare, and submit value engineering change proposal (VECP’s) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP’s, in accordance with the following:

(1) VECP’s cannot impair any essential function or characteristic of the work to be performed, such as functionality, safety, service life, reliability, economy of operation, ease of maintenance, and necessary standardization of features.

(2) VECP Submission: At a minimum, the Contractor shall submit the following information:

- (a) A description of the difference between the existing contract requirement and that proposed the comparative advantages and disadvantage, a justification when an item’s function or characteristics are being altered, and the effect of the change on the end item’s performance.
- (b) A separate, detailed cost estimate for the affected portions of the existing contracts requirements and the VECP.
- (c) A description and estimate of costs City may incur in implementing the VECP.
- (d) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, including any effect on the contract completion time or delivery schedule.

(3) Share Savings: The Contractor and City shall share the net savings resulting from any VCEP accepted and implemented as follows:

- (a) City will not share in collateral savings or future savings resulting from the change proposal. Collateral savings are those saving anticipated by City exclusive of the contract; such as operations, maintenance, and logistical support. Future savings would be those resulting from the Contractor’s value engineering proposals on future contracts for the same deliverables.
- (b) City and the Contractor shall share the ratio of 50/50 percent of net savings. Net savings are defined as gross savings less the Contractor’s cost for developing and implementing and proposal as well as any City’s costs resulting from the change; such as but not limited to, review, implementation, and inspections. Gross savings

include Contractor's labor, material, equipment, overhead, profit, and bond.

VETERANS EMPLOYMENT

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

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

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

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

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

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

FTA PROTEST NOTIFICATION

A protestant must exhaust all City of Fresno Procurement administrative procedures and remedies before pursuing a protest with the FTA.

(1) Any and all protests shall be in writing and shall be filed with the Purchasing Manager with the City of Fresno. A protest relating to the process for determining the most responsive and responsible contractor shall be filed within five (5) calendar days after the protestor knows or should have known the basis of the determination. The Contract Officer shall respond to a protest within fourteen (14) calendar days after the receipt of the protest. The Purchasing Manager may grant the Contract Officer an extension for the response if warranted. A request for reconsideration of any and all determinations by the

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Contract Officer shall be filed with the Purchasing Manager within seven (7) calendar days after the receipt of the determination.

(2) A protest shall include:

- (a) The name, address, and telephone number, including FAX number if available, of the protestor;
- (b) The signature of the protestor or authorized representative;
- (c) Identification of the contract/solicitation;
- (d) A detailed statement of the legal and/or factual grounds of protest including copies and/or citations of relevant documents, and;
- (e) The form of relief requested.

(3) If any of the above information is omitted or incomplete, then the Protestor shall be notified, in writing, within two (2) calendar days after that determination, and the Protestor shall have two (2) calendar days in which to remedy the specified problem.

(4) The City will not make award prior to the resolution of a protest, or open bids prior to resolution of a protest filed before bid opening unless the Purchasing Manager determines in writing that it is in the best interests of the City or in keeping with Item 7 of this procedure to do otherwise. Potential contractors will be advised of a pending protest if the protest is filed before award.

(5) The Purchasing Manager may allow for an informal conference on the merits of a protest with all interested parties allowed to attend. Interested parties include all bidding contractors, and may also include a subcontractor or supplier provided they have a substantial economic interest in a portion of the IFB or RFP.

(6) The Purchasing Manager shall respond "in writing", in detail, to each substantial issue raised in the protest. The Purchasing Manager has the sole authority to make determinations for the City, and a determination shall be considered final when it is labeled as such. A request for reconsideration will be allowed by the Purchasing Manager if he determines that data has become available that was not previously known, or that there has been an error of law or regulation.

(7) The City may proceed with procurement when a protest is pending if the City determines that:

- (a) The items to be procured are urgently required;

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(b) Delivery or performance will be unduly delayed by failure to make the award promptly; or

(c) Failure to make award will otherwise cause undue harm to the grantee for the Federal Government.

(8) FTA will only entertain a protest that alleges:

(a) The City failed to have or to adhere to its protest procedures, or failed to review a complaint or protest; or

(b) Violations of Federal law or regulation.

(9) A protest to FTA must be filed in accordance with FTA Circular 4220.1F, available from the Contract Officer. Specifically, protestors shall file a protest with FTA Region 9 or FTA Headquarters Office no later than five (5) days after a final decision is rendered under the City's protest procedure. In instances where the protestor alleges that the City failed to make a final determination on the protest, protestors shall file a protest with FTA not later than five (5) calendar days after the protester knew or should have known of the grantee's failure to render a final determination on the protest.

A protest filed with FTA shall:

(a) Include the name and address of the protestor.

(b) Identify the grantee, project number, and the number of the contract solicitation.

(c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to have or adhere to protest procedures, failure to review a complaint or protest; or Violation of Federal law or regulation.

Include a copy of the local protest filed with the grantee and a copy of the grantee's decision, if any.

APPENDIX D
Federal Davis-Bacon Wage Rates

Summary:

*Appendix D provides the current
Federal Davis-Bacon Wage Rates*

(Attached Separately)

The link below is for details of prevailing wage rates

SAM.GOV
California State Prevailing Wage

**APPENDIX E
STATEMENT OF WORK**

Summary:

Appendix E provides the Explanation of Bid Items

SECTION 1: EXPLANATION OF BID ITEMS

The unit price bid per unit measure of work shall include all costs of labor, equipment, and materials necessary for the furnishing, installing and/or constructing complete and in place and operating in accordance with the Plans and Specifications for the City of Fresno for all work listed in the bid items.

Bid Item No. 1 - Mediator (Owner's 50% Share, See Page 61 of General Conditions)

This item shall be a bid a lump sum for Mediator. Reference is made to "Mediator" on page 61 of the General Conditions.

This work shall consist of paying the City's share of the costs of the Mediator, in conformance with the provisions in the Specifications, and as directed by the Engineer.

The dollar amount listed on the Bid Proposal form is an estimate only and will be included in each bidder's Bid Proposal. This item will not be paid unless a Mediator is used and will only be paid up to the amount of the actual City share of the cost of the Mediator.

Bid Item No. 2 - Contractor's Pollution Liability Insurance (see page B-3 Insurance Requirements)

This item is provided to account for payment for Contractor's Pollution Liability which is required for this project unless waived in writing by the City's Risk Manager or his/her designee. This item will be used only for this purpose. The dollar amount listed on the Bid Proposal Form is an estimated allowance set aside by the City and shall be included on each Bidder's Bid Proposal sheets.

A. If the Contractor wishes to apply for waiver of Contractor's Pollution Liability he/she shall do so in writing, delivering the request to the Construction Manager no later than five (5) days after his/her receipt of Contract Documents. Time allowed for return of Contract Documents by the Contractor to the Construction Management office shall not be extended on account of the Contractor's request for said waiver.

B. The Contractor will be paid only for the actual amount invoiced by and paid to the policy provider. The policy provider's invoice shall be submitted for payment and must clearly indicate the premium paid which is associated only to this project. In no case shall the payment under this item exceed the amount shown on the Bid Proposal. If the Contractor's actual cost of Contractor's Pollution Liability exceeds the amount shown on the Bid Proposal, the overage shall be spread over the other remaining Bid Items.

C. The value of work may be less than the amount shown on the Bid Proposal sheet, and it could be that Contractor's Pollution Liability is waived and no payment made. Accordingly, payments

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to the Contractor for Contractor's Pollution Liability will likely differ substantially from the estimated Allowance which is included in the Bid Proposal. If Contractor's Pollution Liability is waived, then no payments will be made to the Contractor under this Bid item and the Contract Price will be reduced by the full amount of the item included in the Bid Proposal for Contractor's Pollution Liability.

The Contractor shall have no claim for anticipated overhead or profit should Contractor's Pollution Liability be waived, or should the value of this item be less than anticipated by the Contractor.

Bid Item No. 3 - Supplemental Work

This bid item is provided to account for supplemental work which may be required due to differing job site conditions not provided for on the Contract Documents or in these Specifications and other unforeseen work which the Construction Manager determines that it is necessary to allow for the work required by the Contract Documents to proceed as intended without interruption. This item will be used only for this purpose. The dollar amount listed on the Bid Proposal Form is an estimated allowance set aside by the City and shall be included on each Bidder's Bid Proposal sheet.

Bid Item No. 4 - Construction Phasing

This item shall be bid a lump sum and shall conform to the provisions of Section 9-1.16D1-3 2018 Edition of the State Standard Specifications and these Specifications.

This item shall consist of covering the Contractor's cost for contract documents and for the moving of personnel, equipment, supplies and incidentals to the project site.

Fresno Area Express (FAX) provides public transportation to the residents of the City of Fresno. The work being conducted herein is within the limits of bus operations, parking, and maintenance critical to the continued operations of the public transit 7-days a week. This bid item includes coordination and accommodation of ongoing bus operations (day and night). This project shall be phased to minimize disruption to operations of the bus wash, fueling station, bus yard, employee parking, and Administration building.

Bus fueling and cleaning operations occur in the bus wash building. The building has two lanes which are operated nightly for bus cleaning, compressed natural gas (CNG) fueling and washing. Each lane has a separate fuel dispenser, vacuum system and bus wash gantry. Buses egress is from the east and exit on the west side of the building. The exterior of the bus wash has two public CNG fueling dispensers. Bus cleaning and fueling operations occur nightly, 7 days a week. In coordination with FAX, the bus wash may be closed for construction as needed between the hours of 5 am and 6 pm.

As the bus wash is critical for FAX operations, the Contractor includes the following in the cost of the work:

1. The CNG fueling system must be operational nightly for fueling operations. The CNG fueling system may be shut down during the day in coordination with FAX with 72 hours notice.
2. Each bus wash lane may be shut down for service entirely to facilitate

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839
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construction for 10 hours each (7am – 5pm). Bus lanes must be open for fueling at the end of each day. The buses will utilize the exterior CNG dispensers to fuel during this period. The contractor shall work expeditiously, including off hours/weekend work, to complete the necessary improvements and restore use of the bus lanes. Should the contractor exceed the duration, LD will be \$250.00 per day

3. The bus vacuum system will be replaced and not operable for an extended period of time. The vacuum system will be restored and returned to FAX for temporary service during construction within 90 calendar days upon decommissioning of the existing system. Should the contractor exceed the duration, LDs will be \$100.00 per day
4. The bus washing system will be replaced and not operable for an extended period of time. The bus washing system will be restored and returned to FAX for temporary service during construction within 90 calendar days upon decommissioning of the existing system. Should the contractor exceed the duration, LDs will be \$100.00 per day.

Bus operations and dispatch are conducted in the FAX Administration building. Continued operations are critical to providing transit service 7 days/week. There are three entrances to the building: two on the south side and one on the east side. A minimum of two paths of travel must be maintained at all times for emergency purposes. At least one entrance on the south side of the building must have a protected path of travel to the bus yard during construction.

The Contractor shall submit a phasing plan for the employee parking lot construction. The employee parking lot construction will be phased to allow for some employee parking during the full construction duration.

Bid Item No. 5 - Site Demolition

This item shall include (on and offsite, above and underground demolition) work required to modify the existing condition for the Project. Work includes, but not limited to on- and off-site cutting, removal, disposal, capping, protect-in-place work, as well as underground wet and dry utility demolition. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum price.

Bid Item No. 6 - Site Work

This item shall include, but not limited to site preparation, erosion control, on- and off-site improvement, hard and soft scape Portland cement concrete and Asphalt concrete paving, curbs, gutters, walkways, driveways, parking stalls, fencing, site signage and parking lot stripping, installation and utility connection of OFCI pre-fab guard booth, bollard, flagpole, bike hitch, bicycle lockers (OFCL), etc. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

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Bid Item No. 7 - Entrance Gate and Installation

This item shall include vehicle entry gate, controls and installation. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 8 - Monument Sign

This bid item shall include employee entry gate monument sign, including footing, letters, concrete, anti-graffiti coatings and installation. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 9 - Site Structure

This item shall include the parking PV canopy frames, foundations and complete PV panels. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 10 - Site Wet Utilities

This item shall include stormwater drainages system, domestic water system, fire water system, sanitary sewer system, and their associated piping, fittings, structures and appurtenances for complete systems. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 11 - Landscaping and Irrigation

This item shall include but not limited to providing landscaping, irrigation, softscape, controls, bike hitch posts, and installation. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 12 - Site Electrical

This item shall include but not limited to including power serve equipment, feeders, providing secondary power distribution system, main electrical equipment & feeders, site distribution feeders, OFCI guard booth panels & feeders, PV equipment & circuitry, misc. site power including but not limited to provide power to motorized gate, irrigation equipment, site lighting etc., grounding, electrical trenching/duct bank, feeders, wires and conduits. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 13 - Telecommunication and Security Distribution System

This item shall include, but is not limited to: card readers, CCTV, cameras, conduits, controls, low voltage wiring, security systems, telecommunication systems, racks, cabinets, ladder rack, trenching/ductbank wires and conduits, fiber, IT equipment and related equipment

Bid Item No. 14 - Fire Alarm System

This item shall include, but not limited to, a digital addressable fire alarm system, related components, panels, wiring, conduits, and related equipment. Connect to campus Silent Knight system. This bid item includes all design, deferred approvals, plan check fees, permits and permit fees for the Fire Alarm system. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 15 - New Fuel & Wash Annex Building

Provide complete structural, mechanical, plumbing, electrical, fire-life safety, communications, thermal & moisture protection, electronic safety & security systems, fenestration, doors & windows, ceilings, lighting fixtures, interior finishes, signages, and equipment as delineated in the Contract Document for a complete functional new addition to the existing bus wash facility. Full

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compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 16 - HVAC Systems

This item shall include, but is not limited to: All heating, ventilation, and air conditioning mechanical systems, Split systems, fans, vents, ductwork, diffusers, dampers, wiring, controls, thermostats, and related misc. items and equipment. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 17 - Plumbing Systems

This item shall include, but is not limited to, all plumbing systems, piping, fixtures, water heaters, tanks, bus wash sand/oil interceptor, misc equipment, valves, etc and installation. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 18 - Existing Admin Building Renovation

This item shall include:

- a. Converting an existing office, fare counting room, and exterior fare counting space into a conference room and the operations manager's office. Provide new acoustic ceiling, light fixtures, finishes, telephone/data outlets as delineated in the Contract Documents. Modify existing HVAC ductwork and reinstall existing diffusers. Modify existing fire alarm and electronic security systems to accommodate the new space arrangement.
- b. Renovating the existing restrooms as delineated in the Contract Documents. New plumbing fixtures installed shall comply with ADA requirement.
- c. This work shall be done during FAX off hours 5:00pm – 4:00am

Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 19 - Existing Toilet & Locker Facility Renovation

This item shall include renovating the existing toilet and locker rooms that include, but not limited to, new exhaust system, new plumbing fixtures, new restroom accessories, new lockers, new floor drains, new ceiling, light fixture, new doors with louvers, new windows, and finishes. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 20 - Existing Bus Wash Facility Renovation

This item shall include, but not limited to, demolition and disposal of existing bus wash equipment and associated accessories, new trench/wash pit, modification of existing trench/pit, paving, foundation, and complete structure to support the bus wash facility extension. Modify existing fire sprinkler, plumbing and piping pertaining to industrial water, waste/drain, recycled water, vacuum system piping, and systems as required. New electrical equipment/panel board, feeders, and provide power to new and existing equipment, new lighting, and electronic security systems. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 21 - New Vacuum Equipment and Installation

This item shall include removing and disposing of existing equipment and provide a new complete vacuum equipment system and installation. The work shall provide Owner a functional and

FRESNO AREA EXPRESS FACILITY IMPROVEMENT PROJECT, Bid File No. 3839
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operational system upon installation as delineated in the Contract Documents. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Bid Item No. 22 - New Bus Washing Equipment and Installation

This item shall include removing and disposing of existing bus wash equipment system and provide new complete bus wash systems. The work shall provide Owner a functional and operational system upon installation as delineated in the Contract Documents. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the lump sum.

Full compensation for furnishing all labor, material, tools, and equipment shall be included in the square foot basis. Final quantiles to be paid will be determined by the Engineer.

Bid Item No. 23 - Fire Sprinklers

This item shall include fire sprinkler system design, engineering, permitting and all equipment/components necessary a full functioning fire sprinkler system as required by the Contract Documents. This bid item includes all deferred approval design, drawings, permits, plan check fees, permit fees, etc. Full compensation for furnishing all labor, material, tools, and equipment shall be included in the unit price.

Bid Item No. 24 - Stormwater Filtration System Construction

This item shall include the installation of a structural stormwater best management practice (BMP) device on- or off-line of the existing 30" diameter RCP storm drain main in an approved location in the north end of the parking lot, downstream of all on-site storm drain inlets, with appropriate connecting pipes and structures for a complete installation. The structural BMP shall be able to handle a treatment flow of 14.24 cfs from the approximately 29-acre stormwater

Bid Item No. 25 – SWPPP planning and implementation

This item shall be bid lump sum and shall conform to the provisions of Item 29 of Division IV Special Conditions.

This item shall consist of implementation and maintenance of the control measures (Best Management Practices – BMP's) as stipulated in Item 30 of Division IV Special Conditions to reduce or eliminate pollutants and sediment in storm water discharges from or within the construction site. The Contractor shall be responsible throughout the duration of the project for installing, inspecting and maintaining the control measures (Best Management Practices – BMP's) and for properly removing and disposing of temporary control measures.

Full compensation for complying with and implementing the SWPPP-BMP's, including all labor, materials, tools, equipment, and incidentals, and all work necessary to place, maintain, and remove BMP's as required, and to carry out all training, inspection, monitoring programs, and to perform any other work necessary to comply with the requirements in Item 30 of Division IV Special Conditions, shall be included in the lump sum amount bid for this Bid Item and no additional payment will be made.

**APPENDIX F
STATEMENT OF WORK**

Summary:
Appendix F PLA General Conditions

Appendix F

GENERAL/PLA CONDITIONS

GENERAL CONDITIONS

DEFINITIONS (NONFEDERAL)

Wherever used in the Specifications, including the Instructions to Bidders and the Bid Proposal, or any of the Contract documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

1. "Bidder" shall mean and refer to each person or other entity submitting a bid proposal, whether or not such person or entity shall become a Seller by virtue of award of a Contract by the Buyer.
2. California Building Code (CBC), Latest Edition; California Plumbing Code (CPC), Latest Edition; California Mechanical Code (CMC), Latest Edition; National Electrical Code (NEC), Latest Edition; California Fire Code (CFC), Latest Edition; California Health and Safety Code (as applicable). For purposes of this definition, "Latest Edition" shall mean the edition, and to the extent, adopted by the City through the City of Fresno Municipal Code.
3. "City," "Buyer," "Owner," "Vendee," "City of Fresno" shall each mean and refer to the City of Fresno, California.
4. "City Standard Specifications" - City of Fresno, Standard Specifications, Department of Public Works, dated September, 2010 and as amended from time-to-time.
5. "Construction Manager" shall mean and refer to the Owner's authorized representative at the Job Site, in responsible charge of administering the Contract. The Construction Manager shall be the single point of contact for all correspondence, submittals, progress payment requests, and contacts to and from the Contractor.
6. "Contract," "Contract Documents" shall mean and refer to these Specifications, including the Instructions to Bidders, the Bid Proposal and any addenda thereto, the Agreement and all other standard Specifications, Buyer's Specifications and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
7. "Contractor," "Seller," "Vendor," "Supplier" shall each mean and refer to each person or other entity awarded a Contract hereunder and named or to be named in the Agreement with the Buyer to furnish the goods or services, or both, to be furnished under the Contract.
8. "Council," "City Council" shall each mean and refer to the Council of the Buyer.
9. "Engineer," "City Engineer," shall mean and refer to the City Engineer and any duly authorized representative.
10. "Goods," "Merchandise" shall each mean and refer to the equipment, material, article, supply or thing to be furnished by the Seller under the Contract.
11. "Purchasing Manager" shall mean and refer to the Purchasing Manager of the Buyer.
12. "Specifications" shall mean and refer to all of the Contract Documents.
13. "State Standard Specifications" - State of California, Department of Transportation, Standard Specifications, Latest Edition.
14. "Working day" shall mean and refer to City regular business day.

CITY OF FRESNO COMMUNITY WORKFORCE AGREEMENT

This section refers to the City of Fresno's Community Workforce Agreement, dated September 29, 2021.

DEFINITIONS:

1.12 "Project" means a City awarded public works project as defined in California Labor Code Section 1720, where the engineer's estimate of the total cost of the project exceeds one million dollars (\$1,000,000). All Construction Contracts required to complete an integrated Project shall be considered in determining whether this threshold is met. For the purpose of application of this threshold to Job Order Contracts, the threshold shall be applied to each job order, rather than to the job order contract aggregate maximum; any individual job order above the threshold shall require application of this Agreement to such individual job order. The City and the Trades Council may mutually agree in writing to add additional projects or components to be covered by this Agreement.

ARTICLE V, PRE-JOB CONFERENCES:

5.1 Timing: The Project Manager shall; convene and conduct, at a location and time mutually agreeable to the Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues set forth below, at least fourteen (14) calendar days prior to:

- (a) The commencement of any Project work, and
- (b) The commencement of Project work on any subsequently awarded Construction Contract.

ARTICLE VII, UNION SECURITY:

7.2 The Contractors/Employers shall make and transmit all deductions for Union dues, fees, and assessments that have been authorized by employees in writing in accordance with the applicable Master Agreement. This Agreement does not require any employee of a non-Union Contractor/Employer to join a Union or to pay dues or fees to a Union as a condition of working on a Project; however, nothing in this Article is intended to supersede the independent requirements of the applicable Master Agreements as to Contractors/Employers signatory to such Master Agreements and as to employees of those Contractors/Employers who are performing Covered Work.

ARTICLE IX, LOCAL HIRING PROGRAM:

9.4 Percentage Requirements: For each Project, each Contractor shall make best faith efforts to satisfy the following percentage requirements (the "Percentage Requirements"):

9.4.1 at least 50 percent of all journey-level Project work hours performed by City Residents;

9.4.2 at least 55 percent of all apprentice-level Project work hours performed by City Residents;

9.4.3 at least 30 percent of all apprentice-level Project work hours performed by New Local Apprentices.

LIQUIDATED DAMAGES FOR LOCAL HIRING PROJECT VIOLATIONS

Upon a final determination by the City Manager, or designee, that a Contractor has materially violated the Local Hiring Program percentage requirements terms of the Contract, and after due notice of this determination is given to the Contractor, liquidated damages, on account of non-compliance with the Project Labor Agreement requirements, may be withheld by the City from progress payments, or the final payment, due to the Contractor for work performed under the Contract. Depending upon the seriousness or willfulness of the violation, the amount of liquidated damages shall be not less than 25%, and not more than 100%, of the full dollar amount of the local resident's prospective wages involved in the violation as determined by the Project Labor Agreement Administrator.

A copy of the City's community Workforce is attached.



RESOLUTION NO. 2021-242

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, APPROVING A PROJECT LABOR
AGREEMENT FOR CITYWIDE PUBLIC WORK OF
IMPROVEMENT PROJECTS (THE "RANDY L. GHAN ACT")

WHEREAS, the City of Fresno is experiencing poor economic conditions created by the COVID-19 pandemic and faces significant infrastructure needs; and

WHEREAS, the Project Labor Agreement (Agreement) provides uniform wages, benefits, overtime pay, hours, working conditions, and work rules for work on major construction projects, as well as providing reliable and uninterrupted qualified workers at predictable costs; and

WHEREAS, an Agreement will help to develop qualified workers in the construction trades and include people who are historically underrepresented in the trades; and

WHEREAS, the Agreement for citywide public work of improvement projects, requires employment of local, economically disadvantaged, apprentices, as well as veterans, women and minorities, to the extent permitted by legal and funding restrictions.

WHEREAS, City staff, the Building Trades Council and the ad hoc City Council committee negotiated the Project Labor Agreement as presented to the City Council

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of
Fresno as follows:

1. Approves the Agreement in substantially the form attached hereto as

1 of 3

Date Adopted: 09/16/2021
Date Approved: 09/16/2021
Effective Date: 09/16/2021

Resolution No. 2021-242



Exhibit A.

2. Authorizes the City Manager, or designee, to execute the Agreement.
3. Directs administrative staff to implement and carry out the provisions of the Agreement.
4. This resolution shall be effective upon final approval.

* * * * *



STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, BRIANA PARRA, Interim City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 2nd day of September, 2021.

AYES :Arias, Esparza, Karbassi, Maxwell, Soria, Chavez
NOES :Bredefeld
ABSENT :None
ABSTAIN :None

Mayor Approval:	<u>N/A</u>	<u>2021</u>
Mayor Approval/No Return:	<u>N/A</u>	<u>2021</u>
Mayor Veto:	<u>September 13th</u>	<u>2021</u>
Council Override Veto:	<u>September 16th</u>	<u>2021</u>

BRIANA PARRA, CMC
Interim City Clerk

BY: Briana Parra 9/27/2021
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Brandon M. Collet 9/27/21
Brandon M. Collet Date
Senior Deputy City Attorney

Attachment: Exhibit A - Community Workforce Agreement

COMMUNITY WORKFORCE AGREEMENT FOR THE CITY OF FRESNO

INTRODUCTION/FINDINGS

This Community Workforce Agreement is entered into this 29TH day of SEPTEMBER, 2021, by and between the City of Fresno (hereinafter the "City"), and the Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council (hereinafter the "Trades Council") and its affiliated Unions that have executed this Agreement (referred to collectively herein as the "Union(s)"). Contractors and subcontractors of all tiers who work on City construction projects covered by this Agreement (hereinafter the "Contractor(s)/ Employer(s)"), shall become signatory to this Agreement by signing the "**Agreement to be Bound**" attached hereto as **Addendum A**.

A central purpose of this Agreement is to provide employment and training opportunities that build pathways into high-quality, sustainable construction careers for local workers, to create a pool of skilled construction labor for future City construction projects, to develop the regional workforce and economy, and to combat unemployment and underemployment in the region. Equally important, this Agreement is designed to promote the efficiency of construction operations through the use of skilled labor resulting in quality construction outcomes, and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of City Projects covered by this Agreement.

WHEREAS, this Agreement encourages construction employment and training opportunities in ways calculated to mitigate the harms caused by geographically concentrated poverty, unemployment and underemployment in economically disadvantaged areas and among City residents; and

WHEREAS, this Agreement reflects a commitment by all parties to diversity, workforce equity, and open opportunity in employment and training on City-funded projects; and

WHEREAS, the City places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and military veterans, and recognizes the ability of local pre-apprenticeship and apprenticeship programs to provide meaningful and sustainable career pathways in the construction industry; and

WHEREAS, the timely and successful completion of City Projects is an important fiduciary responsibility of the City of Fresno; and

WHEREAS, large numbers of workers of various skills will be required in the performance of construction work on City Projects and the timely and successful completion of City Projects is of the utmost importance to meet the needs of the City and avoid increased costs from delays in construction; and

WHEREAS, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; and

WHEREAS, it is recognized that on City Projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption may be substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the City, the Unions, and the Contractors/Employers are best served when construction work proceeds in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractors/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on City Projects and to encourage close cooperation among the Contractors/Employers and the Unions so that a satisfactory, continuous and harmonious relationship will exist; and

WHEREAS, the parties seek to avoid the tensions that would arise on City Projects if Union and non-union workers of different employers were to work side by side on City Projects, potentially leading to labor disputes that could delay completion of City Projects; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of City Projects, insofar as a legally binding agreement exists between the Contractors/Employers and the Unions, except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event the provisions of this Agreement shall prevail; and

WHEREAS, the contract(s) for construction work on City Projects will be awarded in accordance with the applicable provisions of all state, local and federal laws; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work toward the mutually satisfactory completion of the City Projects;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE I **DEFINITIONS**

1.1 "Agreement" means this Community Workforce Agreement.

1.2 "Agreement to be Bound" means the agreement (attached hereto as Addendum A) that shall be executed by each and every Contractor/Employer as a condition of working on a Project.

1.3 "City" means the City of Fresno, California and its governing board, officers, agents and employees, including managerial personnel.

1.4 "City Resident" means an individual domiciled in the City. "Domiciled" has the meaning set forth in section 349(b) of the California Election Code, which cannot be a post office box.

1.5 "Completion" means that point at which there is Final Acceptance by the City of a Construction Contract and the City has filed a Notice of Completion. For purposes of this definition, "Final Acceptance" means that point in time at which the City has determined upon final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents and the City has executed a written acceptance of the work.

1.6 "Construction Contract" means the public works or improvement contract(s) (including design-bid, design-build, lease-leaseback or other contracts under which construction of City Projects is done) awarded by the City that are necessary to complete City Projects.

1.7 "Contractor(s)/Employer(s)" or "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation (including the prime contractor, general contractor, construction manager, project manager, design-build entity, lease-leaseback entity or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the City with respect to the construction of any part of City Projects, and all contractors and subcontractors of any tier.

1.8 "Covered Work" means work on a Project that is described in Section 2.3, and not excluded pursuant to Section 2.4.

1.9 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.10 "New Local Apprentice" means a City Resident who both (i) is enrolled (or can be immediately enrolled) in a state-approved joint labor-management apprenticeship program and has progressed less than halfway toward the work hours needed to graduate from such program; and (ii) is a graduate of a Trades Council-recognized pre-apprenticeship program.

1.11 "Party" means the City, the Trades Council, and the Unions.

1.12 "Project" means a City awarded public works project as defined in California Labor Code Section 1720, where the engineer's estimate of the total cost of the project exceeds one million dollars (\$1,000,000). All Construction Contracts required to complete an integrated Project shall be considered in determining whether this threshold is met. For the purpose of application of this threshold to Job Order Contracts, the threshold shall be applied to each job order, rather than to the job order contract aggregate maximum;

any individual job order above the threshold shall require application of this Agreement to such individual job order. The City and the Trades Council may mutually agree in writing to add additional projects or components to be covered by this Agreement.

1.13 "Project Manager" means the person(s) or entity(ies) designated by the City to oversee all phases of construction on a Project and the implementation of this Agreement.

1.14 "Trades Council" means the Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council.

1.15 "Transitional Housing" means housing the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months.

1.16 "Union" or "Unions" means the Trades Council and its affiliated local unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

ARTICLE II **SCOPE OF AGREEMENT**

2.1 **Parties:** This Agreement applies to and is limited to all Contractors/Employers performing work under a Construction Contract on a Project (including subcontractors at any tier), and their successors and assigns, the City, the Trades Council, and its affiliated Unions signatory to this Agreement.

2.2 **Applicability:** This Agreement governs all Construction Contracts awarded on City Projects. For purposes of this Agreement, Construction Contracts shall be considered Completed as set forth in Section 1.5, except when the City directs a Contractor to engage in repairs, warranty work, modifications, or punch list work under a Construction Contract or when a Contractor performs work under a change order for a Construction Contract.

2.2.1 The terms of this Agreement will cover, and will fully apply to, any Contractor performing Project work, without regard to whether that Contractor performs work at other sites on either a union or non-union basis. This Agreement shall not apply to any work of any Contractor other than the Project work specifically covered by this Agreement. No Contractor shall be required to become signatory to a Union Schedule A Agreement as a result of performing Project work.

2.3 **Covered Work:** This Agreement covers, without limitation, all site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting or repair of buildings, structures and other works, and related activities for a Project that is within the craft jurisdiction of one of the Unions and that is directly or indirectly part of a Project, including, without limitation to the following examples, landscaping and temporary fencing, temporary HVAC, geotechnical and

exploratory drilling, soils and materials testing and inspection, pipelines (including those in linear corridors built to serve a Project), pumps, pump stations, start-up, modular furniture installation, and final clean-up. This Agreement covers work done for a Project in temporary yards, dedicated sites, or areas adjacent to a Project, and at any on-site or off-site batch plant constructed to supply materials to a Project.

2.3.1 This Agreement applies to any start-up, calibration, commissioning, performance testing, repair, maintenance, and operational revisions to systems and/or subsystems for a Project performed after Completion, unless performed by City employees.

2.3.2 This Agreement covers all on-site fabrication work over which the City, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for a Project in any temporary yard or area established for a Project). This Agreement also covers any off-site work, including fabrication, that is traditionally performed by the Unions and is directly or indirectly part of a Project, provided such work is covered by a current Master Agreement or current local addenda to a national agreement of the applicable Union(s).

2.3.3 Except for the delivery of supplies, equipment or materials that are stockpiled for later use, this Agreement covers all construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process as well as the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of written request or as required by the bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles IV, XIV and XV of this Agreement shall apply to such work.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement.

2.4.1 This Agreement shall not apply to work performed by the City's own employees as permitted by the Public Contract Code.

2.4.2 This Agreement shall not apply to a Contractor/Employer's non-construction craft employees, managerial employees, administrative personnel, and supervisors above the level of general foreman, unless covered by a Master Agreement.

2.4.3 This Agreement shall not apply to a contract entered into with a professional service provider for a Project, as defined in Section 1.12, unless the professional service provider performs or subcontracts Covered Work, in which event the entity self-performing the Covered Work shall execute an Agreement to be Bound. Where applicable, the City shall include this requirement in the professional services contract.

2.4.4 This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors. Work performed by public or private utilities including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be Covered Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line and provides for access to the building via a conduit or series of conduits shall be Covered Work.

2.4.5 This Agreement shall not apply to the off-site maintenance of leased equipment and on-site supervision of such work.

2.4.6 This Agreement does not apply to work by employees of, or contractors retained by, a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty or guaranty, provided the manufacturer or vendor provides documentation showing that the warranty or guarantee specifically requires such employees or contractors to perform the work in order to preserve the warranty or guarantee, or provided the manufacturer or vendor demonstrates by an enumeration of specific tasks that the work cannot be performed by craft workers covered by this Agreement.

2.4.7 In circumstances requiring special knowledge, work may be performed by persons not covered by this Agreement provided that the Contractor/Employer or manufacturer responsible for such work demonstrates by an enumeration of specific tasks that the work cannot be performed by craft workers covered by this Agreement. A Contractor/Employer invoking this provision shall give notice to the Trades Council and the relevant Union(s), and such work shall be identified and discussed by the Contractor/Employer at its Pre-Job Conference, or, if not known at the time of the Pre-Job Conference, shall be identified and discussed with the Trades Council and the relevant Union(s) once the work becomes known, including by holding a Pre-Job Conference if requested by the Trades Council or the relevant Union(s).

2.4.8 This Agreement shall not apply to work substantially funded by any federal, state, other local or public agency that prohibits the use of project labor agreements on projects receiving its funding, or the funding of projects on which such agreements are used. With respect to such work, the City agrees that it will make a reasonable effort to defend the application of this Agreement, including by making a written request to the funding source. Notwithstanding the foregoing, however, should

only a specific provision of the Agreement be prohibited by the funding source, the parties shall modify the requirements of this Agreement accordingly, to advance the purposes of this Agreement to the maximum extent feasible without the loss of funding.

2.4.9 This Agreement shall not apply to work that is jointly performed with another public agency, unless the work is awarded by the City, or unless otherwise agreed to by the Parties on a case by case basis. With respect to such work jointly performed with another public agency, the City will make a request to the other public agency to apply the terms of this Agreement, or in the alternative, request that the other public agency communicate with City representatives and the Trades Council to discuss application of this Agreement.

2.4.10 This Agreement shall not apply to renovation of Transitional housing buildings or units, given the time sensitivity of such work. For the avoidance of doubt, this exclusion does not apply to new construction, nor to a total remodel where residents are not occupying the building or units.

2.5 Award of Contracts: It is understood and agreed that the City has the right to select any qualified bidder for the award of a Construction Contract under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on a Project. The City shall provide a copy of all such invitations to bid to the Trades Council at the time of issuance.

ARTICLE III **EFFECT OF AGREEMENT**

3.1 By executing this Agreement, the Trades Council, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of work under a Construction Contract for a Project, whether as a Contractor or subcontractor thereunder, all Contractors/Employers agree to be bound by each and every provision of this Agreement and agree to evidence their acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor, as a condition of accepting the award of a construction subcontract, to agree in writing, by executing the Agreement to be Bound, to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor may not be evaded by subcontracting. If the subcontractor refuses to execute the Agreement to be Bound, then such subcontractor shall not be awarded a Construction Contract on a Project.

3.4 This Agreement shall only be binding on the signatory parties hereto, and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Master Agreement. Any dispute between the Union(s) and the Contractor(s) with respect to compliance with this Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a Union signatory to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Schedule As incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement conflicts with a Schedule A, the provision of this Agreement shall prevail. Where a provision of a Schedule A does not conflict with this Agreement, the provision of the Schedule A shall apply.

ARTICLE IV

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1. The Unions, the City, and the Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of a Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on a Project, at the job site of a Project or any other City facility because of a dispute on a Project. Disputes arising between the Unions and Contractor(s)/ Employer(s) on other City projects are not governed by the terms of the Agreement or this Article.

4.1.2 There shall be no lockout of any kind by a Contractor/Employer of workers employed on a Project.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of a demand for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/ Employer agrees to comply with any retroactive terms of the new or modified Master Agreement that are applicable

to any employee(s) on a Project during the interim, with retroactive payment due within seven (7) calendar days of the effective date of the new or modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on a Project, the Union shall give the City and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business day's notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck, of the intent to withhold labor from the Contractor/Employers' or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.1.5 Notification: If the City or any Contractor contends that any Union has violated this Article, it will so notify in writing the Senior Executive of the Trades Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Trades Council will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for the unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred.

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator, under this procedure. In the event the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, the parties shall select the arbitrator from the list in Section 14.4. Notice to the arbitrator shall be by the most expeditious means available, with notice by email and telephone to the City, the involved Contractor, and the party alleged to be in violation, and to the Trades Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the City will contact the permanent arbitrator named above, or the alternate if the permanent arbitrator is not available, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by email and telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article, and the arbitrator's award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with the arbitrator's award ordering the party to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

4.2.5 The arbitrator's award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. The party filing such enforcement proceedings shall give written notice to the other party. In a proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such proceeding may be *ex parte*. However, such agreement does not waive any party's right to seek or participate in a hearing for a final order of enforcement. Any court order enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance with the above procedure, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

4.2.8 Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the City and the Trades Council shall mutually agree to a replacement.

ARTICLE V **PRE-JOB CONFERENCES**

5.1 Timing: The Project Manager shall convene and conduct, at a location and time mutually agreeable to the Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues set forth below, at least fourteen (14) calendar days prior to:

(a) The commencement of any Project work, and

- (b) The commencement of Project work on any subsequently awarded Construction Contract.

5.2 The pre-job conference shall be attended by a representative of each participating Contractor and each affected Union, and the Trades Council and City may attend at their discretion.

5.3 The pre-job conference shall include but not be limited to the following subjects:

- (a) A listing of each Contractor and subcontractor and their scope of work;
- (b) The craft assignments;
- (c) The estimated number of craft workers required to perform the work;
- (d) Transportation arrangements;
- (e) The estimated start and completion dates of the work; and
- (f) Discussion of pre-fabricated materials.

5.4 Joint Administrative Committee: This Agreement is intended to provide close cooperation between management and labor. To that end, the City shall designate two representatives and the Trades Council shall designate two representatives to serve on a Joint Administrative Committee ("JAC"), each of whom may designate an alternate. JAC members may invite participation by a Contractor or Union as needed. The JAC shall meet quarterly and at the request of any member, to review progress of Projects and to discuss matters of general concern, such as safety and security. The JAC shall serve as a forum to foster communication between management and labor, and to assist the Unions and the Contractors to complete Projects in an economically efficient manner without interruption, delays or work stoppages.

5.4.1 The JAC shall participate in the drafting of reports to City Council regarding the status of targeted objectives under this Agreement, including the local hiring and apprenticeship provisions herein.

5.4.2 The JAC shall have no authority to review grievances or disputes involving this Agreement, which are subject to the applicable grievance procedure.

ARTICLE VI **NO DISCRIMINATION**

6.1 The Contractors/Employers and the Unions agree to comply with all anti-discrimination provisions of federal, state, and local law, to protect employees and applicants for employment, on a Project.

ARTICLE VII

UNION SECURITY

7.1 The Contractors/Employers recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement, and all such employees must be represented by a Union for the duration of their employment on a Project.

7.2 The Contractors/Employers shall make and transmit all deductions for Union dues, fees, and assessments that have been authorized by employees in writing in accordance with the applicable Master Agreement. This Agreement does not require any employee of a non-Union Contractor/Employer to join a Union or to pay dues or fees to a Union as a condition of working on a Project; however, nothing in this Article is intended to supersede the independent requirements of the applicable Master Agreements as to Contractors/Employers signatory to such Master Agreements and as to employees of those Contractors/Employers who are performing Covered Work.

7.3 Authorized representatives of the Unions shall have access to a Project whenever work covered by this Agreement is being, has been, or will be performed on a Project.

ARTICLE VIII

REFERRAL

8.1 Contractor(s)/Employer(s) performing construction work on a Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s), unless such craft construction employee is covered by a Master Agreement.

8.3 Core Workers: Contractor(s)/Employer(s) that are not signatory to a Master Agreement may request by name, and the Union will honor, referral of Core Workers as journeypersons for Project work who have been on the Contractor/Employer's active payroll for at least sixty (60) out of the one hundred (100) working days prior to the request, and who possess all licenses and certifications required to perform the work ("Core Workers").

8.3.1 The Union will refer to the Contractor one journeyperson employee from the hiring hall then one Core Worker for the affected trade or craft. This process shall be repeated, one and one, until the Contractor's workforce has a maximum of five (5) Core Workers. Thereafter, all of the Contractor's additional employees performing Covered Work shall be hired from the Union's hiring hall out-of-work list(s).

8.3.2 When the Contractor's workforce is reduced, employees shall be reduced so as to maintain the same ratio of Core Workers to hiring hall referrals as was applied in the initial hiring.

8.3.3 The Contractor shall provide the appropriate Union with the name and all necessary information for each Core Worker, and each Core Worker shall register with the Union's hiring hall and comply with Article VII before commencing work on a Project. If there is any question regarding an employee's eligibility as a Core Worker under this section, the Contractor shall provide the Union with written records demonstrating eligibility.

8.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain the worker(s) from any source. A Contractor/Employer who hires a worker(s) to perform Covered Work on a Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such worker(s) and shall immediately refer such worker(s) to the appropriate Union to satisfy the requirements of this Agreement.

ARTICLE IX

LOCAL HIRING PROGRAM

9.1 It is in the interest of the parties to this Agreement to facilitate employment of City Residents to construct City Projects. To that end, the Unions agree to exert their utmost efforts to recruit a sufficient number of craft persons to fulfill the referral requests of Contractors/Employers for City Projects, consistent with this Article.

9.2 To the maximum extent allowed by law and consistent with the Unions' hiring hall referral provisions set forth in Master Agreements, City residents shall be requested by the Contractor(s)/Employer(s) and dispatched by the applicable Union(s).

9.3 Each Contractor shall either demonstrate satisfaction of the Percentage Requirements in Section 9.4 below, or demonstrate satisfaction of the good faith efforts set forth in Section 9.5 below.

9.4 Percentage Requirements: For each Project, each Contractor shall make best faith efforts to satisfy the following percentage requirements (the "Percentage Requirements"):

9.4.1 at least 50 percent of all journey-level Project work hours performed by City Residents;

9.4.2 at least 55 percent of all apprentice-level Project work hours performed by City Residents;

9.4.3 at least 30 percent of all apprentice-level Project work hours performed by New Local Apprentices.

9.5 Each Contractor must take the following steps in an attempt to utilize City Residents to satisfy the Percentage Requirements:

9.5.1 City Residents/Journey level Hours. Contractor may assign current crew members who are City Residents to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.1, the Contractor shall request referral of needed City Residents from the appropriate Union hiring hall, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section 9.4.1. All requests for referrals under this subsection shall be in writing.

9.5.2 City Residents/Apprentice Hours. Contractor may assign current crew members who are City Residents and apprentices registered in a joint labor-management apprenticeship program to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.2, the Contractor shall request referral of needed City Resident apprentices from the appropriate Union hiring hall or joint labor-management apprenticeship program, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section 9.4.2. All requests for referrals under this subsection shall be in writing.

9.5.3 New Local Apprentices. Contractor may assign current crew members who are New Local Apprentices to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.3, the Contractor shall request referral of New Local Apprentices from the appropriate Union hiring hall or joint labor-management apprenticeship program, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section 9.4.3. All requests for referrals under this subsection shall be in writing.

9.6 Union hiring halls and, where applicable, joint apprenticeship programs, will refer apprentices to non-signatory Contractors/Employers upon request provided the Contractors/Employers submit the forms required by the Department of Industrial Relations.

9.7 Oversight and Enforcement. Contractor requirements of the Local Hiring Program shall be terms of the prime contracts awarded by the City and subcontracts awarded by Contractors. Enforcement actions shall be pursuant to contract compliance procedures set forth in such contracts. Hours worked by workers who reside in states other than California shall not be considered in compliance determinations regarding the Local Hiring Program. Upon request by the City, Contractors shall submit copies of all information necessary to determine Contractor compliance with the Local Hiring Program, including dispatch requests and responses, records regarding hiring decisions of City Residents and New Local Apprentices who were referred but not hired, and any other relevant information requested by the City.

9.8 Federally-Funded Projects: The requirements of this Article IX shall not apply to Projects for which a federal funding source prohibits such application. However,

if a federal funding source requires alternative hiring goals or requirements (such as in federal Executive Order 11246), then such requirements shall apply, and all requirements and procedures set forth in this Article shall be utilized to implement the alternative hiring goals or requirements imposed by the federal funding source. The City shall notify the Trades Council in the event that federal hiring goals supplant this Article.

ARTICLE X

WAGES AND BENEFITS

10.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on a Project, in the amounts designated in the applicable Master Agreement(s).

10.2 By signing this Agreement, the Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements described in Section 10.1, which may from time to time be amended, specifying the detailed basis upon which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if they were appointed by the Contractors/Employers. The Contractors/Employers agree to execute a separate subscription agreement(s) when such Trust Fund(s) requires such document(s).

10.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on City Projects shall be governed by the Master Agreement of the respective craft, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

10.4 Holidays: Holidays shall be as set forth in the applicable Master Agreement.

ARTICLE XI

APPRENTICES

11.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, including on public works projects, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in their respective crafts, to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured.

11.2 Apprentice ratios will be in compliance with the provisions of the California Labor Code and the applicable state prevailing wage determination.

11.3 Consistent with the Master Agreements, there shall be no restriction on the utilization of apprentices in performing the work of their craft provided they are properly indentured and supervised.

ARTICLE XII **HELMETS TO HARDHATS**

12.1 The Contractors/Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

12.2 The Unions and Contractors/Employers agree to coordinate with the Center to participate in an integrated database of veterans interested in working on Projects and of apprenticeship and employment opportunities for Projects. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XIII **COMPLIANCE**

13.1 It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of Article IX of this Agreement. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent wages or Trust Fund contributions from Contractors/Employers on the Projects. Because the Projects are public works subject to the California Labor Code, the City shall monitor and enforce the Contractors/Employers' compliance with state prevailing wage requirements as well as this Agreement.

ARTICLE XIV **GRIEVANCE ARBITRATION PROCEDURE**

14.1 Project Labor Disputes: All disputes involving the application or interpretation of a Master Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV and Article XV, shall be subject to resolution by the grievance arbitration procedures set forth in this Article.

14.2 Employee Discipline: All disputes involving the discipline and/or discharge of an employee working on a Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected

employee. No employee working on a Project shall be disciplined or discharged without just cause.

14.3 No grievance shall be recognized unless the grieving party (Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

14.4 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the representative of the involved Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not resolved at Step 1, within five (5) business days of the Step 1 meeting or the conclusion of efforts to resolve the grievance at Step 1, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. This time limit may be extended by mutual consent of both parties. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Trades Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not resolved at Step 2, either party may request the dispute be submitted to arbitration within five (5) business days of the Step 2 meeting or the conclusion of efforts to resolve the grievance at Step 2. This time limit may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to arbitration, the representatives shall notify the permanent arbitrator designated in Article IV, or if not available, the alternate arbitrator designated in Article IV, for final and binding arbitration. If the permanent arbitrator or the alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. Carol Vendrillo
2. David Weinberg
3. Mark Keppler

14.5 The decision of the arbitrator shall be final and binding on all parties. The arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the arbitrator shall be borne equally by both parties. The arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator.

14.6 The time limits specified at any step of the grievance procedure may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing and/or resolution of like or similar grievances or disputes.

14.7 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this grievance procedure, the parties agree that such settlements shall not be precedent setting.

14.8 Should any of the arbitrators listed in this Article or Article IV no longer work as a labor arbitrator, the City and the Trades Council shall mutually agree to a replacement.

ARTICLE XV

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

15.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

15.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

15.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) calendar days of the selection of the arbitrator. All other procedures shall be as specified in the Plan.

15.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall

be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge.

15.5 Each Employer will conduct a pre-job conference with the Trades Council prior to commencing work. The City and the Project Manager will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE XVI **MANAGEMENT RIGHTS**

16.1 Consistent with the Schedule A agreements, the Contractor(s)/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees, except that all lawful manning provisions in the Master Agreement shall be recognized.

ARTICLE XVII **DRUG AND ALCOHOL TESTING**

17.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

17.2 Drug and alcohol testing shall be conducted in accordance with the substance abuse prevention policies set forth in the applicable Schedule A.

ARTICLE XVIII **SAVINGS CLAUSE**

18.1 If any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word that will meet the objections to its validity and will be in accordance with its original intent. If the parties are unable to agree on substitute language, then the entire Agreement shall be null and void.

18.2 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of the Agreement's provisions, and the City accordingly determines that compliance with this Agreement will not be required in order to perform work under a Construction Contract, the Unions will no longer be bound by the provisions of Article IV.

ARTICLE XIX

TERM

19.1 This Agreement shall be included in all bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of a Construction Contract(s) for each Project.

19.2 This Agreement shall apply until the Completion of each Project in accordance with Sections 1.5 and 2.2.

19.3 This Agreement shall become effective 120 days after it is executed by the City and the Trades Council and shall remain in effect until the five (5) year anniversary of the effective date. During this term, the City administration shall prepare annual reports to the City Council on Agreement implementation and results of the Local Hiring Program, which reports shall be provided to the JAC for review and comment prior to submission to the City Council. The Unions, Trades Council, and Contractors shall provide to the administration requested information relevant to such reports, including information regarding referrals from hiring halls for Covered Work on Projects. Upon the two-year anniversary of the effective date, if the Percentage Requirements set forth in the Local Hiring Program are not being met on all Projects in aggregate, the City shall provide the Trades Council with written notice. Upon receipt of such notice, the Trades Council and the City shall meet and confer regarding whether to modify the Local Hiring Program in order to improve outcomes and meet the Percentage Requirements, with any such modifications made upon mutual agreement by the Trades Council and the City. A similar process will take place on the third and fourth anniversaries of the effective date.

19.4 Approximately ninety (90) days prior to the five (5) year anniversary of the effective date of this Agreement, at the request of either party, the City and Trades Council shall meet to discuss whether to extend this Agreement, and, if so, the proposed terms of such extension including any proposed changes to the Agreement.

ARTICLE XX

MISCELLANEOUS PROVISIONS

20.1 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

20.2 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

20.3 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party


indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

20.4 The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

20.5 All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

[SIGNATURES TO FOLLOW]

CITY OF FRESNO

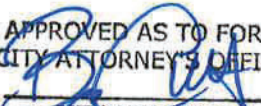
By: 
Name/Title: Thomas Esquerdo
City Manager


Date: 9/29/21

FRESNO, MADERA, KINGS AND TULARE
COUNTIES BUILDING AND CONSTRUCTION
TRADES COUNCIL

By: 
Name/Title: Chucur Rojas

Date: 9.29.21

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY: 
SR DEPT CITY ATTORNEY
Brandon M. Collier

ATTEST:
BRIANA PARRA, CMC
INTERIM CITY CLERK
tv:  9/29/21
Deputy
BERNARD CANEL

[UNION SIGNATURES]

**Addendum A
AGREEMENT TO BE BOUND**

[Date]
[Addressee]
[Address]

Re: City of Fresno Community Workforce Agreement
Agreement to be Bound

Dear _____:

The undersigned confirms that it agrees to be a party to and bound by the City of Fresno Community Workforce Agreement ("Agreement") as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Agreement to be Bound, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust fund documents as set forth in Section 10.1 of the Agreement, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate subscription agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by the Agreement shall extend to all work covered by the Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of the Agreement by signing an identical Agreement to be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: _____

California Contractor State License No. or Motor Carrier (CA) Permit No.:

Name of Authorized Person (print):

Signature of Authorized Person:

Title of Authorized Person:

Telephone Number of Authorized
Person: _____

Address of Authorized

Person: _____

State Public Works Registration Number:

Addendum B SIDE LETTER

The parties recognize that the capacity to perform slurry seal maintenance work may not exist locally. Their mutual intent is to facilitate the creation of such capacity locally over time. Accordingly, the parties agree that with respect to slurry seal maintenance work that may otherwise be covered by this agreement, in the event the City receives no responsive bids, the parties agree to meet and confer. The parties may mutually agree to exclude such projects from coverage under this Agreement, or agree to modify the terms of this Agreement for the purpose of such projects. If the parties cannot agree, the City Manager may recommend to the City Council the exclusion of such projects from PLA coverage.

The parties further recognize that significant, new federal resources may become available after the effective date of this Agreement, and that such resources may require changes to this Agreement in order to ensure that the City can take full advantage of such resources. The parties' mutual goal is to ensure that nothing in this Agreement will impair the City's ability to apply for and receive such new funding, and that they will endeavor to agree on any necessary changes to ensure compliance with any new federal regulations governing such funding.