



CITY OF FRESNO

REQUEST FOR PROPOSALS

FOR

CONSULTING SERVICES:

DOWNTOWN TRANSPORTATION AND INFRASTRUCTURE STUDY

RFP SUBMISSION DEADLINE: **3:00 P.M. Friday, October 28, 2005**
RFP CONTACT: **John Downs, Transit Planning Manager**

**DEPARTMENT OF TRANSPORTATION/FAX/
PLANNING DIVISION
Phone: (559) 621-1502 or 621-1446
Fax: (559) 488-1065**

**REQUEST FOR PROPOSALS
FOR
CONSULTING SERVICES:**

DOWNTOWN TRANSPORTATION AND INFRASTRUCTURE STUDY

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**NOTICE INVITING REQUEST FOR PROPOSALS FOR
CONSULTING SERVICES:**

DOWNTOWN TRANSPORTATION AND INFRASTRUCTURE STUDY

Sealed Request for Proposals (RFP) will be received at the office of the Transit Planning Manager, City of Fresno, Department of Transportation/FAX, 2223 "G" Street, Fresno, California 93706-1600, all in accordance with the following requirements:

The City of Fresno is requesting proposals from firms to provide professional services for the Downtown Fresno Transportation Study. This Request for Proposals (RFP) outlines the information necessary to understand the consultant selection process and the required documentation needed in order to submit a proposal for this project. The City of Fresno has budgeted \$285,000 for this study.

All information shall be submitted to the address listed below no later than October 28, 2005. The City of Fresno shall not be liable for any costs incurred by the Consultant in response to this RFP, nor any cost incurred in connection with any discussions, correspondence, or attendance at interviews or negotiation sessions.

Copies of the RFP may be obtained from the City of Fresno, Department of Transportation/FAX, Planning Division, via e-mail at John.Downs@fresno.gov, or via facsimile at (559) 488-1065.

RFP responses are to be submitted at the Office of the Transit Planning Manager, City of Fresno, Department of Transportation/FAX Planning Division, 2223 "G" Street, Fresno, CA 93706-1600, prior to the opening at 3:00 p.m. on Friday, October 28, 2005, at which time they will be publicly opened and recorded.

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

The City will carry out applicable federal requirements in the award and administration of any contract awarded hereunder. **This is a federal project funded with financial assistance from the U.S. Department of Transportation, Federal Transit Administration (FTA).**

Disadvantaged Business Enterprises (DBEs) will be afforded full opportunity to submit Bid Proposals in response to this invitation. In addition, a Bidder who intends to subcontract a portion of the work shall affirmatively seek out Disadvantaged Business Enterprises that are potential subcontractors, suppliers, or consultants, and actively solicit their interest, capability and prices.

The City of Fresno reserves the right to reject any and all submittals.

ENGAGEMENT PURPOSE AND BACKGROUND

Purpose

The purpose of the Downtown Fresno Study is to define and evaluate transportation alternatives that will make the study area more accessible and attractive to visitors and downtown residents, with an emphasis on providing mobility appropriate for a major city. The Consultant is to investigate all transportation modes as they relate to parking, transit facilities, streetscape design, and street network community. The Consultant will then prepare options that provide an improved level of convenience, multi-modal mobility options to those living in, working in, visiting, or traveling through the area. The Consultant will be responsible for developing and documenting the recommended plan that must contain a set of specific, financially achievable implementation recommendations, and a phased implementation plan. The City of Fresno desires that the Consultant evaluate the study area with “fresh eyes” and no preconceived notions nor proposals until data has been collected and evaluated.

Required Study Elements

- A. Analysis of options must show network conditions during peak and non-peak times, and must reflect existing trips and mode split with existing transportation network, as well as future trips and mode split with existing-plus-proposed network. The year 2050 will be used to determine the future scenario.
- B. Examination of the street pattern, its interaction with the Fulton Mall, integration and access to freeway access, parking and transit centers and other destinations, and the impacts of modifications such as converting some or all the two-way streets to one-way streets and/or pedestrian/vehicular conflicts (including number of conflict points and bus routing), parking access, and service vehicle access; examination of intersections and their impact on traffic flow, etc.; recommendations on signal timing, adding/removal of signals, channelization, and other intersection improvements. The immediate impact on current downtown businesses should be considered.
- C. Integration and encouragement of transit in the downtown area, including design changes or possible relocation of the transit center, additional transit facilities, bus routing alternatives including the opening of the Fulton Mall to some type of transit alternative including people mover or light rail.
- D. Pedestrian amenities and techniques which serve to enhance the attractiveness and walk ability of the Downtown area such as narrowing or closing of streets, elevated walkways, etc.
- E. Review of existing municipal on-street and off-street parking and parking management.
- F. Recommended locations and impacts of additional downtown parking, and examine associated costs.
- G. Study the effects of spreading the urban core by moving parking lots to the perimeter of the study area.

- H. Study alternative transit systems (people movers, PRT, trams, monorail, etc.). These systems may be more viable when linked with parking, advertising, etc.
- I. Study effects of a changing property tax base, sales tax sharing, hotel taxes, etc.
- J. Study effects of identifying and promoting individual downtown districts to aid in way-finding.
- K. Study ways of linking traffic to all of the downtown districts to allow easy way-finding, parking, promotion, and overall downtown beautification.
- L. Study the infrastructure impacts and right-of-way requirements of the proposed high speed rail multi-modal station complex including parking, access, and circulation of all modes including, but not limited to, taxis, buses, Amtrak, Greyhound, freeways, local streets, shuttles, people movers, pedestrians, and bicycles.
- M. Recommended location and impact of a new high speed rail facility.
- N. Other transit alternatives for access to Downtown, particularly to and from proposed business and residential developments referred to as Broadway Row, Forest City, and Chinatown LLC.
- O. The construction of a new intermodal/high speed rail facility adjacent to the Union Pacific Corridor which may affect travel in the area and should account for the effects of these projects on future traffic conditions and in the development of alternatives.
- P. Other tasks, if authorized.

Relevant Studies and Information

In conducting this study, the Consultant will need to be familiar with the City of Fresno and its downtown issues. The Consultant must understand existing policies, plans, and proposed projects for the downtown area including (but not limited to) the following:

- Policies related to transportation and land use as they relate to the downtown in the 2025 Fresno General Plan, including the projected population increase of 12,845 in the Central Area (see Table 1, 2025 Fresno General Plan).
- 1989 Central Area Plan
- Fulton-Lowell Specific Plan
- Vision 2010 Downtown Fresno Plan
- Proposed projects such as:
 - New intermodal/high speed rail facility adjacent to the Union Pacific Corridor
 - Rail consolidation project
 - New developments such as Eaton Plaza, Broadway Row, Forest City, and Chinatown.
- Regional Public Transportation Infrastructure Study

- Growth Response Study
- Major Investment Study for 4 corridors in the metropolitan area
- Short and Long Range Transit Plans
- Downtown Vision - Public Perception Survey
- Ratkovich Plan
- Map of the RFP Study Area defining the downtown triangle

Background

Located in the Central San Joaquin Valley, the City of Fresno is at the geographical center of California. The area's metropolitan population of approximately 550,000 enjoys a wide variety of social, cultural, athletic, educational, and recreational activities. Fresno is the regional capital of entertainment for the Central Valley.

Fresno is the largest city in the San Joaquin and serves as a gateway to some of the world's most beautiful natural surroundings, including three national parks (Yosemite, Kings Canyon, and Sequoia). Fresno is located about three (3) hours from San Francisco and about three (3) hours from Los Angeles.

The City of Fresno is the 35th largest city in the nation and 6th largest in California.

The transportation system is one of the most critical components to the health of Downtown Fresno. It must strike a balance between creating an atmosphere that is attractive and encourages people to work, shop, and visit downtown, while providing them with reasonably convenient access, egress, and parking if they drive. The vast majority of these people do not live within the Downtown area, but travel to and from there on a daily basis either for business, entertainment, shopping, or to access various governmental services located within the Downtown area. The most significant elements of the current downtown transportation system are automobiles, pedestrians, mass transit (municipal bus service, charter bus service, and private long haul bus service), and delivery and service vehicles.

Recent improvements to the Downtown area include a new federal courthouse, IRS Processing Center, expanded Regional Medical Center, Fresno City Hall, new Fifth District Court of Appeals, and a Triple AAA baseball stadium. There are three new proposed development areas planned for the Downtown Area commonly referred to Broadway Row, South Stadium/Forest City, and Chinatown LLC. The California High Speed Rail Authority has also committed to establishing a new intermodal high speed rail facility within the Downtown area along the existing Union Pacific corridor.

Public transit services are currently located at two Downtown transit centers near the corners of Fresno and Van Ness Streets and serve as the Downtown terminus for fixed route transit services provided by Fresno Area Express (FAX) and Fresno County Rural Transit Agency (FCRTA). Interregional bus services are provided by Greyhound Bus Lines through a facility located at the corner of Broadway and Tulare. There have been preliminary discussions to house inter-regional buses, public transit, and taxi services at a new intermodal facility that would also be used to access high speed rail services located along the existing Union Pacific corridor.

INSTRUCTIONS TO CONSULTANTS

Submission of Submittals

Organizations desiring to respond to the RFP shall submit an original and ten (10) copies of the RFP, marked on the outside "RFP for Consulting Services: "Downtown Transportation and Infrastructure Study." The submittals shall include the name of the Consultant and the date and time when the response is due. In order to be considered, an RFP must be submitted **prior to the opening at 3:00 p.m. (PDT), Friday, October 28, 2005,** to the attention of the following:

Mr. John Downs, Transit Planning Manager
City of Fresno
Department of Transportation/FAX Planning Division
2223 "G" Street
Fresno, CA 93706-1600

Responses sent by telephone, telegram, or facsimile will not be accepted.

It is the sole responsibility of each Consultant to ensure that its response reaches the Department of Transportation/FAX Planning Division by the time and date specified. Responses received after the specified time and date shall be returned unopened. The time/date stamp clock located in the Department of Transportation/FAX Administration Division shall serve as the official authority to determine the timeliness of any responses.

Consultants are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if the response is delivered by an express mail carrier or by any other means, it is the Consultant's responsibility to ensure delivery to the above address. The City of Fresno will not be responsible for deliveries made to any place other than the specified address.

Once opened, all responses become public records and will be available to the public for review.

The Consultant's attention is directed to the fact that all applicable state laws, the City of Fresno Charter and Municipal Codes, and the rules and regulations of all authorities have jurisdiction over the services to be performed shall apply to any resulting contract throughout, and they will be deemed to be included in any contract ultimately executed.

Addenda

The City makes a concentrated effort to ensure any addenda issued relating to this RFP is distributed to all interested parties. It shall be the Consultant's responsibility to inquire as to whether any addenda to the RFP have been issued. Upon issuance by the City, all addenda are part of the RFP.

Submittals

- Each Consultant shall carefully examine each and every term of this RFP, and each Consultant shall judge all the circumstances and conditions affecting his/her questionnaire response. Failure on the part of any Consultant to make such an examination and investigate thoroughly

shall not be grounds for any declaration that the Consultant did not understand the conditions of this RFP.

- The Consultant shall comply with any and all federal, state, or local laws now in effect or hereafter promulgated which apply to the products herein specified.

This RFP process does not commit the City of Fresno to enter into a Contract or to pay any costs incurred in the preparation of responses to the request. The City of Fresno reserves the right to accept or reject any submittals, or to cancel in part or in its entirety this Request for Proposals. It may accept the submittal(s) that it considers to be in the interest of the City of Fresno.

Information contained in this RFP is solely for the purpose of allowing Consultants to submit responses, and is not to be used for any other purpose. This RFP and all other information, documents, or materials provided by City must be considered confidential and may not be forwarded to any third party without City's prior written consent.

The City reserves the right to waive any informality or minor irregularity when it is in the best interest of the City to do so, to re-advertise for Qualifications if desired, and to accept the submittal which in the City's judgment is deemed to offer the best value for the public and City. Any submittal which is incomplete, conditional, obscure, or which contains irregularities of any kind, may be cause for rejection.

Public Records

The submittals received shall become the property of the City of Fresno and are subject to public disclosure. Those parts of a submittal which are defined by the Consultant as business or trade secrets as that term is defined in California Evidence Code, Section 3426.1, and are reasonably marked "Trade Secrets," "Confidential," or "Proprietary" and placed in a separate envelope shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Consultants who indiscriminately and without justification identify most or all of their submittal as exempt from disclosure may be deemed non-responsive. Submittals, excluding confidential information, will be available for review after the posting of staff's recommendation

Selection Process and Evaluation Criteria

A Selection Committee will review and evaluate all submittals after formal receipt. To receive proper consideration, the Consultant's submittal must meet the requirements of this RFP. The evaluation process will provide credit only for those capabilities and advantages which are clearly stated in the Consultant's written submittals. In other words, advantages which are not stated will not be considered in the evaluation process.

Consultants whose submittals include a significant failure to comply with these qualification requirements will be dropped from the evaluation process.

Selection of the project Consultant will follow a two-step process. The first step will be an evaluation of the written proposals using the criteria listed below. The weight of each criterion in this step is also shown. In the second step, approximately three of the highest evaluated teams from the first step will be asked to give an oral presentation and respond to questions from an

interview panel. The second step may be waived if the evaluation committee finds from the evaluation in the first step that one team is clearly more qualified to perform the study than the other teams. The Selection Committee consists of the following members:

- Executive Director Fresno Redevelopment Agency
- City of Fresno Public Works Director
- City of Fresno Director of Planning and Development
- City of Fresno Director of Transportation
- Two (2) Advisory Committee Members

The written evaluation criteria are:

1. General Quality and Adequacy of Response (10%)
 - a. Completeness and thoroughness.
 - b. Understanding of the project.
 - c. Conformance to terms and conditions, including sample agreement.
 - d. Estimated time to complete the project.
2. Technical Approaches and Specialized Experience (50%)
 - a. Approach to study, including the ability to derive creative solutions.
 - b. Clarity and organization in concept development.
 - c. Quality and quantity of services to be rendered.
 - d. General experience relevant to the project.
 - e. Specialized experience relevant to the work scope.
3. Organization, Personnel and Project Management (20%)
 - a. Qualifications of proposed personnel, including project manager.
 - b. Experience of proposed project staff.
 - c. Commitment of personnel to the project.
 - d. Past performance and experience.
4. City of Fresno and Study Area Understanding (20%)
 - a. Familiarity with the study area's traffic characteristics, economy, culture, and environment.
 - b. Familiarity with existing and ongoing downtown development and related plans, issues, and activities.
 - c. Familiarity with existing and planned downtown transit services and facilities.

Consultants selected for oral presentation will be given 50 minutes to make their presentations and respond to questions. At least 15 minutes should be reserved for questions. The proposed Project Manager must be present at the oral presentation. Presentation location, dates, and times will be determined after review and selection of the three finalists. Following the oral presentation and interview, a single Consultant team will be recommended to begin fee negotiations. If successful negotiations are not completed within the 30 calendar days from the selection date, then negotiations shall commence with the second-ranked Consultant.

The objective of the negotiations shall be to reach agreement on all provisions of the proposed contract. The first step in this process will be to reach agreement on the scope of services. Once accomplished, the primary firm and associated sub-consultants shall submit cost and pricing data for each task included in the scope of services. The task budget shall indicate personnel assigned or labor categories, total hours for each person, labor rate per hour for each person, travel, material and other direct expenses, general administrative costs, overhead charges, and fees. Overhead, general administrative costs, fees, and other expenses that relate to the overall project rather than any specific task shall be expressed as a separate budget item. Sufficient documentation detailing how the budget was developed must be provided. A cost plus fixed-fee contract with a maximum contract amount will be entered into between the City of Fresno and the Consultant.

The City reserves the right to accept or reject any or all submittals.

The Selection Committee reserves the right to request additional information from Consultants, visit sites, request demonstrations or oral presentations, or ask Consultants to appear before the Selection Committee to clarify points of their qualification submittal.

Any selection shall be on the basis of the criteria specified and made to the Consultant whose submittal is judged as providing the best value in meeting the interest of the City and the objectives of the project.

The City reserves the right to make the selection of Consultant based on any or all factors of value, whether quantitatively identifiable or not, including, but not limited to, the anticipated initiative and ability of the Consultant to perform the services set forth herein.

PROPOSAL FORMAT:

The proposal must address the following items. Failure of the proposal to respond to a specific requirement may be a basis for elimination from consideration during the comparative evaluation. The City of Fresno reserves the right to accept or reject any or all proposals.

A. Give name and address of submitting organization and the state where incorporated or chiefly located. Identify designated contact within your organization and list telephone number. If a consortium or team approach is being proposed, provide the above information for all participating firms. Include an organizational chart showing the lines of authority/responsibility proposed for this project.

B. Indicate ability to begin the project within one week following contract signing. Indicate the ability to collect relevant traffic data and ability to complete the technical portion of the study, including the review draft of the final report within six months from the notice to proceed and to complete the project in 12 months.

C. Create a scope of work to address the Purpose and Study Approach section of the RFP. The successful Consultants will work with the City of Fresno to refine this scope during the negotiation phase of the contracting process.

D. Provide a work program for the study that describes in detail the methods/approaches to be used in addressing the scope of work. Identify specific products that will result from each of the tasks/subtasks proposed. It is important that these products be clearly described.

E. Identify similar projects undertaken by your firm or proposed team firms in other standard urban environments. Document each firm's actual responsibility on the project. Provide appropriate reference(s), name(s) and telephone number(s).

F. Provide a statement demonstrating how the Consultant team will establish and maintain a local presence for key project personnel. This is not a requirement for a local office. Identify specifically the time to be spent by the project manager in Fresno through the course of the study and particularly during the data collection and investigation phases. Describe your proposed project management, coordination, and accessibility requirements for other key staff, including sub-consultants.

G. Provide a description for the level of familiarity with the study area.

H. Provide a project schedule for all tasks showing project milestones as discussed below under Interim Reports.

I. Document the technical and professional qualifications of those key persons. Include a summary of their experience/role on similar projects. Provide appropriate references, names, and telephone numbers. The Consultant should note that as a condition of the contract, the key persons, as defined by the City of Fresno, assigned to the project for its duration must be substantially as represented in the proposal. The City of Fresno reserves the right to cancel the contract and seek damages from the Consultant in the event the Consultant fails to provide the key personnel substantially as represented in the proposal.

Ten (10) copies of the proposal shall be submitted at the time specified in this RFP. The single firm selected for the negotiation process will be asked to submit preliminary costs and pricing data for each task included in the scope of services. The task budget shall indicate personnel assigned or labor categories, total hours for each person, labor rate per hour for each person, travel, material and other direct expenses, general administrative costs, overhead charges and fees. Overhead, general administrative costs, fees, and other expenses that relate to the overall project rather than any specific task shall be expressed as a separate budget item. A cost plus fixed-fee contract will be entered into between the City of Fresno and the Consultant.

ADMINISTRATIVE & ORGANIZATIONAL ELEMENTS:

A. Study Organization

The technical components of the study will be prepared by a Consultant to be selected through the RFP process. The Consultant will work with the City's Planning and Development Director, other City Department Directors, Caltrans, the Council of Fresno County Governments, Downtown Association, and the Executive Director of the Fresno Redevelopment Agency to coordinate routine exchange of data and overall project supervision.

1. Role of City of Fresno

The City of Fresno will manage the entire study and will conduct an RFP process to select the Consultant to perform certain aspects of the study. The City of Fresno will provide a framework for development of the project's scope and will also be responsible for the public involvement aspects of the study. The City of Fresno will also be forming a Citizen's Advisory Committee to guide the study.

2. Role of the Consultant

The Consultant will provide the technical expertise necessary to investigate the transportation system and make recommendations as described under Study Purpose and Approach. The Consultant will collect and analyze traffic and transit data from the project area as necessary. The Consultant will provide input to the public involvement process, attend committee and public meetings as necessary, and prepare necessary reports, maps, etc., of their analysis for distribution.

B. Study Area

The subject study is commonly referred to as the Downtown Triangle and is bordered by State Route 99, 180, and 41 (see attachment). Over the past several years, there has been significant progress in improving the downtown area, including:

- Multipurpose 12,500 Seat Stadium
- Exhibit Hall Expansion
- Regional Medical Center
- Fresno Adult School
- Federal Courthouse
- Uptown Museum District
- Chinatown Beautification
- Streetscape and Parking Improvements
- Santa Fe Promenade and Depot Restoration
- Civic Center Square Development

C. Methodologies and Software

All methodologies and computer software selected by the Consultant to analyze operational conditions must be suitable for examining a downtown street and transit system and should take advantage of other tools already existing or under development by other agencies also conducting studies in the downtown area.

D. Interim & Final Reporting

1. Interim Reports

The Consultant shall prepare technical memos at milestone points of the study that are also to be suggested by the Consultant. Each of these technical memos shall describe the major issues addressed and results obtained in that portion of the study. The technical memos will also include the approved methodologies used to perform the analysis and obtain the results. Data Appendices to these technical memos will contain all data, analysis, input and output files, and other information so the analysis

conducted by the Consultant can be duplicated. The technical memos will serve as a basis for the formal final report. In addition to technical memos, the Consultant shall provide and/or present the interim findings in front of the Citizen's Advisory Committee as appropriate at milestone points. The Consultant shall prepare presentation materials (display graphics, Power Point presentations and written summaries) at specified milestones throughout the study. Interim reports shall be provided in electronic format. All components of a single technical memo would be combined into a single file in Microsoft Word and Adobe Acrobat (PDF) format.

2. Final Reports

The Final Draft Report shall be provided in both printed format (35 copies) and electronic format. All components of the Final Draft Report would be combined into a single file in Microsoft Word and Adobe Acrobat (PDF) format. The primary target audience is technical transportation decision-makers with responsibility in the study area, but also includes the Mayor of Fresno, Council Members, and other educated and informed non-technical persons. The technical memos will support the document. The Draft Final Report will be circulated for review in the study area and will be the subject to three public meetings/workshops. Based upon this review and comment, the Final Report and summary will be prepared.

The Final Report shall be provided in electronic format and 50 copies. All components of the Final Report would be combined into a single file in Microsoft Word and Adobe Acrobat (PDF) format. The summary of the Final Report shall be provided in electronic format and 100 copies. All components of the summary would be combined into a single file in Microsoft Word and Adobe Acrobat (PDF) format. Its intended audience is community and business leaders and the general public who are not well versed in technical transportation issues. All artwork, text, negatives, and other interim and final products necessary to produce this report will be provided to the City of Fresno. The City of Fresno shall own the rights to the final report and supporting documents and may make additional copies as needed.

E. Schedule

It is the intention of the City of Fresno and the other supporting entities to complete the study in 12 months, including a three-month period after the conclusion of the technical parts of the study in which to reach a community consensus. The Consultant shall complete its portion of the study approximately nine months from the date the consulting team is given authorization to proceed. The Consultant's final draft report for review shall be completed by the 12th month.

F. Budget

A cost plus fixed-fee contract with a maximum contract amount will be entered into between the City of Fresno and the Consultant. During contract negotiations, the Consultant must provide individually priced and prioritized tasks to be completed "if authorized." The components must be divided and prioritized in such a way that if later portions were not completed, they would not cause an incomplete study. The City of Fresno has appropriated \$285,000 for this study effort.

Time to Qualify Consultants

The Consultant agrees that the City may have 90 days to accept or reject submittals.

Questions and Clarifications

The City understands that Consultants may have questions. All questions must be in written form and received, via fax, **before 5:00 pm (PDT) on September 23, 2005**, by Mr. John Downs, Transit Planning Manager, at (559) 488-1065, or via e-mail at John.Downs@fresno.gov. An RFP question form for this purpose has been included as page 14.

All questions received and the answers that will be developed in response will be distributed to all registered Consultants prior to the deadline for submittals. All registered Consultants will receive responses to the questions.

Any questions concerning the Disadvantaged Business Enterprise (DBE) issues shall be addressed to the DBE Program Coordinator at 559-621-1182.

Consultant Registration

All potential Consultants receiving copies of this RFP will be considered registered and will receive any additional information issued by the City concerning the process. However, if a Consultant desires that a different individual be listed as the primary contact for that Consultant, the name, title, organization, mailing address, telephone number, fax number, and e-mail address of the new point of contact must be provided to Fresno Transit Planning Manager Mr. John Downs via fax at (559) 488-1065, or via e-mail at John.Downs@fresno.gov.

Contact Between Prospective Consultants and the City

Before Consultants have been notified that the process has ended, any contact with City staff, other than the Transit Planning Manager or his designee(s), without prior written authorization is strictly prohibited and may render the Consultants non-responsible and restricted from further participation.

Notice of Staff Determination

Once the City has reviewed and evaluated the proposals received and has determined for award the responsible proposal most beneficial to the City, that determination will be posted on a public bulletin board outside the Purchasing Division Office and the City's website www.fresno.gov, *Bid Opportunities, Anticipated Awards*. The bulletin board and website will generally be updated by Monday of each week, no later than 5 p.m. It is the sole responsibility of interested Proposers to seek this information from either of these sources.

**CHECKLIST
NOTICE INVITING
REQUEST FOR PROPOSALS FOR CONSULTING SERVICES:
DOWNTOWN TRANSPORTATION AND INFRASTRUCTURE STUDY**

SUBMIT THIS CONSULTANT'S CHECKLIST WITH YOUR QUALIFICATION DOCUMENTS. Consultant shall complete and submit all documents marked with an "X" in the "REQUIRED" column for bids to be considered responsive.

REQUIRED

- 1. **SIGNATURE PAGES, PAGE _____**
- 2. **SAMPLE CERTIFICATION, PAGES ____ and ____.**
- 3. **DISCLOSURE OF CONFLICT OF INTEREST PAGE ____.**
- 4. **ADDENDA - Signature page of all Addenda issued, Addenda No. __ to __. (Enter numbers)**

SUBMITTED BY:

Name of Company _____ Contact Name _____
Address _____ City _____ State _____ Zip _____
Phone No. _____ Fax No. _____



**DEPARTMENT OF TRANSPORTATION/FAX
TELEPHONE # (559) 621-1502
FAX # (559) 488-1065**

<p>RFP QUESTIONS FOR: RFP FOR CONSULTING SERVICES: DOWNTOWN TRANSPORTATION AND INFRASTRUCTURE STUDY</p> <p>ATTENTION: John Downs Transit Planning Manager</p>	<p>(FOR CITY OF FRESNO USE ONLY)</p> <p>QUESTION No: _____</p> <p>DATE: ____ REVIEWED BY: _____</p>
<p>FROM: _____</p> <p>COMPANY: _____</p> <p>CONTACT PERSON: _____</p>	<p>DATE: _____</p> <p>PHONE No: _____</p> <p>FAX No: _____</p>
<p>QUESTION: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>ANSWER: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>RESPONSE BY: _____ DATE: _____</p> <p>INCLUDED IN ADDENDUM NO. _____ DATE: _____</p>	

(Submit with RFP)

SIGNATURE PAGE

By my signature on this proposal, I certify, under penalty of perjury, that the statements contained herein are true and correct.

REQUEST FOR PROPOSALS SUBMITTED BY:
(Please follow the instructions for each line, as explained below.)

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

(2) _____
(Corp) (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

CORPORATIONS: INCLUDE ACKNOWLEDGMENT OF SIGNATURE BY NOTARY IN CORPORATE FORM (See Line 4(a), of next page.)

INDIVIDUALS, PARTNERSHIPS, OR JOINT VENTURES: INCLUDE ACKNOWLEDGMENT OF SIGNATURE BY NOTARY.

(Submit with RFP)

- LINE 1: The name of the Consultant must be the same as that under which a license is issued, if a license is required. If the Consultant is a corporation, enter the exact name of the corporation under which it is incorporated; if Consultant is an individual, enter name; if Consultant 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 Submittal and any Contract awarded thereunder are to be addressed.
- LINE 4: (a) If the Consultant is a corporation, the Bid Submittal 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 (sample certification attached): a copy of the Articles of Incorporation, a copy of the Bylaws, and a copy of the Board Resolution or Minutes authorizing the officer or employee to sign contracts. The signature of the officer or employee who signs the Bid Submittal must be acknowledged by a notary in the corporate form.
- (b) If Consultant is an individual, he/she must sign the Bid Submittal, or if the Bid Submittal is signed by an employee or agent on behalf of the Consultant, a copy of a power of attorney must be on file with the City of Fresno prior to the time set for the opening of the bids or must be submitted with the Bid Submittal. Any signature must be acknowledged by a notary.
- (c) If the Consultant is a partnership, the Bid Submittal 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. All signature(s) must be acknowledged by a notary.
- (d) If the Consultant is a joint venture, the Bid Submittal 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. All signature(s) must be acknowledged by a notary.

Where Consultant 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:

NAME

ADDRESS

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

SAMPLE CERTIFICATION

I, _____, certify that I am the
Name
secretary of the corporation named herein; that _____
Name
_____ who signed this RFP Submittal on behalf of the
corporation, was then _____ of
Title
said corporation; that said RFP Submittal 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 true and correct copy of the _____ which is attached.
(Name of Corporate Document)

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

(Submit with RFP)

**DISCLOSURE OF CONFLICT OF INTEREST FOR:
REQUEST FOR PROPOSALS FOR CONSULTING SERVICES:
DOWNTOWN TRANSPORTATION AND INFRASTRUCTURE STUDY**

		YES*	NO
1.	Are you currently in litigation with the City of Fresno or any of its agents?		
2.	Do you represent any firm, organization or person who is in litigation with the City of Fresno?		
3.	Do you currently represent or perform work for any clients who do business with the City of Fresno?		
4.	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?		
5.	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?		
* If the answer to any question is yes, please explain in full.			

(Signature)

(Name)

(Company)

(Address)

(City/State/Zip)

FEDERAL GOVERNMENT CONDITIONS

1. FLY AMERICA REQUIREMENTS:

49 U.S.C. §40118

41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS:
49 U.S.C. 5323(j)
49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

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

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

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 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 CFR 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 CFR 661.7.

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11, but 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 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

School Bus Operations: Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

3. ENERGY CONSERVATION REQUIREMENTS:

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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

4. CLEAN WATER REQUIREMENTS:

33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

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.

(3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

(4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

5. LOBBYING:

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 CFR Part 19, Appendix A, Section 7.

Mandatory Clause/Language

1. Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 04-65 [to be codified at 2 U.S.C. § 1601, *et seq.*].
2. Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d).
3. Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that Contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.
4. Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING 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

6. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts."

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records: The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>	None	Those imposed on	None	None	None	None
a. Contracts below SAT (\$100,000)	None unless ¹	state pass thru to	Yes, if non-competitive	None unless non-competitive	None unless non-competitive	None unless non-competitive
b. Contracts above \$100,000/Capital Projects	non-competitive award	Contractor	award or if funded thru ² 5307/5309/ 5311	award	award	award
<u>II Non State Grantees</u>	Yes ³	Those imposed on	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes ³	non-state Grantee	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/ Capital Projects		pass thru to Contractor				

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

7. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA. **Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

8. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model/Clauses/Language

No specific language is required. FTA has proposed the following language.

- 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.

9. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Purchaser or Contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to all Contractor and Subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials: The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

10. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

11. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to Contractors and Subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

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. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

- (A) Termination for Convenience (General Provision): The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. 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 (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- (B) Termination for Default [Breach or Cause] (General Provision): 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 (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) 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 (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- (C) Opportunity to Cure (General Provision): The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- (D) Waiver of Remedies for any Breach: In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- (E) Termination for Convenience (Professional or Transit Service Contracts): The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- (F) Termination for Default (Supplies and Service): If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- (G) Termination for Default (Transportation Services): If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

- (H) Termination for Default (Construction): If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargos; and
2. The Contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the

(Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

- (I) Termination for Convenience or Default (Architect and Engineering): The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- (J) Termination for Convenience or Default (Cost-Type Contracts): The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

13. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) 49 CFR Part 29

Executive Order 12549

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services 49 CFR 29. 220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, Contractors, and Subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, Contractors, and Subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that Contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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 City of Fresno. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to City of Fresno, 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 49 CFR 29, Subpart C 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.

14. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights: The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (c) Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

15. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may

include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes: 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) **[title of employee]**. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the **[title of employee]**. 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 **[title of employee]** shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute: Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages: Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies: The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

16. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Patent and Rights in Data requirements apply to all Contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 CFR Part 19, Appendix A, Section 5, but the rights in data clause reflect FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data:** The following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the

Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

- (b) In accordance with 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
- (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal

Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. Patent Rights:** The following requirements apply to each contract involving experimental, developmental, or research work:
- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as

described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**17. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26**

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.

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."

Prompt Progress Payment to Subcontractors

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

Prompt Progress Payment to Subcontractors. A prime Contractor or Subcontractor shall pay a Subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to Subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating Contractor or Subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the City's prior written approval. 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 subcontract performance, or noncompliance by a Subcontractor. This provision applies to both DBE and non-DBE prime contractors and Subcontractors. For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at www.ftahelpline.com.

Prompt Payment of Funds Withheld 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. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision 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 subcontract performance, or noncompliance by a Subcontractor. This provision applies to both DBE and non-DBE prime Contractors and 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.

A copy of the approved City of Fresno DBE Program, outlining DBE requirements, procedures, and certifications, can be obtained by contacting the City's DBE Program Coordinator in the Purchasing Division, 2101 "G" Street, Fresno, CA 93706. Any questions concerning Disadvantaged Business Enterprise (DBE) issues shall be addressed to the DBE Program Coordinator at 559-621-1182 or via e-mail: Patricia.Healy@fresno.gov).

For additional assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at www.ftahelpline.com.

**18. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E**

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

SPECIFIC RESPONSE FORMAT AND CONTENT

Specific Response Format and Content

In order to facilitate review of the Submittals, each Consultant must follow the general format, outlined below, with respect to its RFP. Using section numbers and titles consistent with the outline below, the RFP should include:

- (1) Introduction and Cover Letter (approximately 1 page)
 - a. Consultant's name and address.
 - b. Contact person for the RFP, including name, title, organization, mailing address, telephone number, fax number, and e-mail address.
 - c. Signature of contact person who is authorized to act on the Consultant's behalf.

- (2) Company Profile (approximately 3 pages)

This section shall include information relating to the business organization of the Consultant and any other parties which would be partnering with the Consultant in response to an RFP. For each party, the specific data should include:

 - a. The full name and address.
 - b. Whether each operates as an sole proprietor, partnership, joint venture, corporation, or limited liability company.
 - c. The principal partners and/or corporate officers.
 - d. Recent, summary financial information. If Consultant is a partnership or joint venture, individual financial statements must be submitted for each general partner and the joint venture thereof. If to be treated as "Confidential" provide in a separate envelope with the Submittal.

- (3) Company Experience and Approach (approximately 12 pages)

This section shall contain a general overview of the Consultant's experience in providing the Consultant Services being requested and of a project similar to this project in scope or size, including the ability to derive creative solutions and strategies.

- (4) Company References (approximately 5 pages)

This section shall include a list of five clients and client contact persons and telephone numbers where past work performed by the Consultant on projects of a similar nature to this RFP that would support Submittals of the Consultant. Provide a brief description of the work performed on each project.

- (5) Professional Resumes of Individuals (approximately 6 pages)

For key individuals, please provide professional resumes that describe each person's educational background, work experience, registrations and certificates, and roles in projects similar to this one. Two client references and telephone numbers should be provided for each key project team member.

(6) Study Area Understanding (approximately 6 pages)

This section shall be used by the Consultant to outline their understanding and familiarity of the study area's traffic characteristics, transit services, economy, culture, and environment in addition to current and proposed downtown development and related plans, issues, and activities.

SAMPLE AGREEMENT

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

THIS AGREEMENT is made and entered into the ___ day of _____, [Current Year], by and between the CITY OF FRESNO, a municipal corporation (hereinafter referred to as "CITY"), and [Consultant Name], [Legal Identity] (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional [Kind of Service] services for [Describe Project], hereinafter referred to as the "Project," and desires the CONSULTANT to provide the services described herein; and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a [Consultant's Profession] and hereby represents that it is professionally capable of performing [and is licensed to perform,] the services called for by this Agreement.

AGREEMENT

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

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY, the services described in Exhibit "A," attached hereto and incorporated herein by reference.
2. Effective Date and Time for Performance. It is the intent of the parties that this Agreement be effective as of [Start Date] as to all terms and conditions of the Agreement and end on [End Date]. The services of CONSULTANT as described in Exhibit "A" are to commence [Start Date] and shall be completed no later than [Completion Date].
3. Compensation.
 - a. CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of \$[Fee Amount]. Such fee includes all expenses incurred by CONSULTANT in performance of the services.
 - b. Statements shall be rendered monthly and will be payable in the normal course of CITY business.
 - c. The parties may modify this Agreement to increase the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an agreed upon increase in CONSULTANT'S compensation. Any increase or change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination of Agreement.

a. If, for any reason, CITY determines there is insufficient funding available for the Project, then CITY may terminate this Agreement without any liability whatsoever of CITY to CONSULTANT for breach of contract, default, detrimental reliance or any other basis in law or equity, upon seven (7) calendar days prior written notice of termination to CONSULTANT in the manner provided herein.

b. In addition to CITY'S right of termination pursuant to Section 4a, this Agreement may be terminated immediately by either party upon seven (7) calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this Agreement. A party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured within such seven (7) calendar days prior written notice and this shall constitute a material default and breach of this Agreement.

c. In the event of termination pursuant to Section 4a or not due to the material default of CONSULTANT, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of the notice of termination. In the event of termination due to the material default of CONSULTANT, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure.

d. In the event CITY terminates the Agreement pursuant to Section 4b, CITY may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the Agreement, or to recover direct, indirect, consequential or incidental damages for the breach of the Agreement.

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

5. Confidential Information and Ownership of Documents.

a. Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the City Manager. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

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

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

7. Indemnification. Except with regard to professional negligent errors and omissions, as provided in the paragraph below, to the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless, and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONSULTANT, or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. CONSULTANT'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of CITY or any of its officers, officials, employees, agents, or volunteers.

Specifically regarding professional negligent errors and omissions, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONSULTANT or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses), to the proportionate extent that it arises out of or in connection with the professional negligent errors or omissions of CONSULTANT in the performance of this Agreement.

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

This section shall survive termination or expiration of this Agreement.

8. Insurance. Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (I) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by CITY'S Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as ISO "occurrence" form CG 0001 and shall include coverage for Products and Completed Operations, Personal Injury and Advertising Liability, and Blanket Contractual Liability for bodily injury and property damage with combined single limits of not less than \$1,000,000 per occurrence.

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 per occurrence.

(iii) PROFESSIONAL LIABILITY insurance (Errors and Omissions) with a limit of liability of not less than \$1,000,000 per claim.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(v) EMPLOYERS' LIABILITY insurance (if CONSULTANT has employee(s) or at such time as he/she employs such person(s) during the life of this Agreement) with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Defense costs shall be provided as an additional benefit and not included within the above limits of liability. CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions.

The above-described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of CITY of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. **In the event any policies are due to expire during the term of this Agreement, CONSULTANT shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, CONSULTANT shall file with CITY a new certificate and all applicable endorsements for such policy(ies)

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name CITY, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so CONSULTANT'S insurance shall be primary and no contribution shall be required of CITY. In the event claims made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a 5-year discovery period, or (ii) the coverage shall be maintained for a minimum of 5 years following the termination of this Agreement and the requirements of this section relating to such coverage shall survive termination or expiration of this Agreement. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers. **CONSULTANT shall have furnished CITY with the certificate(s) and applicable endorsements for ALL required insurance prior to CITY'S execution of the Agreement.** CONSULTANT shall furnish CITY with copies of the actual policies upon the request of CITY'S Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the life of the Agreement or any extension, CONSULTANT fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be

withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of CITY, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any work by the subcontractor.

9. General Terms.

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

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

c. Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 9c shall survive expiration or termination of this Agreement.

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

10. Conflict of Interest and Non-Solicitation.

a. Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement. Said statement is attached hereto as Exhibit "B" and incorporated herein by reference. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT on Exhibit "B."

b. CONSULTANT shall comply, and require any of its subcontractors to comply, with all laws and regulations including, without limitation, conflict of interest laws, such as Government Code 1090 et. seq., the California Political Reform Act (Government Code Section 87100, et. seq.) and the

regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700, et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require any subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

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

d. Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract in connection with this Project unless such interest is fully disclosed to and approved by CITY, in advance and in writing.

11. Nondiscrimination. CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era. During the performance of this Agreement, CONSULTANT agrees as follows:

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

b. CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era. CONSULTANT shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era. Such 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. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

c. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.

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

12. Independent Contractor and Not a Partnership/Joint Venture.

a. In the furnishing of the services provided for herein, CONSULTANT is acting as an independent contractor. Neither CONSULTANT, nor any of its officers, associates, agents or employees shall be deemed an employee, partner or agent of CITY for any purpose. However, CITY shall retain the right to verify that CONSULTANT is performing its respective obligations in accordance with the terms hereof.

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

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

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

15. Assignment.

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

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

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

17. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

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

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

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

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

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

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

24. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

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

CITY OF FRESNO,
a municipal corporation

[Consultant Name],
[Legal Identity]

By: _____
[Name], [Title]

By: _____
Name: _____

ATTEST:
REBECCA E. KLISCH
City Clerk

Title: _____
[if corporation of LLC, Board chair,
Pres. Or Vice Pres.]

By: _____
Deputy

By: _____
Name: _____

APPROVED AS TO FORM:
HILDA CANTÚ MONTOY
City Attorney

Title: _____
[if corporation or LLC, CFO,
Treasurer, secretary or assistant
Secretary.]

By: _____
Deputy

Addresses:

CITY:
City of Fresno
Attention: [City Person's Name, Title]
2600 Fresno Street
Fresno, CA 93721
Phone: [City Phone #]
FAX: [City Fax #]

CONSULTANT:
[Consultant Name]
Attention: [Consultant Person's name, Title]
[Street Address]
[City, State, Zip]
Phone: [Consultant's Phone #]
Fax: [Consultant's Fax #]

Attachments:

1. Exhibit "A" - Scope of Services
2. Exhibit "B" - Conflict of Interest Disclosure For