



**Request for Qualifications  
On-Call Construction Management Services  
For the Fresno County Rural Transit Agency  
Maintenance Facility Project  
Date: August 15, 2022  
Submittal Deadline: 12pm, September 15<sup>th</sup>, 2022**

**A) Introduction**

The Fresno County Rural Transit Agency (FCRTA) is proposing to construct the Maintenance Facility Project in the City of Selma. The Project encompasses a 7.5-acre site that will include the construction of a new maintenance and operations facility for the FCRTA.

As part of the construction, the FCRTA proposes to primarily utilize construction management services through the resources available from internal staff. Given the potential impacts to staff availability throughout the duration of the construction project, FCRTA desires to contract with a consultant construction manager to provide support to FCRTA staff in construction management on an on-call basis.

**B) Statement of Qualification Submittal Requirements**

FCRTA is requesting statements of qualifications from qualified firms with experience in providing construction management services for public building projects. FCRTA intends to select a firm to provide a single individual to provide on-call construction management services for the FCRTA Maintenance Facility Project (see Section E for a detailed description of the Project). The selected consulting

construction manager will assist in overseeing a team comprised of FCRTA staff and the selected Design Build Entity (DBE) to ensure appropriate oversight and management of the Project to maintain time, quality, and cost control objectives. FCRTA anticipates that its consulting construction manager will provide, as needed, between 10-20 hours per week on the project over its duration.

FCRTA invites qualified firms to submit a statement of qualifications including the following information:

1. Firm description
2. Identification of the construction manager that will be assigned to the project. Include a description of his or her substantial experience with similar projects, including work performed in collaboration or for any municipality in the County of Fresno. Attach a resume if desired.
3. Proposed Approach. Demonstrate your firm's understanding of FCRTA's objectives by providing a description of the approach the firm will utilize to accomplish the scope of work (see Section F). Include a preliminary outline and description of a construction management plan for the project.
4. References from 5 clients that have direct experience working with the proposed construction manager.
5. Conflict of Interest – include any conflicts that may exist for the firm, or a confirmation that none exist.

### **C) Submittal Deadline**

Statement of Qualifications are due by 12:00 p.m. on Thursday, September 15, 2022, to Janelle Del Campo, Operations Manager, via email: [delcampo@fresnocog.org](mailto:delcampo@fresnocog.org). Questions about the project or the request for qualifications may be directed to Janelle Del Campo by email no later than 12:00 p.m. on Thursday September 1, 2022.

### **D) Selection and Final Scope of Work**

FCRTA intends to select a preferred firm based on its review of statements of qualification it receives in response to this request. FCRTA will work with the selected firm to establish a final on-call scope of work and compensation schedule. If negotiations are not successfully concluded, FCRTA reserves the right to negotiate with an alternate firm or to reject any and all statements of qualification prior to execution of the Agreement, with no penalty to FCRTA. A standard FCRTA consultant agreement (Appendix 1) will be utilized, and standard insurance requirements (Appendix 2) will apply.

### **E) Project Description**

FCRTA has engaged in the process of selecting an on-call consultant to assist in overseeing construction management for the FCRTA Selma Maintenance Facility Project. The project would construct a new maintenance and operations facility for the FCRTA. The facility would include a maintenance shop building with approximately 10,000-square-foot maintenance shop equipped to service both compressed natural gas and 30-40 ft. electric transit buses, light duty electric vehicles and vans. The project also approximately 5,000-square-foot dedicated to centralized dispatching and supervisors offices. The proposed project would also include a bus wash capable of washing up to 40-foot transit buses that would apply conservation and operations best practices such as on-site recycled water, a reverse osmosis final rinse water system, and bus air dryers. A bus detailing area and a Hazardous Material Storage with concrete curb containment.

The project will include the installation of Level 2 electric vehicle (EV) chargers to serve electric transit buses located under solar car ports. The project will include the construction of 1-2 inductive Wave charging unit and the installation of approximately 34 vehicle parking stalls and 20 bus parking stalls with solar roofs ranging in size for cars to 40ft transit buses. The project will also require installation of battery storage to support the electric vehicle charging. FCRTA intends for the on-site solar, battery storage, and electric vehicle chargers to be connected into a single integrated system comprehensively managed by an onsite energy management control system and/or microgrid system to minimize impact to the electric utility grid for bus charging and reduce electric utility demand charge costs for FCRTA.

Project Budget and Funding

This project is funded with a combination of local and federal funds. FCRTA has been awarded a grant from the Federal Transit Administration (FTA) 5339(b) Bus and Bus Facilities Program in the amount of \$5,145,281 for pre-construction and construction activities. The table below summarizes the funding breakdown.

FTA Grant:	\$ 5,145,281
Measure C:	\$ 5,145,281
Total Project Cost:	\$ 10,290,562

Status and Anticipated Schedule

FCRTA released a Request for Qualification (RFQ) on June 30<sup>th</sup> 2021 for the design and construction of the Fleet Maintenance Facility in Selma. FCRTA solicited Statements of Qualifications (SOQs) from DB Entities in order to solicit information in the form of a qualification questionnaire and qualification statements to create a short-list of up to the three of the most highly qualified Entities and the short-listed Entities will be issued a Request for Proposals (RFP). The RFP was released to the short-listed DBE firms on November 1<sup>st</sup> and proposals were due on December 1<sup>st</sup>. FCRTA selected Zumwalt Construction Inc. as they submitted the proposal that FCRTA determined to provide the best value, based on qualifications and other factors set forth in the RFP. It is FCRTA’s intent to award a single contract to a selected DB Entity to deliver this project. In January 2022, the FCRTA Board approved Zumwalt Construction Inc. as the recommendation DBE selection for this project. Zumwalt was given the notice to proceed on April 1, 2022. The project is currently in the preconstruction phase which include site design and plan checks. Construction phase is scheduled to begin in December of 2022 pending a notice to proceed in November.

**F) Scope of Work**

An on-call consulting construction manager will be selected to assist FCRTA staff in overseeing contract administration and construction management for the Selma Maintenance Facility Project, utilizing FCRTA resources and in consultation with the selected DBE. Typical elements required by FCRTA in conjunction with contract administration and construction management are outlined in Appendix 3 to this RFQ. The successful firm will demonstrate its ability to carry out the work as identified. The selected on-call consulting construction manager can anticipate attending regular construction management meetings in person and to be physically on site as needed by FCRTA’s staff.

FCRTA Resources

FCRTA anticipates that, at times, in-house resources may not be sufficient to adequately provide construction management services given workloads and transit related operational priorities. The on-call consulting construction manager will provide the experience and expertise to assist FCRTA and at times lead the construction management of the Project. FCRTA will assign the Operations Manager to serve as FCRTA's primary contact for construction management. FCRTA's Operations Manager will work with the selected construction manager to implement a construction management plan developed by the Consultant and approved by FCRTA for the project.

### **G) Selection Process**

Statements of qualification submitted in response to this request shall be evaluated based on the following applicable criteria:

- Experience of the individual within the Consultant's organization directly responsible for the work
- Demonstrated understanding of the work to be completed
- Thoroughness of the Consultant's proposed construction management plan outline and description Strength and relevance of the references provided

FCRTA staff will assemble all responses received for evaluation by a selection committee. The selection committee may consider it necessary to interview some or all consultants.

### **H) Conflicts of Interest**

Conflicts of Interest Statement - This solicitation is subject Conflicts of Interest requirements. Conflicts of Interest code state that no person or entity performing services for a contracting agency in connection with a state funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project. The proposing Consultant shall disclose any financial, business or other relationship with FCRTA that may have an impact upon the outcome of the contract or the construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract or the construction project that will follow. The proposing Consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on the construction project.

### **I) Appendices**

1. Consultant Agreement
2. Standard Insurance Requirements
3. Elements of Construction Management

**APPENDIX 1**  
**FCRTA Consultant Agreement**

This Consultant Services Agreement ("Agreement") is entered into between the Fresno County Rural Transit Agency, a California joint powers Public Agency (hereafter referred to as "FCRTA") and the individual or entity identified below (hereafter referred to as "Consultant") with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on the date signed by FCRTA, which shall occur after execution by Consultant ("Effective Date").

**RECITALS**

- A. FCRTA desires to obtain services for the work and associated services ("Services") described in Exhibit A, and as further set forth in the proposal from Consultant attached as Exhibit B ("Proposal") and incorporated herein by reference.
- B. Consultant is engaged in the business of furnishing the Services and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services.
- C. FCRTA desires to retain Consultant, and Consultant desires to provide FCRTA with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, FCRTA and Consultant agree as follows:

**AGREEMENT**

1. Scope of Services. Consultant shall perform the Services described in the Recitals. If there is a conflict between the scope of the Proposal and this Agreement, this Agreement shall control. The contractual terms and conditions detailed on page 2 and page 3 of the Proposal shall have no force or effect with respect to this Agreement and the Services performed by Consultant.
2. Commencement of Services; Term of Agreement. Consultant shall commence the Services upon FCRTA's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by FCRTA, has satisfactorily performed and completed the Services, or until such time as the Agreement is terminated by either party pursuant to Section 16 herein, whichever is earlier.
3. Payment for Services. FCRTA shall pay Consultant a sum not to exceed the total set forth in **Exhibit A** for the Services performed pursuant to this Agreement. Consultant shall submit monthly invoices to FCRTA containing detailed billing information regarding the Services provided and unless otherwise specified in **Exhibit A**, FCRTA shall tender payment to Consultant within thirty (30) days after receipt of invoice.
4. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents or volunteers of FCRTA. Consultant is engaged in an independently established trade, occupation, or business to perform the services required by this Agreement and is hereby retained to perform work that is outside the usual course of FCRTA's business.  
Consultant is free from the control and direction of FCRTA in connection with the manner of performance of the work. Nothing contained in this Agreement shall be deemed to create any contractual relationship between FCRTA and Consultant's employees or subcontractors, nor shall anything contained

in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against FCRTA.

5. Standard of Care. Consultant expressly represents it is qualified in the field for which Services are being provided under this Agreement and that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed, bonded, and/or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement, as may be required by law. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with all applicable laws and regulations.

6. Identity of Subcontractors and Sub-Consultants. Consultant shall, before commencing any work under this Agreement, provide to FCRTA in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by FCRTA and in no event shall Consultant replace an approved subcontractor without the advance written permission of FCRTA, with the understanding that FCRTA's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to FCRTA for the performance of Consultant's subcontractors.

7. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to FCRTA the same insurance and indemnity obligations that Consultant owes to FCRTA; (b) make clear that FCRTA intends to rely upon the reports, opinions, conclusions and other work product prepared and performed by subcontractors for Consultant; (c) entitle FCRTA to impose upon subcontractors the assignment rights found elsewhere in this Agreement; and (d) require the payment of prevailing wages in accordance with State and Federal law, if applicable.

7A. Prevailing Wages. Where applicable, Consultant shall be responsible for the payment of prevailing wages in accordance with State and Federal law. Consultant shall further be responsible for ensuring any subcontractors comply with any requirements for the payment of prevailing wages in accordance with State and Federal law, if applicable.

8. Power to Act on Behalf of FCRTA. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of FCRTA except as may be expressly authorized in advance in writing from time to time by FCRTA and then only to the extent of such authorization.

9. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. FCRTA shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide FCRTA with a working draft of all reports and five (5) copies of all final reports prepared by Consultant under this Agreement.

10. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings

and materials recorded on computer discs or other electronic devices ("Work Product"), shall be and remain the property of FCRTA. FCRTA shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon FCRTA's request, Consultant shall make available for inspection and copying all such Work Product and all Work product shall be turned over to FCRTA promptly at FCRTA's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the General Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

11. Confidentiality. All data, reports, conclusions, opinions, recommendations and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to FCRTA, unless otherwise provided by law or expressly authorized by FCRTA. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

12. FCRTA Name and Logo. Consultant shall not use FCRTA's name or insignia, photographs relating to FCRTA projects for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of FCRTA.

13. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, in the Services. Consultant further warrants that neither Consultant nor any of its employees have real property, business interests or income that will be affected by the Services. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the FCRTA or a member of the FCRTA Board.

14. Non-liability of Officers and Employees. No officer or employee of FCRTA shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by FCRTA for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

15. FCRTA Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. FCRTA reserves the right to employ other consultants in connection with the Services.

16. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

a. Termination by FCRTA: Without Cause. This Agreement may be terminated by FCRTA at its discretion upon seven (7) days prior written notice to Consultant.

b. Termination by FCRTA or Consultant: For Cause. Either party may terminate this Agreement upon fourteen (14) days prior written notice to the other party of a material breach, and a failure to cure within that time period.

c. Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant, and provided all other conditions for payment have been met, Consultant shall be paid compensation for services satisfactorily performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of FCRTA, FCRTA may withhold an amount that would otherwise be payable as an offset to FCRTA's damages caused by such failure.

d. Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the FCRTA, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, FCRTA shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks or other electronic devices, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

17. Insurance. Consultant shall satisfy the insurance requirements set forth in **Exhibit C**.

18. Indemnity and Defense. Consultant hereby agrees to indemnify, defend and hold the FCRTA, its officials, officers, employees, agents, and volunteers harmless from and against all claims, demands, causes of action, actions, damages, losses, expenses, and other liabilities, (including without limitation reasonable attorney fees and costs of litigation) of every nature arising out of or in connection with the alleged or actual acts, errors, omissions or negligence of Consultant or its subcontractors relating to the performance of Services described herein, unless the injuries or damages are the result of FCRTA's sole negligence or willful misconduct.

Consultant and FCRTA agree that said indemnity and defense obligations shall survive the expiration or termination of this Agreement for any items specified herein that arose or occurred during the term of this Agreement.

19. Taxes. Consultant agrees to pay all taxes, licenses, and fees levied or assessed by any governmental agency on Consultant incident to the performance of Services under this Agreement, and unemployment compensation insurance, social security, or any other taxes upon the wages of Consultant, its employees, agents, and representatives. Consultant agrees to obtain and renew an annual business license and pay the applicable annual business license fee during the term of this Agreement.

20. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of FCRTA. In the event of an assignment to which FCRTA has consented, the assignee shall agree in writing to personally assume and perform the



covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from FCRTA under the terms of this Agreement to any other individual, corporation or entity. FCRTA retains the right to pay any and all monies due Consultant directly to Consultant.

21. Form and Service of Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be delivered to, served upon, or given to either party to this Agreement by the other party shall be in writing and shall be deemed properly delivered, served or given by one of the following methods:

- a. Personally delivered to the party to whom it is directed. Service shall be deemed the date of delivery.
- b. Delivered by e-mail to a known address of the party to whom it is directed provided the e-mail is accompanied by a written acknowledgment of receipt by the other party. Service shall be deemed the date of written acknowledgement.
- c. Delivery by a reliable overnight delivery service, ex., Federal Express, receipted, addressed to the addressees set forth below the signatories to this Agreement. Service shall be deemed the date of delivery.
- d. Delivery by deposit in the United States mail, first class, postage prepaid. Service shall be deemed delivered seventy-two (72) hours after deposit.

22. Entire Agreement. This Agreement, including the attachments, represents the entire Agreement between FCRTA and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both FCRTA and Consultant.

23. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

24. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

25. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

26. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by FCRTA and Consultant in the County of Fresno, California. Consultant shall perform the Services required under this Agreement in the County of Fresno, California. Thus, in the event of litigation, venue shall only lie with the appropriate state or federal court in Fresno County.

27. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of

this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

28. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

29. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

30. Alternative Dispute Resolution. If a dispute arises out of or relating to this Agreement, or the alleged breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

Demand for mediation shall be in writing and delivered to the other party to this Agreement. A demand for mediation shall be made within reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

31. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class, includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

Now, therefore, the FCRTA and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT

FCRTA

By: \_\_\_\_\_

By: \_\_\_\_\_  
Moses Stites, General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Party Identification and Contact Information:

**[Consultant]**

Company Name

Attn: Name

Title

Address

City, State

\_\_\_\_\_ [E-Mail Address]

\_\_\_\_\_ [Phone Number]

**[FCRTA]**

Fresno County Rural Transit Agency

Attn: Moses Stites

General Manager

2035 Tulare Street, Suite 201

Fresno, CA 93721

mstites@fresnocog.org

(559) 233-6789 Ext.244

APPROVED AS TO FORM

\_\_\_\_\_  
Bryan Rome, Deputy County Counsel

# EXHIBIT A

## DESCRIPTION OF SERVICES

### SCOPE OF SERVICES

*Include a detailed description of services and work product desired. Identify any deliverables.*

### COMPENSATION AND BILLING

*Identify compensation to be paid to consultant and terms of payment.*

*Make sure to include contract total.*

*Include itemized list, if appropriate.*

*Make sure payment is for all services provided, including materials, labor, taxes.*

### SCHEDULE

If not otherwise specifically set forth in the Scope of Services or Proposal, the Services shall occur pursuant to an agreed upon schedule, which is subject to modification based on the FCRTA's operational needs. FCRTA will notify Consultant in advance of any modification to the schedule.

### Optional: PERFORMANCE GUARANTEE

*If necessary, include provisions for a performance bond or other guarantee.*

### Optional: PERFORMANCE REQUIREMENTS

Notwithstanding, and in addition to the provisions of, Section 16 of this Agreement, if any work performed hereunder is not in conformity with the requirements of this Agreement and other pertinent documents, FCRTA shall have the right to require Consultant to perform the work again in conformity with the requirements of this Agreement at no additional increase in the Consultant's fee for service. Remedy for non-compliance or non-performance shall occur within 24 hours of notice. FCRTA shall also have the right to require Consultant to take all necessary steps to ensure future performance of the work in conformity with the requirements of this Agreement. In the event Consultant fails to perform the work again or fails to take necessary steps to ensure future performance of the work in conformity with the requirements of this Agreement, FCRTA shall have the right to immediately terminate this Agreement for default.

### Optional: DELAY DAMAGES

Time is of the essence with respect to this Agreement and the Services provided by Consultant. Consultant's failure to timely perform its service obligations under this Agreement shall result in the assessment of delay damages at the rate of: *[select one (1) of the following:]*

Two percent (2%) of the total cost of the project for each week of non-compliance/non-performance *[or]* \$ \_\_\_\_\_ per day for each day beyond the completion date that the Services remain incomplete or not fully performed.

**EXHIBIT B**  
**CONSULTANT PROPOSAL**

# EXHIBIT C

## INSURANCE REQUIREMENTS

Prior to commencement of the Services, Consultant shall take out and maintain, at its own expense, and shall cause any subcontractor with whom Consultant contracts for the performance of Services pursuant to this Agreement to take out and maintain, the following insurance until completion of the Services or termination of this Agreement, whichever is earlier, except as otherwise required by subsection (d) below. All insurance shall be placed with insurance companies that are licensed and admitted to conduct business in the State of California and are rated at a minimum with an "A:VII" by A.M. Best Company, unless otherwise acceptable to FCRTA.

a. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

(i) Professional Liability Insurance (Errors and Omissions) in an amount not less than \$2,000,000.00 per occurrence or claim, \$2,000,000 aggregate. Said insurance shall be maintained at all times during Consultant's performance of Services under this Agreement, and for a period of five years following completion of Consultant's Services under this Agreement or termination of this Agreement.

(ii) General Liability Insurance (including operations, products and completed operations coverages) in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25

4) or the general aggregate limit shall be twice the required occurrence limit.

(iii) Worker's Compensation Insurance as required by the State of California.

(iv) Business Automobile Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

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

If Consultant maintains higher limits than the minimums shown above, FCRTA shall be entitled to coverage at the higher limits maintained.

b. Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(i) The FCRTA, its officers, officials, employees, agents, and volunteers are to be covered as insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the

Consultant's insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33 or CG 20 38; and CG 20 37 forms if later revisions used).

(ii) For any claims related to the Services performed pursuant to this Agreement, the Consultant's insurance coverage shall be primary insurance as respects the FCRTA, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the FCRTA, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(iii) Each insurance policy required by this section shall be endorsed to state that the FCRTA shall receive written notice at least thirty (30) days prior to the cancellation, non-renewal, or material modification of the coverages required herein.

(iv) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(v) Consultant grants to the FCRTA a waiver of any right to subrogation which any insurer of said Consultant may acquire against FCRTA by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not FCRTA has received a waiver of subrogation endorsement from the insurer.

(vi) Any deductibles or self-insured retentions must be declared to and approved by the FCRTA. FCRTA may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

c. Evidence of Coverage. Consultant shall deliver to FCRTA written evidence of the above insurance coverages, including the required endorsements prior to commencing Services under this Agreement; and the production of such written evidence shall be an express condition precedent, notwithstanding anything to the contrary in this Agreement, to Consultant's right to be paid any compensation under this Agreement. FCRTA's failure, at any time, to object to Consultant's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance), shall not be deemed a waiver of FCRTA's right to insist upon such insurance later.

d. Maintenance of Insurance. If Consultant fails to furnish and maintain the insurance required by this section, FCRTA may (but is not required to) purchase such insurance on behalf of Consultant, and the Consultant shall pay the cost thereof to FCRTA upon demand, and FCRTA shall furnish Consultant with any information needed to obtain such insurance. Moreover, at its discretion, FCRTA may pay for such insurance with funds otherwise due Consultant under this Agreement.

Consultant shall maintain all of the foregoing insurance coverages during the term of this Agreement, except as to (a) the products and completed operations coverage under the General Liability Insurance which shall also be maintained for a period of ten (10) years following completion of the Services by Consultant or termination of this Agreement, whichever is earlier; and (b) Professional Liability Insurance, which shall be maintained for a period of five (5) years following completion of the Services by Consultant or termination of this Agreement, whichever is earlier.

e. Subcontractors. If the Consultant should subcontract all or any portion of the work to be performed in this Agreement, the Consultant shall cover the subcontractor, and/or require each subcontractor to adhere to all the requirements contained herein. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.

f. Special Risks or Circumstances. The FCRTA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

g. Indemnity and Defense. Except as otherwise expressly provided, the insurance requirements in this section shall not in any way limit, in either scope or amount, the indemnity and defense obligations separately owed by Consultant to FCRTA under this Agreement.



**APPENDIX 2**  
**FCRTA Insurance Requirements**

Prior to commencement of the Services, Consultant shall take out and maintain, at its own expense, and shall cause any subcontractor with whom Consultant contracts for the performance of Services pursuant to this Agreement to take out and maintain, the following insurance until completion of the Services or termination of this Agreement, whichever is earlier, except as otherwise required by subsection (d) below. All insurance shall be placed with insurance companies that are licensed and admitted to conduct business in the State of California and are rated at a minimum with an "A:VII" by A.M. Best Company, unless otherwise acceptable to FCRTA.

a. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

(i) Professional Liability Insurance (Errors and Omissions) in an amount not less than \$2,000,000.00 per occurrence or claim, \$2,000,000 aggregate. Said insurance shall be maintained at all times during Consultant's performance of Services under this Agreement, and for a period of five years following completion of Consultant's Services under this Agreement or termination of this Agreement.

(ii) General Liability Insurance (including operations, products and completed operations coverages) in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(iii) Worker's Compensation Insurance as required by the State of California.

(iv) Business Automobile Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

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

If Consultant maintains higher limits than the minimums shown above, FCRTA shall be entitled to coverage at the higher limits maintained.

b. Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

The FCRTA, its officers, officials, employees, agents, and volunteers are to be covered as insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the

Consultant's insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33 or CG 20 38; and CG 20 37 forms if later revisions used).

(ii) For any claims related to the Services performed pursuant to this Agreement, the Consultant's insurance coverage shall be primary insurance as respects the FCRTA, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the FCRTA, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(iii) Each insurance policy required by this section shall be endorsed to state that FCRTA shall receive written notice at least thirty (30) days prior to the cancellation, non-renewal, or material modification of the coverages required herein.

(iv) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(v) Consultant grants to the FCRTA a waiver of any right to subrogation which any insurer of said Consultant may acquire against FCRTA by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the FCRTA has received a waiver of subrogation endorsement from the insurer.

(vi) Any deductibles or self-insured retentions must be declared to and approved by the FCRTA. FCRTA may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

c. Evidence of Coverage. Consultant shall deliver to FCRTA written evidence of the above insurance coverages, including the required endorsements prior to commencing Services under this Agreement; and the production of such written evidence shall be an express condition precedent, notwithstanding anything to the contrary in this Agreement, to Consultant's right to be paid any compensation under this Agreement. FCRTA's failure, at any time, to object to Consultant's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance), shall not be deemed a waiver of FCRTA's right to insist upon such insurance later.

d. Maintenance of Insurance. If Consultant fails to furnish and maintain the insurance required by this section, FCRTA may (but is not required to) purchase such insurance on behalf of Consultant, and the Consultant shall pay the cost thereof to FCRTA upon demand, and FCRTA shall furnish Consultant with any information needed to obtain such insurance. Moreover, at its discretion, FCRTA may pay for such insurance with funds otherwise due Consultant under this Agreement.

Consultant shall maintain all of the foregoing insurance coverages during the term of this Agreement, except as to (a) the products and completed operations coverage under the General Liability Insurance which shall also be maintained for a period of ten (10) years following completion of the Services by Consultant or termination of this Agreement, whichever is earlier; and (b) Professional Liability Insurance, which shall be maintained for a period of five (5) years following completion of the Services by Consultant or termination of this Agreement, whichever is earlier.

e. Subcontractors. If the Consultant should subcontract all or any portion of the work to be performed in this Agreement, the Consultant shall cover the subcontractor, and/or require each subcontractor to adhere to all the requirements contained herein. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.

f. Special Risks or Circumstances. FCRTA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

g. Indemnity and Defense. Except as otherwise expressly provided, the insurance requirements in this section shall not in any way limit, in either scope or amount, the indemnity and defense obligations separately owed by Consultant to FCRTA under this Agreement.

### APPENDIX 3

#### FCRTA – Typical Elements of On-Call Construction Management/Contract Administration

##### A. GENERAL CONSTRUCTION MANAGEMENT \_(AS NEEDED AND REQUESTED BY FCRTA’S GENERAL MANAGER AND OR OPERATIONS MANAGER)

###### 1. CONTRACT ADMINISTRATION

Provide contract administration support services for the Project, integrating services with the standard OWNER systems, personnel and procedures.

###### 2. CONSTRUCTION ADMINISTRATION

Establish written procedures for the Project and upon OWNER-approval of written procedures, prepare and revise as necessary. Procedures for the Project shall include, at a minimum, discussion of the following:

- a. lines of communication;
- b. protocol for processing budget revision;
- c. Material tracking
- d. Labor tracking for certified payroll
- e. job progress meetings;
- f. processing payment requests;
- g. Certified Payroll processing
- h. Testing lab coordination and tracking
- i. owner directed changes during construction; and
- j. protocol for processing RFI’s, review of submittals or substitutions, requests for equitable adjustments and any changes to the contract sum or contract time.

###### 3. CONSTRUCTION MANAGER shall document all procedures, provide reports and controls as follows:

- a. Develop and maintain a filing system for all Project construction phase documents consistent with OWNER requirements.
- b. Prepare and maintain a Project Master Schedule in cooperation with the OWNER; obtain all Project schedules, including construction contractor Critical Path Method (“CPM”) schedules; and create Master Schedule progress graphs for each phase of construction and the overall Project.
- c. Prepare and maintain a system which organizes and tracks all Project documents, including all design, consultant and prime construction contracts which affect the construction, plans and specifications, project schedule, progress graphs, cost estimate, request for information, architectural supplemental instructions, proposal requests, change orders, contract drawings and submittals of any kind, Project correspondence, meeting notes, inspection deficiency notices, records of tests and test results, inspection reports and notices, and any other items deemed necessary by the OWNER (“Project Documentation”).
- d. Maintain one (1) set of PROJECT Documentation at the PROJECT site, with all updates current to within one (1) week of issuance.
- e. Develop a monthly PROJECT reporting format, "Monthly Report", which shall include a detailed accounting of monies paid to date on the construction contract, monies approved for payment on the construction contract, current calculations of Contract Sum for the construction

contract as affected by change orders, current project schedule for the construction contractor as affected by change orders, current job progress, milestones achieved, progress photos, areas of concern and other items of general interest. Provide five (5) copies of the Monthly Report to OWNER on the tenth (10th) business day of each month beginning with the start of construction.

f. Organize and maintain file of warranties and closeout items by contract and contract specification sections.

#### **B. PRECONSTRUCTION SERVICES: CONSTRUCTION DOCUMENT PHASE (AS NEEDED AND REQUESTED BY FCRTA'S GENERAL MANAGER AND OR OPERATIONS MANAGER)**

1. Inform OWNER of adverse impacts to the PROJECT schedule. Recommend to OWNER corrective action where necessary. Provide regular updates to OWNER.
2. Provide ongoing schedule monitoring and update the PROJECT's master schedule monthly. Continually (at least bi-weekly) report on schedules, delays and conflicts, and advise OWNER of all events impacting the PROJECT master schedule. Develop and implement OWNER-approved mitigation plans as required to maintain the PROJECT master schedule.
3. Perform administrative functions relevant to the project, including filing, contract processing, document control and budget tracking.
4. CONSTRUCTION MANAGER is not obligated to perform any activity which requires a professional design license.

#### **C. CONSTRUCTION PHASE (AS NEEDED AND REQUESTED BY FCRTA'S GENERAL MANAGER AND OR OPERATIONS MANAGER)**

1. Conduct weekly coordination meetings between the construction contractors, architects and engineer(s).
2. Document all meetings and verbal directives and provide copies to OWNER's project managers within five (5) working days.
3. Receive and review all construction contractor's payment requests, and make recommendations as to payment.
4. Receive and review all written requests from construction contractors for additional time or money and make recommendations to OWNER regarding same.
5. Document any conditions which a construction contractor alleges is an unforeseen condition by photograph, or written memorandum. Advise OWNER's project manager of the alleged unforeseen condition as soon as it is reported. Coordinate the timely exchange of information regarding the condition, including supplemental instructions and proposal requests between the DBE and contractor to avoid delays and resulting claims for additional time and costs. When requested by OWNER, evaluate contractor assertions of unforeseen conditions and provide a recommendation regarding resolution of same.
6. Document any observed safety violation, hazardous condition, or incident of bodily injury or property damage. Advise OWNER's project manager and construction contractor of the observation on the same day it is noted in the daily log. Coordinate the timely exchange of information regarding the condition to avoid injury, damage, delays and resulting claims for additional time and costs. When requested by OWNER, evaluate contractor refusals to comply with contract safety specifications and provide a recommendation regarding resolution of same.
7. Evaluate Project document changes issued by DBE prior to issuing them to the contractor(s) and make recommendations to the OWNER for the appropriate DBE's Supplemental

Instructions or Proposal Requests -designation. When the contractor submits requests for compensation for a proposed change in scope, CONSTRUCTION MANAGER shall review and submit written recommendations to the OWNER including any analysis thereof.

8. In the event lack of clarity, ambiguity, errors, or omissions in the construction contract documents become apparent, CONSTRUCTION MANAGER will evaluate construction contractors assertions regarding the Project Documentation and advise OWNER, if necessary, as to merit of assertion and need for clarification of Project Documentation, if any.

9. Review construction contractors' cost estimates, and negotiate changes to the contract consistent with OWNER's direction; and, at OWNER's request and by mutual agreement of the parties, prepare cost analysis or estimate of work described in the proposed change order.

10. On a monthly basis, monitor contractor's schedule(s) and advise OWNER of schedule impacts and deviations from contractor's critical path(s).

11. Coordinate Materials Testing and Special Inspections with owners contracted lab, reviewing results in a timely and pertinent manner.

12. Observation and monitoring of the construction contracts consistent with the General Conditions of the Contracts for Construction for the Project, including, without limitation, the following:

a. CONSTRUCTION MANAGER, with Owner's concurrence, shall take appropriate action to direct that each construction contractor performs all work in accordance with the Project Documentation.

b. Perform field quality control inspection(s) and review for compliance with contract documents and coordinate special inspections required by the work of Owner's separate contractors/consultants.

c. Coordinate with owners building inspection department for all required code compliance inspections, field tests and sign-offs required by FCRTA and any other regulatory or testing and inspection firms/agencies.

d. Review construction contractor's as-built documentation and ensure it is up-to-date to within one (1) week of construction and installation.

e. Maintain a complete set of files in the Project office containing a complete record of construction. The files shall contain all Project correspondence, meeting and telephone notes, inspection deficiency notices, Daily reports, records of tests and test results, and inspection reports and notices, etc.

#### **D. CLOSE-OUT (AS NEEDED AND REQUESTED BY FCRTA'S GENERAL MANAGER AND OR OPERATIONS MANAGER)**

1. Schedule, coordinate and supervise final tests and start-up of all building systems. For the purposes of this paragraph, coordinate means to inform all relevant parties with sufficient advance notice of the inspection or start-up date, ensure site access and availability of resources or other Project personnel who may be required for the work and keep OWNER advised of same.

2. Ensure that construction contractor(s) have provided all Project records, drawings, O&M manual, warranties and guarantees, and test reports as required and as directed by OWNER. Coordinate contractor's complete training of OWNER personnel on all building systems. For the purposes of this paragraph, coordinate means to inform all relevant parties with sufficient advance notice of the training date, review training for completeness and accuracy, ensure availability of resources or other Project personnel who may be required for the training, and keep OWNER advised of same.

3. CONSTRUCTION MANAGER shall complete preparation of a detailed listing of construction contractor omissions and defects (commonly referred to as a punch list) and final inspection of the Project. CONSTRUCTION MANAGER shall schedule, coordinate and supervise the inspection of the Project for conformance with Project documents, and distribute a joint final inspection with the OWNER, other agencies, and any other parties as are necessary and/or required. The final inspection shall list all deficiencies and that the CONSTRUCTION MANAGER shall direct the contractor to correct them within thirty (30) calendar days and CONSTRUCTION MANAGER shall check utilities, operating systems and equipment for operational readiness.
4. Prepare all necessary documentation for OWNER'S final acceptance of Project, contract closeout and final report.
5. Upon completion of construction of the Project, CONSTRUCTION MANAGER shall provide a written statement verifying to the OWNER that, to the best of CONSTRUCTION MANAGER'S knowledge, the Project has been completed in accordance with the construction contract documents and any change orders thereto, and in accordance with any and all applicable codes and ordinances. This verification does not relieve the contractor(s) of their responsibility to certify compliance or completion of the work in accordance with the contract documents.