



**RESOURCE
MANAGEMENT AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One
PETE VANDER POEL
District Two
AMY SHUKLIAN
District Three
EDDIE VALERO
District Four
DENNIS TOWNSEND
District Five

AGENDA DATE: October 22, 2019 – **REVISED**

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/> Advertised
Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
CONTACT PERSON: Celeste Perez PHONE: (559) 624-7010		

SUBJECT: Contract Time Extension for Agreement No. 28592 with VSCE Inc.

REQUEST(S):

That the Board of Supervisors:

1. Approve an Amendment to Agreement No. 28592 with VSCE, Inc. to extend the date of termination of the agreement through June 30, 2020 for Construction Management Services for the TOMF Project; and
2. Authorize and direct the Chairman of the Board to execute three (3) copies of the Amendment to Agreement No. 28592.

SUMMARY:

The County entered into TC Agreement No. 28592 with VSCE, Inc., attached as Attachment A, to provide construction management services during the course of the construction of the Transit Operations and Maintenance Facility (TOMF) as well as the Compressed Natural Gas (CNG) Fueling project located at the TOMF. The TOMF was designed for the maintenance of TCaT's bus fleet and for the operations of the various TCaT programs, including bus parking and CNG fueling, and is part of the Tulare County Central Road Yard Expansion Master Plan ("Master Plan"), which your Board approved in Resolution No. 2014-0029 on January 14, 2014.

Staff are requesting a no cost time extension to Agreement No. 28592 with VSCE Inc. to change the termination date from the existing end date of November 30, 2019 to June 30, 2020, attached as Attachment B. The request for a contract extension is due to the changes in the project schedule that occurred earlier in the TOMF project, including separating the CNG project into a different contract. The terms of the contract will remain otherwise unchanged.

SUBJECT: Contract Time Extension for Agreement No. 28592 with VSCE Inc.
DATE: October 22, 2019

Originally, the TOMF and CNG Fueling projects were bid as one project but were later separated into two separate projects with different schedules due to funding issues. Both projects are currently under construction, with the TOMF project expected to be completed at the end of October 2019 and the CNG Fueling System project expected to be complete in February 2020. The extension of the agreement beyond the end of construction will allow for the preparation of closeout documentation and the creation of as-built drawing.

The agreement has a not-to-exceed amount of \$393,439. As of September 24, 2019, \$168,603 has been invoiced by VSCE for services performed on the TOMF project. RMA's Construction Management team has provided primary day to day construction oversight of the TOMF project. RMA anticipates engaging VSCE more heavily for inspection and oversight of the CNG Fueling project, including testing, inspection, and submittal review.

FISCAL IMPACT/FINANCING:

There will be No Net County Cost to the General Fund.

TC Agreement No. 28592 has a maximum cost of \$393,439, of which approximately half has been spent. This change will not impact the total cost of the agreement. This agreement has been included in the Transit budget and is funded by a variety of grant sources as part of the overall TOMF project.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

This County's Strategic Business Plan includes the Safety and Security strategic initiative, which includes a goal to improve and maintain an adequate transportation infrastructure. The TOMF project would be part of the transportation infrastructure in the County and would serve as important infrastructure for the County's public transit system.

ADMINISTRATIVE SIGN-OFF:



Reed Schenke, P.E.
Director

RS:rm/as

cc: County Administrative Office

Attachment(s):

Attachment A: Agreement No. 28592

Attachment B: Proposed Amendment to Agreement No. 28592

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF CONTRACT TIME) Resolution No. _____
EXTENSION FOR AGREEMENT NO. 28592) Agreement No. _____
WITH VSCE INC.)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE BOARD
OF SUPERVISORS, AT AN OFFICIAL MEETING HELD OCTOBER 22, 2019, BY THE
FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Approved an Amendment to Agreement No. 28592 with VSCE, Inc. to extend the date of termination of the agreement through June 30, 2020 for Construction Management Services for the TOMF Project; and
2. Authorized and directed the Chairman of the Board to execute three (3) copies of the Amendment to Agreement No. 28592.

Attachment A: Agreement No. 28592 with VSCE Inc.

**AGREEMENT FOR CONSTRUCTION MANAGEMENT STAFF AUGMENTATION
SERVICES DURING THE CONSTRUCTION OF A TRANSIT OPERATIONS AND
MAINTENANCE FACILITY**

THIS AGREEMENT, is entered into as of May 15, 2018, between the COUNTY OF TULARE, referred to as "COUNTY", and VSCE INC., referred to as "CONSULTANT", incorporated within the State of California, with reference to the following:

A. WHEREAS, COUNTY has requested for construction management services for a building construction project, the Tulare County Transit Operations and Maintenance Facility. These consulting services are to include project management, request for information (RFI) review, change order preparation, construction progress reports, management of construction teams and other compliance tasks as described per Exhibit A, to the satisfaction of the COUNTY, State, Federal Highway Administration (FHWA) and other jurisdictional agencies. CONSULTANT shall document the results of the work to the satisfaction of the COUNTY, the State and FHWA. This may include preparation of project logs or similar evidence of attainment of the agreement objectives and;

B. WHEREAS, CONSULTANT's response indicates that it possesses the professional qualifications, relevant experience and demonstrated competence to provide such services. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence and;

ACCORDINGLY, IT IS AGREED:

1. SERVICES. CONSULTANT will provide construction management services, more particularly described in Exhibit A ("Scope of Work"). All work performed and billed to the COUNTY by the CONSULTANT shall be grant eligible in accordance with the Caltrans Local Assistance Procedures Manual (LAPM), unless otherwise directed by the COUNTY, in writing.

2. TIME FOR PERFORMANCE/TERM. Time is of the essence in this Agreement. The services as described in Exhibit A, will commence within five days of receipt of a written notice to proceed issued following acceptance of this Agreement by the COUNTY. This agreement shall terminate on November 30th, 2019. Mutually acceptable changes in the scope, character, or complexity of the work if such changes become desirable or necessary as the work progresses will be accommodated by a supplemental agreement. An appropriate extension of time may be made in the form of a supplemental agreement in case of unavoidable delays. Corresponding warranted adjustments in payment will be made based upon the incorporated rate

schedule. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the contract is fully executed and approved by COUNTY.

3. COMPENSATION.

- a. The COUNTY shall reimburse the CONSULTANT for hours worked at the hourly rates specified in the CONSULTANT's Cost Proposal, as described in Exhibit C. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this contract.
- b. In addition, the CONSULTANT will be reimbursed for incurred direct costs other than salary costs that are identified in the Scope of Work, Exhibit A, and the Cost Proposal, Exhibit B.
- c. No additional compensation will be paid to the CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of the work or the scope of the project, adjustment to the fee will be negotiated between the CONSULTANT and COUNTY. Adjustment in the fee will not be effective until authorized by supplemental agreement and approved by the COUNTY.
- d. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by COUNTY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due COUNTY that include any equipment purchased under the provisions of Article 26 Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Ross W. Miller
5961 S. Mooney Blvd.
Visalia, CA 93277

The total amount payable by the COUNTY for services identified in Exhibit A and Exhibit B shall not exceed sum of Three hundred ninety three thousand four hundred thirty eight dollars and ninety eight cents (393, 438 and 98/100) for primary services a.

The CONSULTANT shall not commence performance of work or services until this contract has been approved by COUNTY, and a notification to proceed has been issued. The CONSULTANT shall not commence performance of optional services until a notification to proceed has been issued. No payment will be made prior to approval or for any optional services performed prior to issuance of a notice to proceed.

CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any cost for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, will be repaid by the CONSULTANT to the COUNTY.

Any subcontract in excess of \$25,000, entered into as a result of this contract, shall contain all the provisions of this article.

4. PAYMENT. No sooner than the 10th day of each calendar month, CONSULTANT will submit to the Resource Management Agency, Attn: Contract Administrator, a detailed invoice for services rendered under this Agreement during the previous calendar month. CONSULTANT will be deemed to have waived all rights to compensation for any services not billed within 90 days after the month in which the services were provided. Invoices shall detail the work performed on each milestone, on each project as applicable and shall provide total contract recap of prior invoices, current invoice, and contract balance. Invoices shall reference this agreement number and the project title. CONSULTANT shall not commence performance of work or services until this agreement has been approved by the COUNTY, and a notification to proceed has been issued. No payment will be made for any work performed prior to receiving the notification to proceed.

5. COMPLIANCE WITH LAW. CONSULTANT shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONSULTANT'S employees, CONSULTANT shall comply with all laws and regulations pertaining to prevailing wage rates and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

_____CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

_____ Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

6. RETENTION OF RECORDS/AUDIT. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants' (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

7. AUDIT REVIEW PROCEDURES. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the COUNTY'S Auditor-Controller.

Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by COUNTY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by COUNTY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

CONSULTANT and subconsultant contracts, including cost proposals and ICR are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT'S responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

8. SUBCONTRACTING. Nothing contained in this contract or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT'S obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the CONSULTANT.

CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted

without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.

All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

9. INDEPENDENT CONTRACTOR STATUS. CONSULTANT will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement may be construed to constitute CONSULTANT or any of its agents, employees or officers as employees or officers of COUNTY. CONSULTANT agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. CONSULTANT will be solely responsible for determining the means and methods of performing the specified services, and COUNTY will have no right to control or exercise any supervision over CONSULTANT as to how the services will be performed. COUNTY will not:

- a. Withhold FICA (Social Security) from CONSULTANT'S payments.
- b. Make state or federal unemployment insurance contributions on CONSULTANT'S behalf.
- c. Withhold state or federal income tax from payments to CONSULTANT.
- d. Make disability insurance contributions on behalf of CONSULTANT.
- e. Obtain unemployment compensation insurance on behalf of CONSULTANT.

Notwithstanding this independent contractor relationship, COUNTY reserves the right to monitor and evaluate the performance of CONSULTANT for the purpose of assuring compliance with this Agreement.

10. INSURANCE. Prior to approval of this agreement by the COUNTY, CONSULTANT shall file with the Resource Management Agency, evidence of the insurance in accordance with Exhibit D attached, which outlines the minimum scope, specifications and limits of insurance required under this contract. Additional insured endorsements required as outlined in Exhibit D shall not be used to reduce limits available to COUNTY as an additional insured from the Contactor's full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the

policy coverage and limits available from the insurer (s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of this agreement.

11. INDEMNIFICATION: CONSULTANT shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising out of the willful misconduct, or the negligent acts or omissions, of CONSULTANT or its agents, officers and employees under this agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, any claims made against COUNTY alleging civil rights violations by CONSULTANT under Government Code sections 12920 et seq. (California Fair Employment and Housing Act). The indemnification obligation shall continue beyond the term of this Agreement as to any willful misconduct, negligent errors, acts or omissions, or negligent acts occurring under this Agreement or any extension of this Agreement.

12. TERMINATION. The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

(a) Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination and with the reasons for termination stated in the notice. COUNTY will pay to the CONSULTANT the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all plans, specifications and estimates, and other documents prepared by CONSULTANT in accordance with this Agreement. No Sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or

- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by CONSULTANT or anyone acting on CONSULTANT'S behalf, as to any matter related in any way to COUNTY'S retention of CONSULTANT, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONSULTANT to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

COUNTY will pay to the CONSULTANT the compensation earned for work performed and not previously paid to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all reports and other documents prepared by CONSULTANT by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will the COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONSULTANT'S scope of work exceeds the unpaid balance of the agreement, the CONSULTANT must pay the difference to the COUNTY. Sanctions taken will be possible rejection of future proposals based on specific cause of non-performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONSULTANT'S services have been terminated by the COUNTY, said termination will not affect any rights of the COUNTY to recover damages against the CONSULTANT.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONSULTANT'S services are to be performed, may immediately suspend performance by CONSULTANT, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONSULTANT to

comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

13. ENTIRE AGREEMENT REPRESENTED. This Agreement represents the entire agreement between CONSULTANT and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

14. HEADINGS. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

15. NOTICE. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare County Resource Management Agency
Attention: Reed Schenke, Contract Administrator
5961 South Mooney Boulevard
Visalia, CA 93277

Fax No.: (559) 730-2653 Confirming No.: (559) 624-7000,
Email: rschenke@co.tulare.ca.us

CONSULTANT:

VSCE Inc.
827 Broadway No. 340
Oakland, CA 94607
(510) 452-9209

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail will be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph. The above stated CONSULTANT address is to be the main working office location for the duration of this agreement.

16. CONSTRUCTION. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 will not apply to address and interpret any uncertainty.

17. NO THIRD PARTY BENEFICIARIES INTENDED. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or

enforceable legal or equitable right or remedy. The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this agreement without liability, or at its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. The COUNTY warrants that they have not required the CONSULTANT to employ or retain any company or person, or to pay or agree to pay any firm, person or organization, any fee, contribution donation or consideration of any land, contingent upon or resulting from the award or formation of this agreement.

18. JURISDICTION/VENUE. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California. CONSULTANT waives the removal provisions of California Code of Civil Procedure Section 394. 19. WAIVERS. The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

20. EXHIBITS AND RECITALS. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement. However, it is hereby mutually agreed and understood that, should any of the provisions of the Exhibits and Recitals attached to this Agreement be contrary to any of the paragraph provisions of this Agreement, the paragraph provisions of this Agreement shall control and supersede the provisions of the Exhibits and Recitals.

21. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY. This Agreement is subject to all applicable laws and regulations. If any provisions of this Agreement are found by any court or other legal authority, or are agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement

to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect.

22. FURTHER ASSURANCES. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to affect the purposes of this Agreement.

23. PROFESSIONAL STANDARDS. By submitting final documents for approval by COUNTY, CONSULTANT represents that said documents are accurate. CONSULTANT will be responsible to COUNTY for the professional quality, adequacy, and completeness of the services, studies, and reports provided, and represents that such services, studies and reports will be suitable for the intended purposes.

CONSULTANT will perform the services provided in this Agreement in a manner consistent with the professional skill and care ordinarily exercised by expert members of the planning, construction, engineering, and environmental profession practicing in the State of California under similar conditions.

Where applicable and in accordance with California law, the responsible CONSULTANT/engineer shall sign and seal reports and engineering data furnished by him/her.

24. DBE PARTICIPATION REQUIREMENTS: This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

The goal for DBE participation for this contract is 0 %. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (**Exhibit E**), or in the Consultant Contract DBE Information (**Exhibit F**) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of

this contract, which may result in the termination of this contract or such other remedy as COUNTY deems appropriate.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise

(DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT'S authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY'S Contract Administrator within 30 days.

25. OWNERSHIP OF DOCUMENTS. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in COUNTY; and no further agreement will be necessary to transfer ownership to COUNTY. CONSULTANT shall furnish COUNTY all necessary copies of data needed to complete the review and approval process.

It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by COUNTY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by COUNTY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by CONSULTANT.

Applicable patent rights provisions regarding right to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts for federal-aid contracts.

COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

26. EQUIPMENT PURCHASE. Prior authorization in writing by the COUNTY'S Contract Administrator shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

Prior to seeking authorization by the County's Contract Administrator for the purchase of any item, service or consulting work not covered in the CONSULTANT'S Cost Proposal and exceeding \$5,000, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the COUNTY elects to keep the equipment, fair market value shall be determined at the CONSULTANT'S expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5000.00 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

27. DISPUTES. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the COUNTY'S Contract Administrator and the Assistant Director of Public Works, who may consider written or verbal information submitted by the CONSULTANT.

Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by the Tulare County

Board of Supervisors for unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

28. CONFIDENTIALITY OF DATA. All financial, statistical, personal, technical, or other data and information relative to the COUNTY'S operations, which are designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.

Permission to disclose information on one occasion or by public hearing held by the COUNTY relating to the contract, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the COUNTY'S actions on the contract, except to the COUNTY'S staff, CONSULTANT'S own personnel involved in the performance of this contract, at public hearings or in response to questions from Legislative committee.

The CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY and receipt of the COUNTY'S written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this article.

All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than COUNTY.

29. CONFLICT OF INTEREST. The CONSULTANT shall disclose any financial, business, or other relationship with the COUNTY that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.

The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this article.

The CONSULTANT hereby certifies that neither the CONSULTANT, its employees, nor any firm affiliated with the CONSULTANT providing services on this project will bid on any

construction contract, or any contract to provide construction inspection for any construction project resulting from this agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultants who have provided design services in connection with this contract shall be eligible to bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this agreement.

30. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION. The CONSULTANT warrants that this contract was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion to terminate the contract without liability; to pay only for the value of the work actually performed; to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

31. PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR LOBBYING. The CONSULTANT certifies to the best of his or her knowledge and belief that:

- a. No state, federal or COUNTY appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall

complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

32. CLAIMS FILED BY CONSTRUCTION CONTRACTOR. If claims are filed by COUNTY'S construction contractor relating to work performed by CONSULTANT'S personnel, and additional information or assistance from CONSULTANT'S personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with COUNTY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

CONSULTANT'S personnel that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT'S personnel services under this contract.

Services of CONSULTANT'S personnel in connection with COUNTY'S construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

33. SAFETY. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by COUNTY Safety Officer and other COUNTY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to authority contained in Section 591 of the Vehicle Code, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14,

and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

34. EVALUATION OF CONSULTANT. CONSULTANT'S performance will be evaluated by COUNTY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

35. STATEMENT OF COMPLIANCE. CONSULTANT'S signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

36. NONDISCRIMINATION. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color,

national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

37. FUNDING REQUIREMENTS. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

This contract is valid and enforceable only, if sufficient funds are made available to COUNTY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or COUNTY governing board that may affect the provisions, terms, or funding of this contract in any manner .

It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

COUNTY has the option to void the contract under the 30-day termination clause pursuant to Article 12 of this agreement, or by mutual agreement to amend the contract to reflect any reduction in funds.

38. INSPECTION OF WORK. CONSULTANT and any subconsultant shall permit COUNTY, the state, and the FHWA if federal participating funds are used in this contract, to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

39. RETENTION OF FUNDS. No retainage will be withheld by the Resource Management Agency from progress payments due to the CONSULTANT. Retainage by the prime CONSULTANT or subconsultants is prohibited, and no retainage will be held by the prime CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating prime CONSULTANT or subconsultants to the penalties, sanctions, and

other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the prime CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime CONSULTANTS and subconsultants.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

41. DEBARMENT AND SUSPENSION. CONSULTANTS signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgement rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct with the past three (3) years. Any exceptions to this certification must be disclosed to COUNTY.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosure must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by General Services Administration are to be determined by the Federal Highway Administration.

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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

By J. Alan Smithley
Chairman, Board of Supervisors

ATTEST: Michael C. Spata
County Administrative Officer/
Clerk of the Board of Supervisors

By Mary Ruello
Deputy Clerk



CONSULTANT

By Jesus V. Vayas

Title President

By [Signature]

Title Secretary/Treasurer

[Corporations Code Section 313 requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is also accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract. California Corporations Code section 17703.01 requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

Approved as to Form
County Counsel

By [Signature] 2018997
Deputy 5/10/18

EXHIBIT A
SCOPE OF WORK

**Scope of Services for Providing CM Staff Augmentation
For the
Tulare County Transit Operations and Maintenance Facility
Tulare County RMA**



Pre-Construction Phase:

- Not Required

Construction Phase:

VSCE augmented staff activities during this phase will generally include the following as specifically directed by the Tulare County RMA Project Manager:

- Assist with a kick-off meeting with the design team and the Contractor;
- Assist with a coordination meeting with the County building department and permitting agencies as necessary to outline their respective involvement and inspection requirements;
- Construction Documentation – Assist with processing submittals, RFIs, field information requests, contract change orders, and all project correspondence;
- Scheduling – Assist with review, analysis and evaluation of the Contractor's baseline schedule and monthly schedule updates;
- Cost Control – Assist with monitoring, update and forecast budget, cost and cash flow;
- Change Orders – Assist with proactively identify and anticipate potential problems to minimize changes. Recommend unavoidable changes for approval to the County Project Manager. Review and evaluate the Contractor's requests for changes. Assist to negotiate with Contractors, when change orders are accepted by the County. Maintain a log of change requests;
- Inspection and Quality Control – Perform field inspections to verify that the work is in compliance with the contract documents, County Standards and meet general functional and regulatory requirements. Coordinate inspection of project improvements with County building department;
- Safety Programs – Verify that the Contractor has a Health and Safety Plan developed for the project as required by the contract documents;
- Utility Coordination – Monitor Contractor's effort to coordinate with the utility agencies for the service hook-ups to minimize impact on the construction progress;
- Record the Progress of the Project – Prepare and maintain daily inspection reports, that include information regarding construction progress, critical activities, Contractor's work force and equipment, etc.
- Progress Meetings – Assist in conducting weekly or bi-weekly on-site construction progress meetings with Contractor, subcontractors, County staff, other consultants, and other involved parties to discuss matters such as procedures, progress, problems and scheduling;

- **Materials Testing** – Coordinate and schedule material testing. Keep up-to-date log of non-compliance and corrective actions. Maintain material testing and inspection records for source testing, acceptance testing, and special inspections & testing in accordance with construction documents;
- **Photographic Record** – Maintain a detailed photographic history of the project on a regular basis;
- **Inspection of Work in Place** – Determine that the Contractor's work is being performed in accordance with the requirements of the contract documents. As appropriate, require special inspection or testing, or make recommendations to the County Project Manager regarding special inspection or testing of work not in accordance with the provisions of the contract documents, whether such work is fabricated, installed or completed;
- **Payment Processing** – Review Contractor's monthly progress payments. Make recommendations to the County Project Manager for payment;
- **As-Built Plans** – Verify that the Contractor is maintaining redlined as-built plans throughout construction and provides said plans to the design team at the completion of the contract.

Post-Construction Phase:

VSCE staff activities during this phase will include the following:

- Assist with coordination and commissioning of the facility and acquiring the occupancy permit from the County;
- Coordinate the inspection and approval of the project by the County;
- Coordinate and conduct a job walk-through with the County and the designer and develop a preliminary punch list. Coordinate the correction and completion of the work;
- Assist the County Project Manager in determining when the project, or a designated portion thereof, is substantially complete;
- Assist in the preparation of proposed final estimates for the payment to the Contractor;
- Obtain evidence of certification of all lien releases;
- Coordinate final punch list items and sign off;
- Administer and coordinate final inspections;
- Assist the County Project Manager with filing the Project "Notice of Completion;"
- Collect redline record drawings and designer-initiated plan revisions. Transmit said information to the design team for their preparation of the record drawings.

EXHIBIT B

SCHEDULE

Issue RFP	November 22, 2017
Pre-Proposal Conference	December 13, 2017, at 10:00 AM
Written Questions Due	December 21, by 4:30 PM
Proposals Due	January 10, 2018, at 5:00 PM
Initial Consultant Ranking	January 19, 2018
Construction Bids Received	February 8 2018
Notice to Proceed	May 2018
Pre-Construction Conference	May 2018
Construction Completed	August 2019

EXHIBIT C
COMPENSATION FOR CONSULTANT'S SERVICES



VSCE

**Tulare County Transit Operations and Maintenance Facility Project
Project Fee for CM Staff Augmentation
Tulare County RMA**

DIRECT LABOR

Name	Classification	Base Rate	Indirect		Billable Rate	Hours	Total
			Cost 118%	Fee 5%			
Frank Sana, P.E.	Principal CM	\$ 95.00	\$ 112.10	\$ 10.36	\$ 217.46		\$ -
Hugo Mejia, P.E.	CM/RE	\$ 97.37	\$ 114.90	\$ 10.61	\$ 222.88		\$ -
Robert Fuentes	Lead Insp.	\$ 72.00	\$ 84.96	\$ 7.85	\$ 164.81	2265	\$ 373,290.12
Moises Rodriguez	OE/Insp	\$ 45.00	\$ 53.10	\$ 4.91	\$ 103.01		\$ -
Santana Jimenez	Mech Insp /Comm.	\$ 67.72	\$ 79.91	\$ 7.38	\$ 155.01		\$ -
Bert Dasmarinas	Scheduler	\$ 65.00	\$ 76.70	\$ 7.09	\$ 148.79		\$ -
Evan McCulloch	Electrcal Insp	\$ 58.01	\$ 68.45	\$ 6.32	\$ 132.78		\$ -
TBD (Local hire)	Admin Support	\$ 20.00	\$ 23.60	\$ 2.18	\$ 45.78		\$ -
Benga Olayomi	Tech Expert	\$ 95.00	\$ 112.10	\$ 10.36	\$ 217.46		\$ -
Direct Labor Escalation for 2019 @ 3%							\$ -

*** Note. VSCE's IDC rate has been audited by an independent CPA Firm in accordance with AASHTO guidelines (FAR) and accepted by Caltrans D6 and BART (See attached approval letter from BART). This rate is based on 2016 financials, 2017 financial reports are still being reconciled.*

Labor Rates for Expert Resources:

Average Billing Rate	As Needed Personnel	TBD	-	Est.hrs	\$ -
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Total Direct Labor Costs **\$ 373,290.12**

SUBCONSULTANTS

BSK Associates, Inc.	Special Inspections for concrete and structural steel				\$ 19,562.00
	** Exclude all materials testing. To be provided by RMA staff				
Total Subconsultants					\$ 19,562.00

*** Budgeted allowance is transferable to cover other scope of CM services as needed to effectively respond to the Contractor's schedule and activities*

OTHER DIRECT COSTS

	Rate	Unit	actual	
Repographics, photo copying			actual	
Deliveries, Mail			actual	
CM / Inspector Vehicles (Included in VSCE's OH Rate)	\$ -	0	Incl	\$ -
Const. Inspector Per Diem (Actual per Caltrans Travel Guidelines for Contractors) 3 Per	\$ -	0	Months	\$ -
Submittal Exchange License (Web Collaborative CM Tool)	\$ -	1	LS	\$ -
CM Office	To be provided by the Contractor			
Total ODC				\$ -
3% mark up on ODC & Subconsultants				\$ 586.86
Total				\$ 393,438.98

Note (1) Blueprinting, reproduction, messenger service and other direct expenses will be charged as an additional cost plus 3%. A Subconsultant Management & Ins. fee of 3% will be added to all subconsultant services to provide for the cost of administration, subconsultant consultation and insurance.

EXHIBIT D

INSURANCE

PROFESSIONAL SERVICES CONTRACTS
INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. **Minimum Scope & Limits of Insurance**

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, 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.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. **Specific Provisions of the Certificate**

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects, liability arising out of work or operations performed by or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the county by virtue of the payment of any loss under such insurance. CONTRACTOR 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 COUNTY has received a waiver of subrogation endorsement from the insurer.*

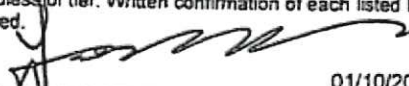
- d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after written notice has been provided to the County.*
- 3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.
- C. Deductibles and Self-Insured Retentions
Self-insured retentions must be declared and the COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.
- D. Acceptability of Insurance
Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.
- E. Verification of Coverage
Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

EXHIBIT E

Consultant Contract DBE Commitment (CALTRANS EXHIBIT 10-01)

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Tulare County 2. Contract DBE Goal: 0%
 3. Project Description: Tulare County Transit Operations and Maintenance Facility
 4. Project Location: 14001 Avenue 256, Visalia, CA 93292
 5. Consultant's Name: VSCE, Inc. 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Construction Management	34787	VSCE Inc. 516 W. Shaw Ave, Ste. 200 Fresno, CA 93704 559-221-4909	90%
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	90 %
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  12. Preparer's Signature _____ 13. Date <u>01/10/2018</u> Frank Sana 510-835-5001 14. Preparer's Name _____ 15. Phone Principal 16. Preparer's Title _____		
20. Local Agency Representative's Signature _____	21. Date _____		
22. Local Agency Representative's Name _____	23. Phone _____		
24. Local Agency Representative's Title _____			

DISTRIBUTION: Original - included with consultant's proposal to local agency.

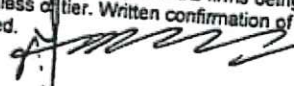
ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-8410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

EXHIBIT F

Consultant Contract DBE Commitment (CALTRANS EXHIBIT 10-02)

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: Tulare County 2. Contract DBE Goal: 0%
 3. Project Description: Tulare County Transit Operations and Maintenance Facility
 4. Project Location: 14001 Avenue 256, Visalia, CA 93292
 5. Consultant's Name: VSCE, Inc. 6. Prime Certified DBE: 7. Total Contract Award Amount: TBD
 8. Total Dollar Amount for ALL Subconsultants: TBD 9. Total Number of ALL Subconsultants: 1

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Construction Management	34787	VSCE Inc. 516 W. Shaw Ave, Ste. 200 Fresno, CA 93704 559-221-4909	
Local Agency to Complete this Section 20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			14. TOTAL CLAIMED DBE PARTICIPATION \$ <u>TBD</u> 90 %
23. Local Agency Representative's Signature _____ 24. Date _____ 25. Local Agency Representative's Name _____ 26. Phone _____ 27. Local Agency Representative's Title _____	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  15. Preparer's Signature _____ 01/10/2018 16. Date _____ 17. Preparer's Name _____ 510-835-5001 18. Phone _____ 19. Preparer's Title _____ Principal		

DISTRIBUTION: 1. Original - Local Agency
 2. Copy - Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS - CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

1. Local Agency - Enter the name of the local or regional agency that is funding the contract.

EXHIBIT G

**Consultant Certification of Contract Cost and Financial Management System
(CALTRANS EXHIBIT 10-K)**

EXHIBIT 10-K CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM

(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm in lieu of this form.)

Certification of Final Indirect Costs:

Consultant Firm Name: VSCE, Inc.

Indirect Cost Rate: 118% * for fiscal period 01/01/16 - 12/31/16 (mm/dd/yyyy to mm/dd/yyyy)

*Fiscal period covered for Indirect Cost Rate developed (not the contract period).

Local Government: Tulare County Transit Operations and Maintenance Facility

Contract Number: Project Number:

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

- 1. All costs included in this proposal to establish final Indirect Cost Rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and Indirect Cost Rates have been disclosed as of the date of proposal preparation noted above.

Certification of Financial Management System:

I, the undersigned, certify to the best of my knowledge and belief that our Financial Management System meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

Certification of Dollar Amount for all A&E Contracts:

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$ 8.5 Million and the number of states in which the firm does business is one.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

Subconsultants (if applicable)

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ TBD

Prime Consultants (if applicable)

Proposed Total Contract Amount (or amount not to exceed if on-call contract): \$ TBD

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

BSK	\$	TBD
	\$	
	\$	
	\$	
	\$	

Consultant Certifying (Print Name and Title):

Name: Frank Sana

Title: Principal

Consultant Certification Signature **: 

Date of Certification (mm/dd/yyyy): Jan. 10, 2018

Consultant Contact Information:

Email: fsana@vsceinc.com

Phone number: 510-835-5001

****An individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the Indirect Cost Rate proposal submitted in conjunction with the contract.**

Note: Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.

- Distribution:**
- 1) Original to Caltrans Audits and Investigations
 - 2) Retained in Local Agency Project Files

EXHIBIT H
VITAL PERSONNEL



Construction Management Services for the
Tulare County Transit Operations and Maintenance Facility

List of Vital Personnel

NAME	AVAILABILITY	COMPANY	PROJECT POSITION	EMAIL ADDRESS	PHONE NUMBER	ADDRESS
Frank Sana, PE	50%	VSCE	Principal CM	Fsana@vsceinc.com	510-589-2618	324 Squirrel Ridge Way Danville CA 94506
Hugo Mejia, PE	100%	VSCE	Construction Manager	Hmejia@vsceinc.com	559-250-9682	7185 W Browning, Fresno CA 93723
Robert Fuentes	100%	VSCE	Construction Inspector	Rfuentes@vsceinc.com	559-240-5979	6802 E McKenzie Ave Fresno, CA 93727
Moises Rodriguez	75%	VSCE	Office Engineer/ Inspector	Mrodriguez@vsceinc.com	559-352-7095	5898 W Parr Ave, Fresno, CA 93722
Evan McCulloch	25%	VSCE	Electrical Inspector	Emcculloch@vsceinc.com	832-997-9671	55 W. Bullard Ave, Clovis, CA 93612
Santana Jimenez	25%	VSCE	Equip. Mechanical Inspector	Sjimenez@vsceinc.com	510-439-6335	1423 Monte Grosso Merced, CA 95340

Appendix: List of Vital Personnel



EXHIBIT I
COMPUTER SERVICES

Item	Format/Denotation
Email	Required for each of the "Vital Personnel" listed
Computer Aided Drafting	Auto Cad
Word Processing	MS Word
Spreadsheet	MS Excel
Project Schedule	MS Excel or MS Project

**Attachment B: FIRST AMENDMENT TO
TULARE COUNTY AGREEMENT NO. 28592**

**FIRST AMENDMENT TO
TULARE COUNTY AGREEMENT NO. 28592**

THIS FIRST AMENDMENT (“Amendment”) to Tulare County Agreement Number 28592 (the “Agreement”) is entered into by and between the **COUNTY OF TULARE** (“COUNTY”) and **VSCE, INC.** (“CONSULTANT”) as of _____, 2019, with reference to the following:

- A. The COUNTY and CONSULTANT entered into the Tulare County Agreement 28592 on May 15 , 2018 for the purpose of providing construction management services for the Transit Operations and Maintenance Facility project; and
- B. COUNTY and CONSULTANT now wish to amend the Agreement in order to extend the term thereof.

ACCORDINGLY, COUNTY and CONSULTANT agree as follows:

1. Provision 2, TIME FOR PERFORMANCE/TERM, shall be modified and the termination date shall be extended to and through June 30, 2020. The remainder of Provision 2, shall remain in full force and effect.
2. This FIRST AMENDMENT becomes effective upon its execution by the Board of Supervisors.
3. Except as provided above, all other terms and conditions of the Agreement shall remain in full force and effect.

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**FIRST AMENDMENT TO
TULARE COUNTY AGREEMENT NO. 28592**

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

VSCE, INC.

Date _____

By _____

Print Name _____

Title _____

Date _____

By _____

Print Name _____

Title _____

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract.]

COUNTY OF TULARE

Date _____

By _____

Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Date: _____

Approved as to Form:
County Counsel

By _____
Deputy

Date: _____

Matter # _____