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**FRESNO COUNTY RURAL TRANSIT AGENCY (FCRTA)
MEETING AGENDA**

DATE: Thursday, February 24, 2022
TIME: 5:30pm, **AFTER** the Fresno Council of Governments (FCOG) Meeting
PLACE: FCOG / FCRTA Offices
Sequoia Conference Room
2035 Tulare Street, Suite 201
Fresno, CA 93721
*(Corner of Tulare and Van Ness Ave. - above Club One
Park in Underground Garage - Entrance off Tulare & Van Ness Ave.
Exit Elevator on Tulare St., Turn Left, Enter Lobby Door,
Up Elevator to Second Floor, Left to Sequoia Conference Room)*

Americans with Disabilities Act (ADA) Accommodation

The Fresno COG / FCRTA offices and restrooms are ADA accessible. Individuals with disabilities may call (559-233-4148) / FCRTA (559-233-6789) at least 3 days in advance, to request auxiliary aids and/or translation services necessary to participate in the public meeting / public hearing. If Fresno COG / FCRTA are unable to accommodate an auxiliary aid or translation request for a public hearing after receiving proper notice, the hearing will be continued on a specified date when accommodations are available.

AB 23 Requirement: In accordance with the Brown Act and AB23 the amount of stipend paid to members of the Board of Directors for attending this meeting of the Fresno County Rural Transit Agency, is \$50.00.

THE FRESNO COUNCIL OF GOVERNMENTS AND FRESNO COUNTY RURAL TRANSIT AGENCY BOARD MEETINGS WILL TAKE PLACE IN PERSON AT THE FRESNO COG SEQUOIA ROOM AND VIA ZOOM.

Join Zoom Meeting
<https://us06web.zoom.us/j/82575190204?pwd=b29nemhhS1MybGZRRTBBcmxwM3Z3Zz09>
Meeting ID: 825 7519 0204 Passcode: 540533
Dial In: +1 669 900 6833

If you wish to address the Board during the public comment portion of the agenda, click on the "Reactions" at the bottom center of your PC or Mac screen. Select the Hand icon, click the icon to "RaiseHand". Your digital hand will now be raised.

When on the phone, if you wish to address the Board during the public comment portion of the agenda, Press *9 to "RaiseHand" and we will select you from the meeting cue.

**If joining by phone use *6 to unmute and mute yourself. When joining the meeting all participants are automatically muted. Do NOT use the mute function on your land line phone or cell phone.

Those addressing the Board are asked to state their first and last name and agency for the record.

To facilitate electronic access, no person shall speak until recognized by the Chair.

1. ROLL CALL

Public Presentations - This portion of the meeting is reserved for persons wishing to address the FCRTA Board on items within its jurisdiction but not on this Agenda.

NOTE: The public may also comment on any Agenda item, as they are presented, prior to action by the FCRTA Board.

2. CONSENT ITEMS

A. Approve Executive Minutes of January 27, 2022 Meeting [ATTACHMENT]

B. Amendment I to the Contractor Services Agreement with Fresno Economic Opportunities Commission [APPROVE]

Summary: The Board approved in June 2021, the Contractor Services Agreement with Fresno Economic Opportunities Commission (FEOC) for FY 2021-22 providing CTSA services in rural Fresno County. FCRTA is the sole designee for Rural Fresno County and administers the funding, activities, and transportation programs of all CTSA service providers in Rural Fresno County. FCRTA has made available up to \$413,000 in State Transportation LTF Article 4.5 funds to fund eligible services and activities that support social service transportation within Fresno County. FEOC currently has carryover funds from LTF funding from prior years in the amount of \$345,246 as of June 30, 2021. The agreement with FEOC has been amended to include these changes and require that EOC use carryover LTF funds for CTSA services prior to using funds made available in FY 2021-22 from FCRTA.

Action: Staff recommends Board approval of Amendment I and authorize General Manager to execute Amendment I to the Agreement for Contractor Services with FEOC.

C. Electrical Grid Analysis Study Final Report [INFORMATION]

Summary: FCRTA was awarded \$515,800 in funding through the Caltrans Sustainable Communities Transportation Planning Grant Program to conduct an Electrical Grid Analysis Study in rural Fresno County. FCRTA in partnership with AECOM, have prepared this Electrical Grid Analysis Study to identify the impacts of the anticipated increased electrification on the electric grid system and the unique challenges faced by rural communities serviced by FCRTA.

To develop this Study, existing conditions within Fresno County were assessed to identify existing grid-related issues. This included reviewing data from sources that provided information about socioeconomic conditions, energy sources, electrification efforts, and an assessment of the electric grid system. Public outreach efforts during the course of the study took place to engage residents and community members within Fresno County. To protect public health, these engagements were largely held virtually and provided participants with context about the Study, the basics of electrification, and gave opportunities for discussion on areas of priority. Finally, a technical assessment, taking into account existing and forecasted grid conditions as well as the needs of an electrified FCRTA, was undertaken to identify potential grid constraints and solutions.

Through this analysis, the following recommendations for rural electric grid management were identified: Equitably upgrade and maintain electric grid infrastructure; Reduce risk and impacts of climate change; Ensure transportation system reliability; Build and sustain a foundation for innovative technologies and economic opportunity; Support streamlined planning including permitting. Technical findings indicated that, while the rural Fresno County grid system generally holds sufficient capacity for future electrification, some constraints are forecasted in specific communities. Specifically, the electrical feeder servicing both Selma and the unincorporated community of Tombstone. To mitigate these grid impacts, promote beneficial electrification, and secure the grid against anticipated extreme events due to climate change and catastrophic events, the following strategies have been identified in this report: Development of shared charging infrastructure and models with other public agencies; Infrastructure

which integrates solar and storage; Resilience hubs which can be leveraged for transportation, grid, and resilience benefits, particularly in unincorporated communities as well as economic opportunities.

As a whole, this report provides an actionable framework for FCRTA and rural Fresno County communities to understand the current and future state of the electric grid infrastructure and pursue innovative, integrative, and inclusive strategies to adapt to a changing energy and climate system while meeting the needs of vulnerable communities. The report is available at the FCRTA website www.ruraltransit.org

Action: Information only. The Board may provide additional direction at its discretion.

D. Annual Productivity Evaluation FY 2020-21 [APPROVE]

Summary: The productivity evaluation is conducted annually to assess transit operators that receive State Transportation Development Act funds and to recommend potential productivity improvements. This is an evaluation of all routes and services provided by FCRTA for FY 2020-21 which provides an excellent tool to evaluate ridership and costs of all the subsystems that FCRTA oversees. This analysis is very detailed for routes, hours and days of service by inter-city and intra-city routes.

There is also data that is measured by the TDA performance indicators for passenger costs, fares, miles, hours and farebox ratio to determine state compliance for funding. This report will also be used to submit to funding sources and for the Triennial performance Audit. The FY 2020-21 Productivity Evaluation is available on FCRTA's website www.ruraltransit.org.

Action: Staff recommends Board approval of FY 2020-21 Annual Productivity Evaluation.

E. Future Board Meeting Format [ACTION]

Summary: On September 15, Governor Newsom signed Assembly Bill (AB) 361, amending the Ralph M. Brown Act to allow local agencies to continue conducting public meetings remotely during a state of emergency after October 1, so long as they make specific findings every 30 days, and ensure conditions related to public participation are satisfied. While the Board has the option of using teleconferencing, as was available prior to COVID restrictions, the Brown Act requires: 1) a quorum of the legislative body to participate from within the boundaries of the agency's jurisdiction, 2) the public agency to post notice of each teleconference location, and 3) the public be allowed to address the legislative body from each teleconference location. These requirements place a significant burden on both Board members and staff. Although the Governor waived AB 361's applicability until October 1 local agencies retain the option of meeting beforehand to make the required findings under AB 361 to hold future meetings remotely. Under the urgency legislation, a local agency may use the more "relaxed" Brown Act teleconferencing/videoconferencing requirements in any of the following circumstances:

1. There is a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; or
2. There is a proclaimed state of emergency, and the local agency's meeting is to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
3. There is a proclaimed state of emergency, and the local agency has determined, by majority vote, that as a result of the emergency meeting in person would present an imminent risk to the health or safety of attendees.

AB 361 defines a "state of emergency" as a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act. Importantly, this includes the Governor's proclaimed state of emergency due to the COVID-19 pandemic.

On January 6, 2022, the Board adopted Resolution No. 2022-01, under which the Board found that circumstances warranted remote meetings for the reasons stated therein. Since the adoption of Resolution No. 2022-01, the State remains under a declared state of emergency and continues to impose or recommend social distancing measures. In addition, FCRTA continues to impose or recommend the social distancing measures discussed in Resolution No. 2022-01.

To continue to rely on the relaxed teleconferencing provisions, the local agency must reconsider the circumstances of the state of emergency and make the following findings by majority vote, **every 30 days**:

- The state of emergency continues to directly impact the ability of members to meet safely in person; or
- State or local officials continue to impose or recommend measures to promote social distancing.

While the Board has the option of using teleconferencing, as was available prior to COVID restrictions, The Brown Act requires: 1) a quorum of the legislative body to participate from within the boundaries of the agency's jurisdiction, 2) the public agency to post notice of each teleconference location, and 3) the public be allowed to address the legislative body from each teleconference location. These requirements place a significant burden on both Board members and staff.

Action: Staff recommends the finding under this option would be that "The FCRTA Board of Directors finds, meeting during a proclaimed state of emergency, that (1) the state of emergency continues to directly impact the ability of the members of the Board of Directors and the public to meet safely in person and (2) State or local officials continue to impose or recommend measures to promote social distancing."

3. ACTION ITEMS

A. **Return to In Person Meetings [DISCUSSION/ACTION]**

Summary: COVID case rates of the Omicron variant are steadily decreasing and the State of California on Feb. 15 rescinded mask mandates that had been instituted for most indoor locations and activities since December 2021. In Fresno County, case rates, which were peaking around Jan. 22, began a precipitous decline on Jan. 29. In the meantime, seven city councils in the Fresno County region have resumed in-person meetings: Clovis, Coalinga, Kingsburg, Parlier, Reedley, Sanger and Selma.

As the COVID pandemic has alternately spiked and receded, from time to time, Fresno COG Board members have inquired about the timeline for returning to in-person meetings. While AB 361 provides a mechanism for continuing remote, video- or teleconferencing meetings, the law's language is permissive and not mandatory. Previously approved consent item 2E, is a standing, contingency item available as long as Board members continue to issue findings that current conditions warrant avoiding public meetings for the sake of protecting public health and safety; however, the Board is free to resume in-person meetings at its discretion.

Action: Discussion and potential action, subject to the Board's direction.

B. **DBE Selection for the FCRTA Selma Maintenance Facility Project [APPROVE]**

Summary: FCRTA released a Request for Qualification (RFQ) on June 30, 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 three of the most highly qualified Entities, with the short-listed Entities to be issued a Request for Proposals (RFP). FCRTA received five (5) SOQs from DB Entities, from Zumwalt, Diede, Harris, Wu & Associates and AMG. The scoring panel, consisting of representatives from FCRTA, Fresno COG, City of Clovis and Kings Area Rural Transit (KART), reviewed the proposals on August 16, 2021, and Harris and Zumwalt were selected for the short-list.

The Request for RFP was released to the short-listed DBE firms on November 1, 2021, and proposals were due on December 10, 2021. The scoring panel held interviews with Harris and Zumwalt on January 4, 2022, and the panel unanimously recommended Zumwalt as they presented and provided the best value, based on qualifications and other factors that were set forth in the RFP including a stipulated sum approach for the price component. FCRTA sent an intent to award letter to Zumwalt and a rejection letter to Harris on January 18, 2022. On January 26, 2022, FCRTA received a bid protest letter from Harris. Staff hand delivered a response letter and submitted all requested documents under the Public Records Act to Harris on February 2, 2022. FCRTA's response letter did not address the allegations made in that portion of the letter from Harris described as a protest.

In consultation with County Counsel, FCRTA has determined that the protest lacks merit and should be rejected. First, Harris's first complaint is that the RFP referenced Public Contract Code Section 22614, which does not exist. While Harris is correct in that, the code section referenced was clearly a typographical error in which two digits of section 22164 were transposed. Various sections of Public Contract Code 22160 *et seq* are cited throughout the RFP and exhibits, including at page 10, another location where the "best value" selection criteria is described. A reasonable reader, especially a sophisticated contractor with design build experience such as Harris Construction, would have known that it was merely a typographical error. Five other examples of the correct citation are included in your packet.

Second, Harris' bid protest letter states that, because the scoring summary showed that Harris received only 68 out of a maximum possible 200 points from one of the panelists, this indicated that the scoring criteria "simply was not followed." The letter omits any reference to the fact that the same scoring summary also showed that Zumwalt only received 93 points out of the maximum 200 points. The reason for these seemingly low scores is that one of the panelists was unable, for medical reasons, to participate in the interview process, so that panelist gave both Harris and Zumwalt zero points out of the maximum possible 100 points for the interview. As a result, the maximum score from that panelist was 100 points, which was true for both Harris and Zumwalt, such that it obviously resulted in no unfairness to either firm. In any event, it was clear from the scoring summary -- even without reference to the individual scoring sheets that confirm the accuracy of the scoring summary -- that all four panelists ranked Zumwalt higher than Harris, which undermines the effort by Harris to focus attention on that one panelist.

Approval of the Recommended Actions will authorize award of the Selma Maintenance Facility Construction project to Zumwalt Construction Inc. If the recommended actions are not approved, the project will be delayed.

As an alternative action, the Board may instead choose to reject all bids and re-bid the project, which would result in the project's construction being delayed by several months (ATTACHMENTS).

Action:

1. Hear and consider bid protest from Harris Construction regarding the proposed award of the RFP for the FCRTA Selma Maintenance Facility Project; and
2. Find that the process utilized by FCRTA staff in the evaluation of bid proposals was fair and consistent with the provisions of the RFP and substantially complied with the requirements of the Public Contract Code.
3. Find that Zumwalt Construction is the best value bidder of the RFP for the FCRTA Selma Maintenance Facility Project, and award Zumwalt Construction Inc. as the selected Contractor for the Selma Maintenance Facility Project in the amount not to exceed \$10,290,562 for Phase 1.
4. Issuance of the following statement: The award of the Fleet Maintenance Facility project is based on the scoring panel's evaluation of those price and non-price factors identified in the RFP, including but not limited to: technical design and construction expertise, life cycle costs, design-build team organization and personnel, and skilled workforce commitment, together with the interviews conducted by the scoring panel with the short-listed DB Entities, with all of those evaluation factors weighted and accorded a maximum point total as specified in Exhibit B to the RFP.

4. OTHER BUSINESS

A. Items from staff.

B. Items from members.

5. ADJOURNMENT

Executive Minutes

Thursday, January 27, 2022 at 5:30 P.M after COG Policy Board Meeting
COG Sequoia Conference Room
2035 Tulare St., Suite 201, Fresno, CA

Members Attending:

Mayor Ron Ramsey, City of Coalinga
Mayor Brady Jenkins, City of Firebaugh
Mayor David Cardenas, City of Fowler
Mayor Gary Yep, City of Kerman
Councilmember, Michelle Roman, City of Kingsburg
Mayor Victor Lopez, City of Orange Cove
Mayor Mary Fast, City of Reedley
Mayor Alma Beltran, City of Parlier
Mayor Scott Robertson, City of Selma
Mayor Eli Ontiveros, City of Sanger
Mayor Julia Hernandez, City of San Joaquin
Supervisor Sal Quintero, Fresno County

Moses Stites, General Manager
Janelle Del Campo, Operations Manager
Bryan Rome, County Counsel
Jeaneen Cervantes, FCOG

Absent:

Mayor Rey Leon, City of Huron
Mayor Rolando Castro, City of Mendota

1. **ROLL CALL** — Meeting called to order 8:07 p.m.
Public Presentations - This portion of the meeting is reserved for persons wishing to address the FCRTA Board on items within its jurisdiction but not on this Agenda.
NOTE: The public may also comment on any Agenda item, as they are presented, prior to action by the FCRTA Board.
2. **CONSENT ITEMS**
 - A. **Approve Executive Minutes of November 18, 2021 [ATTACHMENT]**
 - B. **Approve Executive Minutes of January 6, 2022 Special Meeting [ATTACHMENT]**
 - C. **Request for Proposals (RFP) Microgrid Feasibility Study Project [INFORMATION]**
 - D. **Future Board Meeting Format (ACTION)**

A motion was made by Mayor Ontiveros (Sanger) and second by Mayor Lopez (Orange Cove). A vote was called, and motion carried.

3. **ACTION ITEMS**

A. **DBE Selection for the FCRTA Selma Maintenance Facility Project [APPROVE]**

Moses informed the Board that this item is being pulled from the agenda and Staff will return to the Board with this item at a later date.

4. **OTHER ITEMS**

A. **Items from Staff**

1. Food drive at Clovis East High School.

Moses informed the Board that in December, FCRTA participated in a food drive at Clovis East High School and filled our electric buses with 55,000 units of food. The food was delivered to the Community Food Bank by police escort and will get distributed throughout Fresno County. Moses said it was a great event and very beneficial to the community.

B. **Items from Members**

5. **ADJOURNMENT @ 8:13p.m.**

Respectfully submitted,



Moses Stites
General Manager

AMENDMENT I TO THE AGREEMENT BETWEEN
THE FRESNO COUNTY RURAL TRANSIT AGENCY
AND
FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION

This Amendment I to Agreement ("Amendment I") amends that certain lease agreement entered into on June 25, 2021 (hereinafter referred to as "Agreement"), between the FRESNO COUNTY RURAL TRANSIT AGENCY (herein after referred to as "FCRTA") and FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION, (herein after referred to as "CONTRACTOR"), whereby CONTRACTOR agreed to provide contractor services to FCRTA. FCRTA and CONTRACTOR may be referred to herein collectively as the "Parties" or individually as a "Party."

Whereas, the Parties entered into an Agreement ("Agreement") on June 25th, 2021, and Contractor provides social services transportation to the rural areas of Fresno County as detailed in the Urban & Rural Social Service Transportation Proposed Operations Program & Budget FY 2021-2022; and

Whereas the Parties wish to use carryover LTF funds from prior years for such services totaling \$345,246 as of June 30, 2021; and

Whereas, an amendment to the Agreement is necessary to add carryover funds to the Rural CTSA budget for FY 2021-2022.

NOW THEREFORE, in consideration for their mutual promises, FCRTA and CONTRACTOR agree to amend the Agreement as follows:

1. That existing Section III. A. Total Compensation; shall be deleted in its entirety and replaced with the following:

Notwithstanding any other provision in this Agreement, the basic fee for the services rendered shall be limited by an amount not to exceed the sum of FOUR HUNDRED THIRTEEN THOUSAND and NO/100 DOLLARS (\$413,000.00) as detailed in Exhibit A. CONTRACTOR shall use carryover balances for Rural CTSA services with Rural LTF funds from prior years totaling THREE HUNDRED FORTY-FIVE THOUSAND TWO HUNDRED AND SEVENTY-SIX DOLLARS (\$345,276.00) as of June 30, 2021 prior to using FY 2021-22 funds.

2. This Amendment I to Agreement shall become effective on February 24, 2022 ("Effective Date").
3. Upon the Effective Date, the Agreement and Amendment I shall together constitute the Agreement.
4. Unless expressly modified by the terms of this Amendment I, all terms of the Agreement remain in full force and effect.

5. Each Party represents and warrants to the other Party that such Party is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Amendment I, and that the individual signing this Amendment I on behalf of such Party has been duly authorized to execute this Amendment I on behalf of such Party, and will, by signing this Amendment I on such Party's behalf, legally bind such Party to the terms, covenants, and conditions of this Amendment I. Each Party further represents and warrants to the other Party that no other person or entity is required to give its approval or consent to this Amendment I in order for such Party to authorize, enter into, and perform its obligations under this Amendment I, or that if such approval or consent to this Amendment III is required, that such approval or consent has been obtained.

IN WITNESS WHEREOF, the parties hereto have executed this document the ____day of _____, 2022.

FRESNO COUNTY RURAL TRANSIT AGENCY

By _____
MOSES STITES, General Manager

FRESNO COUNTY OPPORTUNITIES COMMISSION

By _____
EMILIA REYES, Chief Executive Officer

APPROVED AS TO LEGAL FORM ON BEHALF OF FCRTA:
DANIEL C. CEDERBORG, County Counsel

By _____
ALISON SAMARIN, Deputy County Counsel

Agenda Item 3B Attachments:

1. Protest Letter from Harris Construction
2. Response Letter from FCRTA
3. Supporting Documentation for RFQ
4. Supporting Documentation from RFP
5. Response Letter from Zumwalt Construction

**Baker
Manock
& Jensen**

ATTORNEYS AT LAW

Jerry H. Mann
Attorney at Law
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January 26, 2022

VIA ELECTRONIC MAIL

Fresno County Rural Transit Agency
Attn. Moses Stites, General Manager
2035 Tulare Street, Suite 201
Fresno, CA 93721

Email: mstites@fresnocog.org

Re: FCRTA Selma Maintenance Facility Project in Selma, California

Dear Mr. Stites:

This firm represents Harris Construction Co., Inc. ("Harris") who was the purported second bidder on the above project. The purpose of this letter is to protest any award to Zumwalt Construction and to request various documents pursuant to California Public Records Act (Gov. Code, § 6250 et seq.) and *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065

**I.
PROTEST****A. Background.**

At the outset, the Request For Proposal ("RFP") set up a two-step process which involved pre-qualification and then an invitation to short listed proposers to submit proposals for this design build project. Section 2.1 of the RFP provided in part that "[t]he Proposals submitted in response to the RFP will be evaluated per criteria as defined in this RFP." The RFP called proposers' attention to Exhibit B, "Proposal Evaluation Factors, Scoring and Ranking Methodology."

Exhibit B, "Basis for Award," provided in part that "The Project will be awarded to the selected Design Build Entity (DBE) based on a "Best Value" evaluation pursuant to California Public Contract Code Section 22614..."

Fresno County Rural Transit Agency

January 26, 2022

Page 2

Exhibit B, "Evaluation Factors and Scoring of Proposal," provided that "[e]ach proposal will be evaluated and scored to determine the Best Value proposal based on the point system as described below." The Exhibit then set forth various evaluation factors and assigned points. The Maximum number of points was 200 points (100 for the Proposal and 100 for the interview).

On or about January 10, 2022, Harris requested copies of the scoring sheets for the evaluation process described above.

On January 18, 2022, FCRTA sent Harris the letter attached as Exhibit A with purported "Maintenance RFP Scoring Panel Totals."

B. Basis for Protest

The purpose of requiring governmental entities to open the contracts process to public bidding is to eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition. Because of the potential for abuse arising from deviations from strict adherence to standards which promote these public benefits, the letting of public contracts universally receives close judicial scrutiny and contracts awarded without strict compliance with bidding requirements will be set aside. This preventative approach is applied even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the entity money. [Citations.] The importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements.

(Konica Business Machines U.S.A. Inc. v. Regents of University of California (1988) 206 Cal.App.3d 449, 456-457; [citations omitted.]

It is fundamental that bidders or proposers are told how bids will be evaluated. The RFP provides that "The Project will be awarded to the selected Design Build Entity (DBE) based on a "Best Value" evaluation pursuant to California Public Contract Code Section 22614..." However, "Public Contract Code Section 22614" does not exist. Thus, what was the basis for the evaluation?

Next, Exhibit B to the RFP sets forth specific scoring criteria. However, when Harris asked for the score sheets, it was only given purported totals. This has lead Harris to wonder

whether there was any individual scoring at all as the RFP required. Bidders are entitled to know the scoring plain and simple.

It is also significant that "Panelist 2" in the Scoring Panel Totals awarded Harris 68 points. This would indicate that a large section of the scoring criteria which contemplated a maximum award of 200 points was simply was not followed. It would be improper to deviate from the RFP scoring process.

In the final analysis, this bid process does not meet the rigorous requirements of public bidding. The FCRTA should not award to Zumwalt.

II. PUBLIC RECORDS REQUEST

Government Code section 6250 provides in part that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

Writings are defined in Evidence Code section 250 as follows:

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

The Supreme Court has made clear in *Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th 1065 that a public agency must release proposals before an agency's recommendation is finally approved by the awarding authority.

With these rules in mind, Harris requests copies of the following:

1. All writings consisting of scoring sheets evaluating the proposals of Harris and Zumwalt to the RFP. Harris would also requests any notes of panelists.
2. All writings consisting of any communications (emails, letters, texts) pertaining to the RFP evaluation process during the period of December 1, 2021, to January 18, 2022. This would include internal communications by and among panelists and within the FCRTA itself.

3. The response of Zumwalt to the RFP. This would include what Zumwalt submitted in response to the RFP.

4. All writings consisting of communications (emails, letters, texts) between the FCRTA (and any of its agents or employees) with Zumwalt in connection with the RFP.

**III.
CONCLUSION**

Harris requests that the FCRTA not award to Zumwalt. The process does not withstand scrutiny.

Very truly yours,

Jerry H. Mann

Jerry H. Mann
BAKER MANOCK & JENSEN, PC

JHM:EVS

Copy via email only: Fresno County Rural Transit Agency Board, Fresno County Transportation Authority Board, Fresno County Transportation Authority Committee, Fresno County Board of Supervisors

EXHIBIT A



Fresno County Rural Transit Agency

2035 Tulare Street, Suite 201, Fresno, CA 93721
tel 559-233-6789 Fax 559-233-9645
www.ruraltransit.org

January 18, 2022

Harris Construction Co., Inc.
5286 E. Home Ave.
Fresno, CA 93727

Dear ^{Matt} Mr. Davies,

Fresno County Rural Transit Agency (FCRTA) and the scoring panel have evaluated proposals received from the selected short-listed firms for the RFP released November 1, 2021, as well as evaluated the interviews conducted on January 4th, 2022. The scoring panel was also provided the budget submitted on January 12, 2021. As described on page 6, Section 1.1. "BEST VALUE WITH STIPULATED SUM AWARD", the project will be awarded to the selected DBE based on a best value evaluation. Unfortunately, your proposal was not selected as it was not determined to be the best value by the scoring panel and FCRTA.

FCRTA sincerely appreciates the time and effort put forth by you and your team. We wish to thank you for submitting your proposal, and hope that you will continue to bid in the future.

Should you have any questions, please contact me at mstites@fresnocog.org.

Thank you

A handwritten signature in blue ink that reads "Moses Stites". The signature is fluid and cursive.

Moses Stites
General Manager
Fresno County Rural Transit Agency

MAINTENANCE RFP SCORING PANEL TOTALS		
	HARRIS	ZUMWALT
Panelist 1	192	197
Panelist 2	68	93
Panelist 3	175	190
Panelist 4	165	184
TOTAL	600	664



Fresno County Rural Transit Agency

2035 Tulare Street, Suite 201, Fresno, CA 93721
 tel 559-233-6789 Fax 559-233-9645
 www.ruraltransit.org

February 2, 2022

Jerry H. Mann, Esq.
 Baker Manock & Jensen
 5260 N. Palm Avenue, Suite 201
 Fresno, CA 93704

Sent by personal delivery

Re: Public Records Act Request, Dated January 26, 2022

Dear Mr. Mann:

On January 26, 2022, you submitted on behalf of your client, Harris Construction Co., Inc., a letter ("Your Letter") styled as a protest to the award of a contract to Zumwalt Construction and a request under the Public Records Act ("PRA"). This letter constitutes the response of Fresno County Rural Transit Agency ("FCRTA") to only the portion of Your Letter constituting a request under the PRA. FCRTA does not, at this time, respond to the allegations made in the portion of Your Letter described as a protest to the award of a contract to Zumwalt Construction.

In Your Letter, you requested copies of the following documents:

1. All writings consisting of scoring sheets evaluating the proposals of Harris and Zumwalt to the RFP. Harris would also requests any notes of panelists.
2. All writings consisting of any communications (emails, letters, texts) pertaining to the RFP evaluation process during the period of December 1, 2021, to January 18, 2022. This would include internal communications by and among panelists and within the FCRTA itself.
3. The response of Zumwalt to the RFP. This would include what Zumwalt submitted in response to the RFP.
4. All writings consisting of communications (emails, letters, texts) between the FCRTA (and any of its agents or employees) with Zumwalt in connection with the RFP. (Your Letter, pp. 3 – 4.)

We have undertaken a reasonable effort to locate responsive records existing in the possession of FCRTA as of the date of your request, based on your description the types of records sought. Copies of all public records that are responsive to Your Letter are available for immediate production.

As a courtesy to you, the responsive records are provided to you on a USB along with personal delivery of this response letter. Please note that the PRA does not require FCRTA to produce records which did not exist as of the date of the PRA request.

Very truly yours,

Moses Stites, General Manager
 Fresno County Rural Transit Agency

CC: Alison H. Samarin, Deputy County Counsel

project approach, price and life-cycle costs. All costs, expenses and fees incurred by all Proposers are at their own risk and expense and the FCRTA is not responsible and/or liable therefore.

D. PROJECT DELIVERY OVERVIEW

It is FCRTA's intent to award a single contract to the selected DB Entity to deliver the PROJECT. The selected DB Entity will be the single point of contact and have contractual responsibility for all services contracted by FCRTA for the PROJECT. By combining the responsibilities of design and construction within a single team FCRTA expects to secure benefits for its customers by reducing costs, integrating construction considerations into the design of the PROJECT to deliver a better and more reliable facility, delivering a high-quality project with efficient sharing of responsibilities, and achieving benefits from schedule and cost efficiencies. Additional benefits include reducing the risk to FCRTA by contracting project responsibilities to a single entity, allowing for appropriate innovations in technology, and competitive selection of the best pre-qualified DB Entity.

It is anticipated that neither a detailed conceptual design component nor a corresponding lump sum fixed price will be required in response to the RFP. After the DB Entity is selected, the design will progress in an interactive manner leading to a negotiated guaranteed maximum price (GMP).

E. LEGAL AUTHORITY

This procurement is structured to comply with the requirements of California Senate Bill 785 (Public Contract Code Sections 22160-22169), as well as the requirements of all other applicable California law.

F. PROCESS SCHEDULE

FCRTA anticipates soliciting proposals from the short-listed DB Entities for the PROJECT from June 2021 through July 2021 and awarding a Design-Build Contract no later than September 2021. The RFP will provide additional process and project schedule information.

G. EXCLUSIVE PROCESS

Each prospective DB Entity invited to submit a proposal to undertake the PROJECT must have provided a complete SOQ through the process outlined in this Request for Qualifications of Design-Build Entities for the PROJECT. No other RFQ process completed for FCRTA will meet these requirements.

H. PREPARATION OF THE SOQ SUBMITTAL

Each prospective DB Entity must provide a complete, responsive SOQ package which consists of contact information and general information (Parts I and II), the minimum requirements and scored questions (Parts III and IV) and project experience, key personnel experience, and DB Entity financial information (Parts V, VI and VII) with all required attachments and any other supplemental information. Submission of an incomplete and/or unclear SOQ could result in a determination by FCRTA that the prospective DB Entity is nonresponsive.

The SOQ package must be presented bound and separated by tabbed section dividers for each "Part" (e.g. Part I, II, III, etc.) in two separate binders/Volumes. **Parts I, II, III and IV should be bound in Volume 1. Parts V, VI and VII shall be bound in Volume 2. Include a copy of the Cover Page for**

In accordance with Labor Code Section 1720 *et seq.*, the Project is a “public work”. The successful proposer (Contractor) and any Subcontractors shall pay wages in accordance with the determination of the Director of the Department of Industrial Relations (DIR) regarding the prevailing rate of per diem wages. The Contractor shall post a copy of the DIR’s determination of the prevailing rate of per diem wages at each job site. This Project is subject to compliance monitoring and enforcement by the DIR in accordance with Labor Code Section 1771/1725.5 registration requirement.

FCRTA is requesting Proposals for Design-Build services for the Project through an RFP process. Each response to the RFP must propose a business offer that will result in the delivery of a Project of a high level of design, innovation and technical quality in accordance with FCRTA’s Project Criteria and additional documentation issued with the RFP.

FCRTA will award the Design-Build Agreement for the Selma Maintenance Facility on the basis of a best value selection as provided for in Public Contract Code section 22160, *et. seq.*, per Federal public law, and as specifically described in this solicitation.

The process to select DBE to implement this Project involves a two-part process including the Part A - RFQ Process and Part B - RFP Process.

- Part A – RFQ Process: required all interested proposers to complete a Pre-Qualification Questionnaire which was used to establish whether a proposer meets the prequalifying criteria and to create a short-list of the highest ranked proposers based on the Part A Pre-Qualification Questionnaire submittals. The Part A Prequalification Questionnaire was open to all interested parties.
- Part B – RFP Process: FCRTA will invite the short-listed proposers to submit Proposals. The Part B Proposal is limited to those proposers short-listed under Part A.
- FCRTA will assemble a Review Committee that will evaluate the Proposals received from among the short-list of eligible proposers. The Proposals submitted in response to the RFP will be evaluated per criteria as defined in this RFP. Those submittals that do not meet the requirements may be deemed nonresponsive and disqualified from further consideration. FCRTA may utilize the services of appropriate experts to assist in the evaluation process.
- The Proposal evaluation process may include oral presentations/interviews with the RFP Review Committee based on review and ranking of the Proposals. One (1) firm will be selected for the Award of the Design-Build Agreement for Selma Maintenance Facility Project. Selection of the successful proposer in Part B shall be based upon pre-established criteria set forth in the Request for Proposal, which include cost and technical factors, as well as results from the RFP Interview process. Award of the Design-Build Agreement for Selma Maintenance Facility Project shall be made to the responsible DBE whose Proposal is determined by FCRTA to have offered the best value to the public.

2.2 OWNER’S TEAM

Owner: Fresno County Rural Transit Agency
Moses Stites, General Manager
Phone: (559) 233-6789
Email: mstites@fresnocog.org

Fresno County Rural Transit Agency

The issuance of an RFP constitutes only an invitation for DBE's to present their competitive Proposals. FCRTA reserves the right to determine, in its sole discretion, whether any aspect of the Proposal satisfactorily meets the criteria established in the RFP and the right to seek clarification from any proposer submitting Proposals. FCRTA also reserves the right to reject any or all Proposals received as a result of this solicitation; to extend the Proposal due date for RFP's; to modify, amend, reissue or rewrite this RFP document; and to procure Design-Build services by other means. In the event the RFP is withdrawn by FCRTA prior to the receipt of RFP Proposals, or if FCRTA does not proceed for any reason, FCRTA shall have no liability to any proposer for any costs or expenses incurred, in connection with the preparation and submittal of a response to this RFP.

4.12 REGULATORY COMPLIANCE

The design and construction must comply with the requirements of all applicable local, State and Federal agencies. Each portion of the work shall be performed by a person licensed, equipped and experienced to do work in the particular field. Please review Public Contract Code and Public Law, which include requirements for performance of the work by Contractors and Subcontractors. Both shall furnish certified payroll records and participate in an approved apprenticeship program as required by Federal and State requirements. The labor compliance and apprenticeship requirements will be monitored throughout the construction process. Any DBE found not in compliance shall be in default of its contract.

All subcontracts that are not listed by DBE in the Proposal shall be awarded by DBE in accordance with state and federal code. Specifically, DBE shall procure all subcontracts in accordance with California Public Contract Code 22166.

4.13 CONTRACTING WITH SMALL AND MINORITY OWNED FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

It is policy to award a fair share of contracts to Small Business and Minority Firms. Accordingly, affirmative steps must be taken to assure that Small Business and Minority Owned Firms are utilized, when possible, as sources of supplies, equipment, construction and services.

4.14 CLEAN AIR AND WATER ACTS

Contractors with Federally-assisted construction contracts of \$100,000 or more must comply, and ensure all sub-contractors comply, with the requirements regulated by the Environmental Protection Agency.

4.15 INACCURACIES OR MISREPRESENTATIONS

If in the course of the RFP process or in the administration of a resulting Contract, FCRTA determines that DBE has made a material misstatement or misrepresentation or that materially inaccurate or misleading information has been provided to FCRTA, DBE may be terminated from the RFP process or in the event a Contract has been awarded, the Contract may be immediately terminated.

In the event of a termination under this provision, FCRTA is entitled to pursue any available legal remedies.

4.16 CHANGING TEAM MEMBER

No changes to the members of DBE, including the firms and listed personnel, shall be permitted after the deadline for submission of the RFPs, except with the prior written authorization of

TAB 8) Life Cycle Costs over 25 Years

- A. FCRTA recognizes that the Design Build proposals will not include a full design within the proposal. However, Proposer shall identify a potential Heating, Ventilation, and Air Conditioning (HVAC) system based on the project description and criteria provided in the RFP. Proposer shall provide a Life Cycle Cost (LCC) analysis for the HVAC system using the LCC Template provided in **Exhibit F-2: Life Cycle Cost Template**. The LCC analysis study period shall span 25 years.

The analysis shall include, but not be limited to, the initial investment cost, rebates, equipment replacement cost, equipment residual value (if any), electric energy cost, gas cost, water cost (for water cooled systems only), and maintenance and repair costs. The maintenance and repair costs shall be computed based on prevailing wage standards in effect for this project.

- B. FCRTA has a focused interest in the total cost of ownership of the building over its expected life and desires a lower cost over the life of the building. FCRTA wants this project to be energy-efficient and sustainable. The Design-Build team shall consider the mechanical and electrical systems, and the overall energy consumption of the building holistically.

The Proposer shall provide the following in the proposal:

1. Based on an existing project of similar scope, demonstrate how the team creatively reduced the energy consumption of the project. Provide specific examples.

TAB 9) Skilled and Trained Workforce Commitment

Proposer shall provide a work plan defining how the Proposer and its subcontractors at every tier will comply with the requirements for the use of a skilled and trained workforce to perform all work on the project that falls within an apprenticeable occupation in the building and construction trades as required per Public Contract Code 22164(c) and in compliance with Department of Labor Public Law 113-128. Proposer shall demonstrate how it will document to FCRTA its commitment to comply with the above referenced requirement. This work plan builds on the requirement in the Request for Qualifications that the DBE provide an enforceable commitment.

TAB 10) DBE Good Faith Effort Documentation

Submit documentation of Proposer's good faith efforts for DBE participation in the Project.

2. PART TWO – COST PROPOSAL

In a separate sealed envelope, submit one (1) original with wet signature and five (5) copies of the following:

- A. Cost Proposal Form as provided in **Exhibit F-3**. The markup for overhead and profit and insurance line items included in Exhibit F-3.
- B. List of Subcontractors as provided in **Exhibit F-4**. Provide listing of all subcontractors known at time of RFP submittal. All subcontracts that are not listed by the DBE shall be awarded by the DBE in accordance with state and federal code. Specifically, DBE shall procure all subcontracts that are not listed by the DBE in accordance with California Public Contract Code 22166.
- C. Non-Collusion Affidavit as provided in **Exhibit F-5**. One of the five sets must include a Signed Original.
- D. Additionally, if DBE is a Joint Venture, Proposer shall provide a copy of the joint venture agreement. (No page limit) *Note: Agreement must provide that All responsibilities of the joint venture shall become the individual responsibilities of each member of the joint venture in the event of the termination of the joint venture for any reason.*



ITEM 3B-5

GENERAL CONTRACTOR'S LICENSE #706140

5520 E. Lamona Ave., Fresno, CA 93727
(559) 252-1000 office • (559) 252-1005 fax
zumwalt@zumwaltconst.com e-mail

February 17, 2022

Fresno County Rural Transit Agency
2035 Tulare St.
Fresno, CA 93721
Attn: Moses Stites

Re: New Bus Maintenance Facility-Selma CA

Su: Bid Award

Moses,

I would like to express our sincere thanks to your selection committee on being recommended as the best responsible bidder for the New Bus Maintenance Facility located in Selma CA. We have completed in many design-build RFQ/RFP's and we feel that, though rigorous, the FCRTA process was transparent and fair to all of the competitors. Zumwalt Construction Co., Inc. (ZCI), TETER Architects & Engineers (TETER) and Westech Systems (WS) has put together a very robust and experienced team to help facilitate your dream of a new maintenance facility into reality. This new facility is the perfect size project for both ZCI and TETER, in such that we can provide very experienced individuals to assist in the design build process, value engineering, scheduling and eventual construction of the project.

ZCI partnered with the local architectural firm of TETER, due to their past experience on working on projects of this size/nature, including their professional approach and collaboration with the stake holders assigned to this project. As demonstrated in our interview, TETER provided not only the base plot plan layout (see attached) for the overall site, they also included the new office, bus maintenance facility, bus wash, parking lot, and exterior building elevations of the project; all of this was accomplished with ZCI and TETER working together based on the bid documents and the financial requirements provided by your firm. ZCI and TETER spent many hours of collaboration in putting together our thoughts and anticipated Owner expectations, based upon the Request for Proposal (RFP) documentation. We thoroughly studied the RFP, to ensure that we made every attempt possible to convey that we are the right bidder and could fulfill the obligations and demands of this project.

During the interview process our team was very transparent on how we arrived at our distributed budgets, that we feel will best meet the demands of this new facility, which can be built upon for future expansion. Our electrical consultant WS, not only will provided the necessary engineering services, but is also a PG&E certified engineer, which will be a huge benefit for this



ZUMWALT
CONSTRUCTION, INC.

GENERAL CONTRACTOR'S LICENSE #706140

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project, due to the necessary power demands of this facility and future photovoltaic energy production.

ZCI, TETER and WS were very satisfied in the points awarded to our team, from the interview process and feel that the selection committee saw the real value in awarding our team this project. We have the manpower, consultants and infrastructure to get this project started and look forward in working on this project and future projects together.

Look forward to working on this project.

Sincerely,

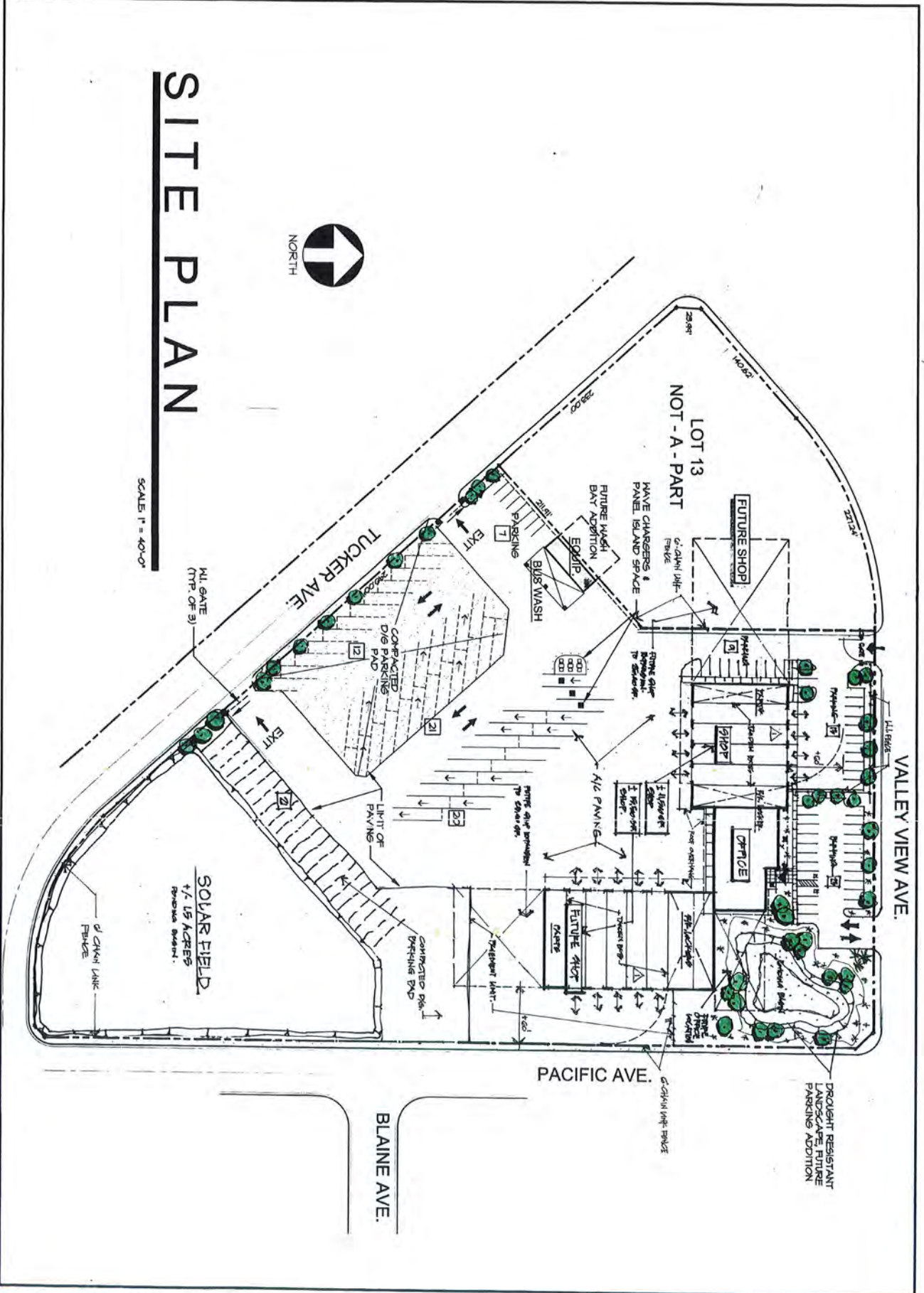
A handwritten signature in blue ink, appearing to read 'R. McKnight', is written over the typed name.

Robert McKnight
President

attachment

SITE PLAN

SCALE 1" = 40'-0"



FRESNO CO. RURAL TRANSIT AGENCY MAINTENANCE FACILITY
 PROJECT NO. 24-1271
 SELMA, CA
 DRAWING TITLE SITE PLAN



TETER, LLP
 FRESNO HEADQUARTERS
 VISALIA | BAKERSFIELD | MODesto | SAN LUIS OBISPO
 ARCHITECTS ENGINEERS CONNECTED

NOT FOR CONSTRUCTION

DATE	DESCRIPTION
1/10/22	PERMITS TRAIL STUDY

DATE: 1/10/22
 DRAWING TITLE: PERMITS TRAIL STUDY

Scale: 1/4" = 10'-0"
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