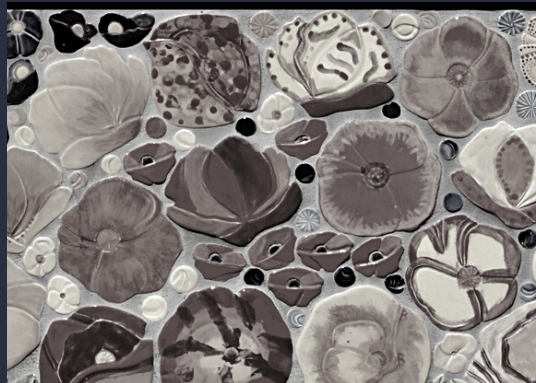


ISSUED: 09/03/2021



REQUEST FOR PROPOSALS

Ballot Measure Polling and Outreach Consultant Services



PROPOSALS DUE: OCTOBER 8, 2021 BY 5:00 PM

CITY OF MERCED, CALIFORNIA
REQUEST FOR PROPOSALS – BALLOT MEASURE POLLING
AND OUTREACH CONSULTANT SERVICES

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PART I – SPECIFICATIONS

I. INTRODUCTION

The City of Merced (hereinafter referred to as “the City”) is requesting proposals from qualified firms (hereinafter referred to as “Firm”) for professional services to provide polling and public outreach services pertaining to a potential ballot measure.

In 2006, Merced voters approved Measure C, a half-cent local sales tax. Following the adoption of Measure C, the City Council, with input from the community, elected to use the funds on priorities the community deemed to be important, including public safety, firefighting, and public works projects citywide.

Measure C generates between \$6 - \$7 million annually. The funds currently support 19 police positions including those in the Merced police department gang unit; Merced’s regional participation in the Merced Area Gang and Narcotic Enforcement Team (MAGNET); local school resource officers in middle and high schools, and the Disruptive Area Response Team (DART); 12 fire personnel; and streets projects of approximately \$100,000.

Unfortunately, many of these staffing levels are not considered “full” staffing, and due to state takeaways of local funds, Measure C funds have had to backfill, not expand, these critical services.

Measure C funds are monitored by a citizen-led Tax Transparency Oversight Committee which reports on expenditures, ensuring they are in line with the community’s stated priorities for Measure C funds, on an annual basis.

In 2026, Measure C funds are set to expire. As part of the City’s ongoing budget process, any and all potential solutions, including fee increases, budget cuts, and mechanisms for revenue enhancements have been transparently discussed in Council meetings.

No decision has been made to put ballot proposals forward for voter consideration. Merced is currently evaluating community priorities as they relate to current local Measure C funding and is looking to determine the best election cycle for potential renewal.

During the proposal evaluation process, the City reserves the right to request additional information or clarification from proposers, or to allow corrections of errors or omissions. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal firm bidder selected.

To be considered, proposals must be received by the Merced City Manager no later than **5:00 p.m. on October 8, 2021**. Proposals will be accepted via email and mail. If submitting via mail, a flash drive containing the full electronic proposal must be submitted with the hard copy. Proposals submitted via facsimile will not be accepted. It is anticipated that the selected firm will be notified by the week of **October 25, 2021**. The contract award is tentatively scheduled for the **December 6, 2021**, City Council meeting. An electronic version of this request for proposal may be found on the City's website: <https://www.cityofmerced.org/business-services/bid-opportunities>.

All questions related to this Request for Proposal must be submitted in writing via email or received via mail by Friday, **September 24, 2021**, to:

City Manager Stephanie Dietz
City of Merced
678 W. 18th Street
Merced, CA 95340
dietzs@cityofmerced.org

All responses to questions and RFP revisions will be available on the City's website: <https://www.cityofmerced.org/business-services/bid-opportunities>.

II. DESCRIPTION OF THE CITY

Merced is a dynamic community of over 91,000 people, with friendly small town living in a mid-size city. The University of California Merced campus, opened in 2005, provides new educational and economic opportunity, adding to the already-established growth of the region. Merced's population is youthful and diverse.

Located in the heart of California's agricultural Central Valley, Merced is the region's hub for education, culture, and business. The community offers abundant shopping, pleasant neighborhoods, and tree-lined streets. Bicycle paths along creeks link major City parks. Even with recent increases in prices, Merced's housing remains affordable compared to many other California locations. Merced's revitalized downtown is emerging as the entertainment center of the area. Recent development projects in Downtown Merced have drawn national attention.

The City operates under a "council-manager" form of government. Policy making and legislative authority are vested in the City Council. The City Council consists of the Mayor elected from the City at large, and six Council Members elected by single-member district election. The Mayor is elected to serve a four-year term. The Council is elected to four-year staggered terms, with three members elected every two years. The Mayor and individual Council Members can serve up to two (2) four-year terms, if elected. The City Council is responsible, among other matters for passing ordinances, adopting the City budget, appointing committees, and appointing the City's Charter Officers, which includes the City Manager, City Attorney, and Finance Officer.

The City Manager is the chief administrator of the City, responsible for coordinating and directing the resources of the City government to carry out the programs, policies, and ordinances set by the elected City Council, managing the daily operations of the City, and for hiring executive management staff, and employees.

The City Attorney acts as legal advisor and counsel for legal issues involving the City, the Public Financing and Economic Development Authority (PFEDA), and the Parking Authority and their committees and commissions.

The Finance Officer provides fiscal advice, financial forecasting, budgetary controls, and other financial information to the City Council, City officials, and the general public.

The City provides a full range of municipal services including fire and police protection, construction and maintenance of City streets and storm drains, connection to City water and sewer, zoo, parks and City right-of-way maintenance, community recreation activities, building inspections, licenses and permits, and public facilities. City departments include City Manager, City Attorney, City Clerk, Development Services - which is comprised of Planning/Permitting, Building/Inspection Services, Housing, and Engineering divisions; Economic Development, Finance, Fire, Human Resources, Information Technology, Insurance/Risk Management, Parks & Community Services, Police, Public Works, and the Merced Yosemite Regional Airport.

The City's adopted budget for FY 2021/22 is \$320.1 million. The General Fund budget is \$51.3 million.



III. SCOPE OF WORK TO BE PERFORMED

A. Services to be Performed by Consultant

1. The City seeks proposals for polling and public outreach consultant services pertaining to sales tax measures. The City desires to better understand citizen opinion, assess the likelihood of success of different approaches and taxation amounts and ensure voters are accurately informed and understand the outcome of their vote(s) associated with the ballot measures.
2. Create a survey instrument and undertake a statistically valid online survey and/or telephone poll of residents to determine community interests related to sales tax. Provide statistical data from which conclusions can be drawn and recommendations made relative to the number of respondents and the effect on the margin of error. The sample size should yield a 90% confidence level and a +/-5% accuracy level.
3. Develop a Comprehensive Outreach/Engagement Strategy:
 - a) Craft appropriate informational and educational materials in English, Spanish, and Hmong and provide advice on distribution methods.
 - b) Design, advertise and conduct five public outreach meetings, including Spanish and Hmong translation at the meetings.

B. Timeline Requirements

1. Consultants shall initiate work by January 2022 with the first milestone date of March 2022. The timing of the polling and public outreach is approximately one year. A draft schedule is attached to this RFP for information purposes. The City seeks to complete the polling and a portion of the public outreach by June 2022 to provide ample time to share the results with the Council. If the Council determines that these two ballot measures should be placed on the November 2, 2022 election ballot, then public education would continue until approximately one month before the election.

C. Reporting and Communication

1. The consultant will meet initially with the City Manager, City Attorney, and Finance Officer to design the survey and questions as well as meet regularly

during the process to discuss issues, concerns, preliminary findings, and recommendations.

2. The consultant will provide regular updates to the City regarding progress on the analysis and recommendations and request any additional information or direct need to complete the project on time and within the contract budget.
3. Prior to issuing the first milestone report, the consultant will meet with the City Manager, City Attorney, and Finance Officer to review the draft report and make recommendations to be presented to the City Council.
4. Present data and recommendations to the City Council.

D. Other Considerations

1. All working papers, reports, and records relating to the work performed under the Professional Services Agreement must be retained, at the consultant's expense, for a minimum of five (5) years, unless the Firm is notified in writing by the City of Merced of the need to extend the retention period.
2. The consultants will be required to make working papers available upon request to the appropriate parties.

IV. BASIS FOR COMPENSATION

- A. The City will pay the consultant for the services described in Part I, Section III (Scope of Work to be Performed) that do not exceed the amount contained within an executed Professional Services Agreement between the City and the Firm. For additional services required after the inception of the Agreement, written approval by the City shall be required in advance of such services being rendered. The fee for such services shall be paid based on the consultant's quoted hourly rates.

V. ADDITIONAL PROVISIONS

- A. Upon notice of intent to award contract, the successful consultant shall enter into a Professional Services Agreement with the City of Merced subject to approval by the Merced City Council.

- B. No officer, agent, or employee of the City and no member of its governing bodies shall have any financial interest, direct or indirect, in this agreement or the proceeds thereof. No officer, agent, or employee of the Firm shall serve on a City committee or hold any such position which is incompatible with such person's duties or obligations or other relationship to this agreement.
- C. Time is of the essence in each and all provisions of the Agreement.

VI. SPECIAL TERMS AND CONDITIONS

- A. Invoices received from the Firm will be approved by the Finance Officer and processed within thirty (30) days from receipt.
- B. The City is not liable for any pre-contractual expenses incurred by any bidder. In addition, no bidder shall include any such expenses as part of the price proposed to conduct the work.
- C. The City reserves the right to withdraw the RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any bidder responding to this RFP. The City expressly reserves the right to postpone action regarding this RFP for its own convenience and to reject any and all proposals in response to this RFP without indicating reasons for such rejection.
- D. The City is not responsible for oral statements made by any of its employees or agents concerning this RFP. If the bidder requires specific information, the bidder must make the request in writing as instructed in the RFP.
- E. All responses to the RFP shall become the property of the City and a matter of public record. Responders must identify all copyrighted material, trade secrets or other proprietary information that the responder claims are exempt from disclosure by the California Public Records Act. In the event a responder claims such exemption, the responder must state in the response that: "The responder will indemnify the City and hold it harmless from any claim or liability and defend any action brought against the City for its refusal to disclose copyrighted material, trade secrets, or other proprietary information to any person making a request thereof." Failure to include such a statement shall constitute waiver of the responder's right to exemption from disclosure and authority for the City to provide a copy of the proposal or any part thereof to the requestor.

- F. The individual(s) preparing and submitting the proposal must state they possess the authority to bind the Firm to the terms of the RFP.
- G. All questions regarding this RFP should be made in writing and emailed to dietzs@cityofmerced.org by 5:00 p.m. on **September 24, 2021**.

PART 2 – PROPOSAL REQUIREMENTS AND INFORMATION

I. PROPOSAL PROCESS AND CALENDAR

A. Distribution of Proposals

Request for Proposals shall be available on the City of Merced website: <https://www.cityofmerced.org/business-services/bid-opportunities> on **September 3, 2021**.

B. Proposal Submission

Proposals for the City of Merced Ballot Measure Polling and Outreach Consultant Services must be received no later than **5:00 p.m. on October 8, 2021**. Proposals will be accepted via email and mail. If submitting via mail, a flash drive containing the full electronic proposal must be submitted with the hard copy. Proposals submitted via facsimile will not be accepted. Proposals must be submitted to the following:

City Manager Stephanie Dietz
City of Merced
678 W. 18th Street
Merced, CA 95340
dietzs@cityofmerced.org

Proposals must contain a cover page with the following information: firm's name, mailing address, physical address, and RFP title. Late or incomplete proposals will not be considered.

C. Proposal Review and Notification

The City Manager and a selection panel will review and evaluate the proposals. The proposal review process is projected to be completed by **October 29, 2021**.

D. Interviews

The City will schedule interviews with finalists, if applicable, for the week of **October 25, 2021**. Firms selected for interviews may be requested to prepare a short presentation for the interview committee.

E. Final Selection and Notification

The City anticipates making a final selection by **October 29, 2021** and sending written notification of status to the finalists by **November 5, 2021**.

II. PROPOSAL REQUIREMENTS

A. Firm Qualifications and Experience

The proposal should state the size of the Firm, the size of the Firm's staff, the location of the office from which the work on this engagement is to be performed. For the Firm's office assigned responsibility for the polling and public outreach, list the most significant engagements (minimum of 3, maximum of 5) performed in the last five (5) years that are similar in organizational type, size and complexity to the engagement described in this request for proposal. These engagements should show experience with local governments providing ballot measure polling and outreach consultant services. Indicate the scope of work, date engagement partners, total hours, and the name and telephone number of the principal client contact and, if available, a link to the final published report.

Provide data that demonstrates success rate of past polling endeavors. Statistical data should be included that demonstrates polling results and predictions versus actual results in the elections.

B. Partner, Supervisory, and Staff Qualifications and Experience

The Firm shall identify the principal supervisory and management staff, including engagement partners, managers, other supervisors, and specialists, who would be assigned to the project. The Firm should also provide information on direct polling and outreach experience, including the scope of services requested by the City, of each person, and information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of these services.

The Firm should provide as much information as possible, including resumes, regarding the number, qualifications, experience, and training of the specific staff to be assigned to this agreement. The Firm should also indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff, and specialists may be changed if those personnel leave the Firm, are promoted, or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City of Merced. However, in either case, the City of Merced reserves the right to approve or reject replacements. This shall also apply to consultants and firm specialists mentioned in response to this request for proposal.

Other personnel may be changed at the discretion of the Firm provided that replacements have substantially the same or better qualifications or experience and there is continuity of key staff to ensure an efficient process.

C. Specific Polling and Public Outreach Strategy

The proposal should set forth a work plan, including an explanation of the polling methodology to be followed to perform the services required in Part I, Section III of this request for proposal.

D. Total All-Inclusive Maximum Price

The proposal should contain all pricing information relative to performing the polling and outreach services as described in this request for proposal. The total all-inclusive maximum price to be proposed is to contain all direct and indirect costs, including all out-of-pocket and travel expenses.

E. Rates by Partner, Supervisor, and Staff Level Times Hours Anticipated for Each

The proposal should include a schedule of professional fees and expenses, as presented in the format shown in Appendix A, which includes the proposed total all-inclusive maximum price.

F. Ownership of City-Related Documents

All property rights, including publication rights of all reports produced by the Firm in connection with services performed under this agreement shall be vested in the City of Merced. The proposer selected shall not publish or release any of the results of its examinations without the express written permission of the City of Merced.

G. Acceptance of Proposal Contents

After a Firm is selected by the City, the contents of the submitted proposal shall become part of the resulting Professional Services Agreement. The successful bidder will be required to execute a standard Professional Services Agreement with the City, an example of which is attached as Appendix B. Failure of the Firm to agree to include the proposal as part of the contractual agreement may result in cancellation of the award. The City reserves the right to reject those parts of the proposal that do not meet with the approval of the City.

H. Acceptance or Rejection and Negotiation of Proposals

The City reserves the right to reject any or all proposals, to waive non-material irregularities or information in the request for proposal, and to accept or reject any item or combination of items. By requesting proposals, the City is not obligated to award a contract or to pay expenses of the proposing Firms in connection with the preparation or submission of a proposal. All requests for proposals received by the City will remain open, valid, and subject to acceptance for a period of three months.

III. EVALUATION PROCESS

The proposals for the City's polling and outreach services will be evaluated by a committee selected by the City Manager, City Attorney, and Finance Officer. Proposers may be required to make oral presentations as a supplement to their proposals. These presentations would only be held subsequent to the receipt of the proposals and will be part of the evaluation/interview process to determine qualifications of the firm. The City Manager will schedule a time and location in the City of Merced for each oral presentation that it requests. Should a proposer refuse to honor the request for an oral presentation or interview, it may result in the rejection of the proposal by the City.

Evaluation considerations will include the following:

- A. Responsiveness of the proposal in clearly stating the understanding of the work to be performed and in demonstrating the intention and ability to perform the work.
- B. Consultant's experience in conducting polling and public outreach for cities of a similar nature, size, and complexity, and the consultant's commitment to maintaining technical expertise in the municipal election's environment.

- C. Technical experience and professional qualifications of the team. The number of key and supervisory personnel who will directly participate in the polling and public outreach.
- D. Size and structure of the Firm's office from which the work is to be done and continuity in staff. The City is looking for a highly qualified team that is able to meet the due dates specified in this document.
- E. Cost. Although a significant factor, cost will not be the primary factor in the selection of a firm.
- F. Consultant's experience in complying with applicable federal and state regulations relating to non-discrimination and equal employment opportunity.

IV. FORMAT AND CONTENT OF PROPOSAL

A. Title Page

The title page should include the request for proposal subject, the name of the proposer's firm, local address, telephone number, name of contact person, and date.

B. Table of Contents

Include a clear identification of the material by section and by page number.

C. Letter of Transmittal

1. State whether the Firm is local, national, or international.
2. Give the location of the office from which the work is to be done and the number of partners, managers, supervisors, seniors, and other professional staff employed at that office.
3. Describe the range of activities performed by the local office such.
4. Describe the local office's polling analysis capabilities, including the number and classifications of personnel skilled in statistical analysis who will work on the polling.
5. Describe the local office's public outreach format and techniques for attendance, engagement, and dissemination of information in the English, Spanish, and Hmong languages.

6. Describe the local office's recent polling and public outreach experiences with mid-size local government agencies.

D. Polling and Outreach Team

1. Describe the composition of the team, including staff from other than the local office, and consultants. Include resumes of each personnel identified.
2. Identify the supervisors and consultants who will work on the polling and public outreach and include resumes of each personnel identified.
3. Provide qualifications, relevant experience, and training of the specific staff to be assigned to this agreement. The Firm should also indicate how the quality of staff over the term of the agreement will be assured.

E. References

List five municipal (City or County clients) for whom similar or comparable services have been performed. Include the name, mailing address, and telephone number of their principal representative, a detailed description of the work performed, and the dates services were provided.

F. Scope and Provisions

Describe the scope of the required services to be provided and outline a plan on how such services will be implemented. Please include depth of work, staffing, and time estimates. Proposers should list all reports that are to be issued, the points to be addressed by reports, parameters of recommendations, and the estimated completion dates.

G. Cost Data

Indicate the total hours and hourly rates by staff classification and the resulting all-inclusive maximum fee (not to exceed total) for which the requested work will be done for each of the specific deliverables identified in this Request for Proposal. Fees must include all anticipated costs including travel, per diem, and out-of-pocket expenses.

H. Additional Data

Data not specifically requested should not appear in the foregoing sections, however any additional information considered essential to the proposal may be presented in this section.

APPENDIX A

Schedule of Professional Fees and Expenses to Support the Total All-Inclusive Maximum Price

| PERSONNEL | HOURS | STANDARD HOURLY RATES | QUOTED HOURLY RATES | TOTAL |
|-------------------|-------|--------------------------|---|-------|
| Partner | | \$ | \$ | \$ |
| Manager | | \$ | \$ | \$ |
| Supervisory Staff | | \$ | \$ | \$ |
| Other (specify) | | \$ | \$ | \$ |
| | | | Subtotal | \$ |
| | | | Out-of-Pocket Expenses | \$ |
| | | | All-Inclusive Maximum Total Price | \$ |

APPENDIX B

(PLEASE SEE ATTACHED CITY OF MERCED'S
STANDARD "PROFESSIONAL SERVICES AGREEMENT")

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as “City”) and _____, a _____, whose address of record is _____, (hereinafter referred to as “Consultant”).

WHEREAS, City is undertaking a project to _____; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide _____ services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the _____ services described in Exhibit “A” attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the _____ or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit “B” attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on _____, 20__.

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an

invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "C". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of \$_____.

5. METHOD OF PAYMENT. Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. RECORDS. It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. CONSULTANT'S BOOKS AND RECORDS. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. INDEPENDENT CONTRACTOR. It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System

(PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

CHOOSE WHICH INDEMNITY PROVISION APPLIES –

This indemnity provision applies to Vendor and Consultants providing general services to the City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement; Consultant shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

This indemnity provision applies to Design Professionals that require errors and omissions coverage (Auditors, Attorneys, Architects, Engineers, Landscape Designers, Land Surveyors, etc.)

9. INDEMNITY.

A. Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

B. Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public works" the Vendor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Vendor further agrees to the penalties and

forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Vendor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Vendor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Vendor agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a “public works” as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

15. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. _____

ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

APPENDIX C

TENTATIVE SCHEDULE

