



# CITY OF MERCED

*Engineering Department*

*Telephone 209-385-6800*

*Fax 209-385-6211*

DATE: December 19, 2023  
TO: Interested Parties  
FROM: Michael Wegley P.E., Interim City Engineer  
SUBJECT: **OPPORTUNITY TO PROPOSE ARCHITECTURAL SERVICES  
FOR APPLGATE PARK ZOO**

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We invite your interest in the possibility of proposing architectural design services for the Applegate Park Zoo project, in the City of Merced.

The Request for Proposals (RFP) is attached. Please review it carefully before responding.

Interested proposers are encouraged, but not required, to attend a site visit:

**Site Visit**

10:00 a.m. to 11:00 a.m.  
Tuesday, January 9, 2024  
Applegate Park Zoo  
1045 West 25<sup>th</sup> Street  
Merced, California

Written questions regarding the RFP must be received no later than **January 18, 2024**.

**Please deliver your proposal before 4:00 p.m. on January 25, 2024.** Faxes, e-mails, late proposals, or incomplete proposals will not be accepted.

Thank you.

**REQUEST FOR PROPOSALS FOR APPLGATE PARK ZOO  
ENCLOSURE AND EXHIBIT RENOVATION DESIGN  
Engineering Department of the City of Merced**

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**Proposals due by 4:00 p.m. on January 25, 2023**

The Engineering Department of the City of Merced will accept proposals for services listed above. Proposals will be accepted at the office of the City Engineer, Merced Civic Center, 678 West 18th Street, Merced, California 95340.

**PURPOSE AND SUMMARY OF WORK**

The purpose of the work by the Architectural/Engineering Consultant is to provide all design services needed for zoo improvements including a Bear Enclosure, Tortoise Exhibit, Screech Owl Exhibit, lighting, landscaping and hardscape for the Applegate Park Zoo located at the northeast corner of R Street and 25<sup>th</sup> Street.

The design of the improvements should be consistent with the conceptual vision and specifications. See the "Background" section below for additional detail.

City Engineering staff will work with the Consultant in carrying out the project.

**BACKGROUND: THE CITY OF MERCED AND THE PROJECT**

**Community Description:** Merced is a community of approximately 90,000 located in the Central Valley of California. The University of California Merced campus, opened in 2005, provides new educational and economic opportunity, adding to the already-established growth of the region. Located in the heart of California's agricultural Central Valley, Merced is the region's hub for education, culture, and business.

**Aesthetic Character:**

The Consultant shall conduct a complete site analysis to clearly identify problems and opportunities connected with the redevelopment and remodeling of the site. Included in this analysis are all existing facilities, zoning, and other legal requirements. The functional and visual relationship among all site components, both the existing and the proposed facilities, will be studied, and design options on their total integration will be presented for approval and development as part of this project. Work should be consistent with the Zoo Master Plan.

It is the Zoo's desire to incorporate a consistent "look" for their facilities which incorporates the City's "Gateway to Yosemite" theme. It was decided that natural materials, such as, stone and wood, would provide an appropriate aesthetic for the Zoo. For example, a

“Yosemite Lodge” type of architecture, of an appropriate scale, that is expressive of the functional activities taking place within and around the facility, would be appropriate. Design of the Bear Enclosure, Tortoise Exhibit and Screech Owl Exhibit shall include conceptual renderings for a Recreation/Zoo Department presentation and review as well as public “open house” style project review to receive comments. Careful consideration should be given to service and emergency circulation as well as security of and around the facility in the Project design. Circulation plans should also account for safely moving animals outside of enclosures. The Project should reflect the Zoo’s commitment to be operationally cost effective by providing functional, flexible facilities that minimize staffing requirements and maximize energy conservation.

A landscape plan shall be part of the planned facilities. Plants should be selected for ease of care, water conservation, and appropriateness for the Merced climate and Zoo landscape. Highlighting plants historically used by the native Yokut people is also encouraged. As vegetation is considered a major asset to the Zoo environment, an evaluation of all plants impacted by development, regardless of protected status, shall be made. The evaluation shall consider those plants of major size and/or particular value such as plants providing shade for users or structures; plants possessing wildlife value; and those plants possessing a unique character or particular aesthetic quality or that can be used as brows for Zoo animals. Planning efforts shall attempt to preserve in place or transplant existing viable plants and trees.

Lighting should maximize energy conservation and comply with Dark Sky Standards. The angle of the sun should be considered in the design for the enclosures as well as to provide shade for visitors and animals.

### **Consultant Qualifications:**

To be eligible for being considered as Consultant, the proposal should address the following eligibility criteria:

- Current and active license by the State of California in Architecture, Landscape Architecture and/or Civil Engineering.
- Experience successfully completing at least three (3) similar projects in the past ten (10) years.

### **Scope of Project:**

This project is being supported, in whole or in part, by federal award number SLFRP4002 awarded to the City of Merced by the U.S. Department of the Treasury. As there are limited funds for this project, the construction budget will be pre-determined by the City and it shall be the Consultant’s responsibility to produce construction documents conforming to this budget. The base bid is to provide for the construction of facilities and site improvements that are determined by the City. Bid Alternates will be included for lower priority components and to allow for some flexibility in the design as it

relates to the Construction Contract. Below is a list of desired renovations in priority order. As many of the listed renovations as possible should be incorporated into the design with a **total project funding budget for design and construction not to exceed \$1.8 million.**

- Replace all asphalt with concrete walking paths that meet ADA requirements
  - Address grading and drainage to assist with dispersing storm water
  - Accessible entrance for admission building
- Retain as much shade in Zoo as possible
- Renovate/rebuild existing cougar enclosure to house American Black bears
  - Must meet California Fish and Wildlife Restricted Species Laws and Regulations Manual 671 (DFW 1312d)
  - Must include:
    - 2 dens
    - Trainer corridor for zookeepers
    - Water feature
    - Shade
- Provide new electrical infrastructure throughout facility
  - Ambient light
  - Outlet receptacles
  - Emergency lighting (flood lights)
- Update maintenance hall electrical and plumbing fixtures
- Separate wetland pond drain from main hall enclosures to limit backflow into exhibits
- Revise magpie exhibit entry door
- Create Desert Tortoise exhibit with heated dens for reptiles (west of restrooms)
- Add handwashing station for petting zoo (between goats & emu)
- Upgrade restrooms
  - Add electrical for lighting
  - Add baby changing table
  - New restroom fixtures
- Renovate Screech owl exhibit (deteriorating from moisture)
- Build ADA compliant platform around fruitless mulberry tree between big pond and small pond area

**General Work Program:** The professional services agreement is intended as a “Turnkey” project. All tasks shall be coordinated to effectively develop interrelated project elements, and tasks shall not be advanced until preliminary requirements are addressed, and clear direction established. The consultant shall have total responsibility for the accuracy and completeness of all work and services required for this project. Quality Control shall be consistently and thoroughly applied throughout the project development. Assigned QA/QC staff shall be technically well qualified to conduct the appropriate level of oversight, and demonstrate a concerted commitment to provide a high-quality product.

A project schedule shall be prepared itemizing all activities and subtasks to support project milestones. The schedule shall be in the form of a bar chart and show deliverables and other relevant data needed for the control of work. A copy of the schedule and monthly updates shall be furnished to the City Project Manager. Consultants proposing on this project shall clearly demonstrate the ability and commitment to accelerate project completion with promptness and efficiency. Accordingly, the consultant shall commit all necessary resources to achieve expeditious completion. The specific services being furnished during the life of this contract shall be rendered by Architects and/or Engineers registered to practice in their particular field of endeavor with the State of California. The selected consulting firm shall maintain the same project manager throughout the duration of the project, as specified in the proposal and approved by the City.

The Scope of Services (Attachment A) defines the general project requirements. Associated tasks and provisions not specifically defined are requested to be fully addressed in the proposal. The tasks and fee shall reflect mandatory combined elements for the overall project. All tasks shall be undertaken and completed within the proposed "Not to Exceed" contract fee.

### **METHOD OF COMPENSATION**

**Cost proposals submitted to the City must be sealed.**

The Consultant is to identify an hourly rate of compensation, cost by Task, and a "Not to Exceed" figure for the project. Progress payments will be made monthly upon invoice, based on actual hours worked applied to the agreed upon hourly rates of compensation.

The Consultant must also identify any reimbursable expenses and give a "Not-to-Exceed" total for reimbursables. Any necessary services outside the scope of the work must also be identified.

### **SCHEDULE AND TIME OF COMPLETION**

It is anticipated that the design work described herein shall be completed within five (5) months of the date of signing the appropriate agreement. Anticipate award of contract in February 2024 and completion of design work by July 2024, followed by bidding and construction.

The Schedule:

February 19, 2023	Award of Design Contract
May 8, 2024	Recreation/Zoo Dept. Conceptual Plan Presentation/Review
June 19, 2024	Public Review Meeting
July 19, 2024	Completion of Design (Biddable Plan Set)
August 29, 2024	Bid Opening
September 17, 2024	Award of Construction Contract
August 29, 2025	Completion of Construction

## **CITY'S RESPONSIBILITIES**

The City shall provide the Consultant with existing relevant plans, studies, and publications concerning the activities and programs. The City shall designate a representative authorized to act in its behalf with respect to the Contract(s), and furnish required information as expeditiously as necessary for the orderly progress of the work.

## **CONSULTANT'S PRODUCTS, EXPENSE, OWNERSHIP AND DISPOSITION**

The City of Merced shall not be responsible in any manner for the costs associated with the submission of the proposals. The proposals, including all drawings, plans, photos, and narrative material, shall become the property of the City upon receipt by the City. No materials will be returned to the Proposers.

All Consultant products produced under the contract become the property of the City, and shall bear no restrictive markings intended to prevent their free use by the City. Electronic files shall be reproducible and shall not be "write-protected" in any manner.

## **SPECIAL ISSUES AND REQUIREMENTS**

**Form and Execution of Contract.** The form of contract is Attachment B. It shall be executed and returned with the Consultant's proposal. If the Consultant is unable to execute the Contract, then the Consultant's proposal will be deemed incomplete and not considered.

**Insurance.** The Consultant shall meet the insurance requirements in Section 10 of the contract, including liability insurance in the amount of \$1,000,000, naming the City as additional insured.

**Conflicts of Interest.** The Consultant must be aware of and comply with conflict of interest rules included in the California Political Reform Act, Section 1090 et. seq. of the Government Code, and Federal Regulation Governing Conflict of Interest 2 CFR 200. Any potential conflict of interest affecting the award must be disclosed in writing in accordance with 2 CFR 200.112. If no conflict of interest exists, include such statement in the proposal.

**Federal Funding Requirements.** This project is being supported, in whole or in part, by federal award number SLFRP4002 awarded to the City of Merced by the U.S. Department of the Treasury. All actions must comply with the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions (Attachment C)

**California Prevailing Wage.** Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental

hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations (DIR) websites. Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.

## **REQUIRED FORM AND CONTENTS OF YOUR PROPOSAL**

Proposals are more likely to be viewed favorably if they are brief, concise, and specific. Overly elaborate proposals will be construed as a lack of cost consciousness.

All required contents must be submitted in **paper** form. Electronic submittals of required elements, or references to websites or other publications, are unacceptable and will cause the proposal to be deemed incomplete and rejected in the preliminary screening for completeness.

Each Consultant proposal shall include the following items in the following order:

- A. Cover letter stating interest in the work and ability to perform to Schedule
- B. Executed contract in the form attached (City will NOT accept AIA contracts)
- C. Statement of previous experience and expertise in the area of the Scope of Work
- D. Names and qualifications of key personnel assigned to the project, including resumes
- E. Names and qualifications of subcontractors, if any, including resumes of key subcontractor personnel
- F. Proposed Scope of Work
- G. **Sealed** cost proposal and budget, conforming to the "Method of Compensation" in this RFP
- H. Statement of understanding and compliance with the special requirements
- I. Three (3) references for other related or similar programs

The Consultant shall sign the proposal and contract. Please send **five (5) copies** of the proposal to:

CITY CONTACT:

Eric Soito

Assistant Engineer  
City of Merced  
678 West 18th Street  
Merced, CA 95340

Phone: (209) 385-7511

Email: [soitoe@cityofmerced.org](mailto:soitoe@cityofmerced.org)

Incomplete proposals may be rejected as non-responsive. The City reserves the right to waive any irregularities in the proposals.

### **SELECTION PROCEDURE**

Proposals submitted will be initially reviewed for completeness, and any incomplete proposals rejected without further review.

If a proposal is deemed complete, then it shall be further reviewed based upon the criteria below by City representatives, and may also be reviewed by a Selection Committee. The selection process may include an interview before Selection Committee representatives. The City representative will negotiate with the most qualified Consultant to determine the final award.

Criteria for selection includes but is not limited to:

- a. Experience;
- b. Previous design quality;
- c. References;
- d. Responsiveness to RFP.

### **Attachments:**

Exhibit A: Scope of Services

Exhibit B: Schedule

Exhibit C: Fee Schedule (Provided by Consultant)

Exhibit D: Agreement for Professional Services

Exhibit E: U.S. Department of the Treasury Coronavirus Local Fiscal Recovery  
Fund Award Terms and Conditions



## **EXHIBIT A: SCOPE OF SERVICES**

**Deliverables.** Throughout the work, all deliverables are to be supplied in the following formats unless otherwise specified:

Drawings and Plans:     Electronic version in AutoCAD format (2018 or later preferred);  
                                     Paper copies  
Text documents:             Microsoft Word  
Spreadsheets, budgets or other financial data: Microsoft Excel

### **Task 1. Preliminary Design**

- a. Consultant will meet with City officials and discuss the project requirements and preliminary program.
- b. The Consultant shall make a comprehensive review of the site and provide basic concept of materials and methods of construction, along with a schematic budget.
- c. Consultant shall prepare a conceptual site plan, floor plan and elevation, based upon City requirements.
- d. Approval of conceptual plans by the City.

### **Task 2. Preparation of Design Development Drawings**

- a. Consultant shall prepare Design Development Drawings consisting of drawings and other documents to fix and describe the size and character of the project as to architectural, structural, mechanical, and electrical systems, materials and other elements as may be appropriate including utilities and site improvements. Drawings shall be on AutoCad 2018 or later version.
- b. Consultant shall prepare a preliminary specification including all plumbing, electrical, mechanical, fixture selections and all finish materials including recommendation interior and exterior colors.
- c. Consultant shall prepare a Preliminary Cost Estimate, including site, building, and equipment.
- d. Provide colored renderings, elevation, floor plan, and site plan of the revised plan for presentation to stakeholders, and for the purpose of community presentations. Drawings prepared for presentation should

include sections and perspectives as necessary to fully explain the work.

- e. Consultant shall participate in design review and public open house meetings.
- f. Approval of Design Development Drawings, Specifications, and a Cost Estimate by the City.

### **Task 3. Preparation of Construction Documents**

- a. Consultant shall prepare Final Contract Bid Documents to include; The Drawings, Specifications, and other documents needed to secure accurate bids, obtain all necessary permits, and provide the details required to construct and develop the site. Drawings shall be on AutoCad 2018 or later version.
- b. Consultant shall prepare a final Cost Estimate including all fees, permits, off-site work, impacts, utility connection fees and related costs.
- c. Consultant shall prepare necessary documents for the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the project.
- d. Consultant shall provide a digital copy (PDF) of the plans for the City's use. Specifications shall be in Microsoft Word format and the Cost Estimate shall be in Microsoft Excel format.

### **Task 4. Bid Process**

- a. Consultant shall provide bid documents, including standard bid materials used by the City. Specifications are to be in Microsoft Word format.
- b. Consultant shall participate in pre-bid meeting and walkthrough for bidders.
- c. The Consultant shall provide assistance to the City during the bidding process regarding specifics of the design or specifications and answering questions by prospective bidders.

- d. The Consultant will provide all necessary addendum, and addendum drawings required to supplement the contract drawings as needed for clarification of both the drawings and specifications.
- e. Consultant is to provide a bid analysis in Microsoft Excel format.

### **Task 5. Construction Phase**

The Consultant shall provide assistance to the City during the construction phase. This assistance will include the following:

- a. Attend the pre-construction meeting and periodic site meetings as needed during the construction phase.
- b. Review the contractor's submittals, requests for information, and supplementary instructions.
- c. Provide all necessary plans and specifications for contract change orders.
- d. Review contractor's substitution requests.
- e. Review contractor's payment requests.
- f. Provide periodic site visits as required for interpretation of drawings, specifications, and payment requests.
- g. Prepare Project close-out drawings including punch lists, walk-through items, and follow up and Final as-built drawings in electronic form shall be provided within thirty days of the consultant's receipt of the as-built drawings from the Contractor.

### **Task 6. Extra Services**

The Consultant should identify which other services or tests they will require to complete the project and identify the associated costs.

## **Exhibit B: Schedule**

February 19, 2023	Award of Design Contract
May 8, 2024	Recreation/Zoo Dept. Conceptual Plan Presentation/Review
June 19, 2024	Public Review Meeting
July 19, 2024	Completion of Design (Biddable Plan Set)
August 29, 2024	Bid Opening
September 17, 2024	Award of Construction Contract
August 29, 2025	Completion of Construction

## **Exhibit C: Fee Schedule**

## **Exhibit D: Agreement for Professional Services**

## 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 18<sup>th</sup> 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 Improve Applegate Park Zoo; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide Architectural/Engineering 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 Architectural/Engineering 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 City Engineer 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.

## 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 Consultant 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 Consultant 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 Consultant from the Department of Industrial Relations. These wage rate determinations are to be posted by the Consultant at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Consultant 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:  
D. SCOTT MCBRIDE, 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: \_\_\_\_\_



**Exhibit E: U.S. Department of the Treasury Coronavirus Local Fiscal  
Recovery Fund Award Terms and Conditions**

**U.S. DEPARTMENT OF THE TREASURY  
CORONAVIRUS STATE FISCAL RECOVERY FUND  
AWARD TERMS AND CONDITIONS**

**1. Use of Funds.**

- a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with sections 602(c) and 603(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
- b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

**2. Period of Performance.** The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024.

**3. Reporting.** Recipient agrees to comply with any reporting obligations established by Treasury, as it relates to this award.

**4. Maintenance of and Access to Records**

- a. Recipient shall maintain records and financial documents sufficient to evidence compliance with sections 602(c) and 603(c), Treasury's regulations implementing those sections, and guidance regarding the eligible uses of funds.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
- c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

**5. Pre-award Costs.** Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

**6. Administrative Costs.** Recipient may use funds provided under this award to cover both direct and indirect costs.

**7. Cost Sharing.** Cost sharing or matching funds are not required to be provided by Recipient.

**8. Conflicts of Interest.** Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

**9. Compliance with Applicable Law and Regulations.**

- a. Recipient agrees to comply with the requirements of sections 602 and 603 of the Act, regulations adopted by Treasury pursuant to sections 602(f) and 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
  - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
  - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

- v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award, include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

**10. Remedial Actions.** In the event of Recipient's noncompliance with sections 602 and 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of sections 602(c) or 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in sections 602(e) and 603(e) of the Act.

**11. Hatch Act.** Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

**12. False Statements.** Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

**13. Publications.** Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to City of Merced by the U.S. Department of the Treasury."

**14. Debts Owed the Federal Government.**

- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

#### 15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

#### 16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Treasury employee responsible for contract or grant oversight or management;
  - v. An authorized official of the Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

## ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

### ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the City of Merced (hereinafter referred to as "the Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits. This assurance applies to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of this assurance apply to all of the recipient's programs, services and activities, so long as any portion of the recipient's program(s) is federally assisted in the manner proscribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166; directives; circulars; policies; memoranda and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on LEP, please visit <http://www.lep.gov>.
4. Recipient acknowledges and agrees that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

*The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.*

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any

personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property;

7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. That is, the Recipient shall comply with information requests, on-site compliance reviews, and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI..
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.
10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that he/she has read and understood its obligations as herein described, that any information submitted in conjunction with this assurance document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

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Recipient

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Date

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Signature of Authorized Official:

#### PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.