



CITY OF MERCED

REQUEST FOR QUALIFICATIONS (RFQ)

Municipal Well Inspection, Recommendation, and Repair Services

The Water Division of the City of Merced Public Works Department is accepting proposals from qualified contractors to provide annual maintenance and repair services for the City of Merced Municipal Well Sites, on an on-call, as-needed basis for a period of three years with the option for one additional year extension. Statement of Qualification (SOQ) submittals for the general and highly specialized Municipal Well Services as generally described herein.

For all proposals over \$15,000, the proposer is required to abide by all applicable provisions of the Labor Code, including payment of the minimum prevailing wage rate as determined by the State Department of Industrial Relations (DIR). No contractor or subcontractor may be listed on a proposal or be awarded a contract for public work unless registered with the DIR pursuant to the Labor Code. This project is subject to compliance monitoring and enforcement by the DIR.

You are hereby invited to submit a proposal of your qualifications based upon the requirements and conditions set forth in this RFQ.

Proposal Submission:

Three (3) copies of the completed proposal and fee schedule must be submitted no later than 4:30 p.m. on Friday, April 19, 2024.

Mailing Instructions:

Johnnie Baptista
Public Works Manager - Water
City of Merced Public Works
1776 Grogan Avenue
Merced, CA 95341

Inquiries:

Questions pertaining to this RFQ should be directed in writing, no later than 72 hours prior to proposal submission to:

Johnnie Baptista, Public Works Manager – Water
Phone number: (209) 384-4180
Email: baptistaj@cityofmerced.org

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OBJECTIVE

The City of Merced Public Works Department (“City”) is seeking to create a list of properly licensed and highly qualified Well Service Contractors to provide planned and unplanned response to various Municipal Well related repair projects throughout the Merced City Water System. The contractors will be under contract to respond to well emergencies within 14 days and will be relied upon as the preferred contractor for general well services when it is in the City Water System’s best interest.

Term commencement is tentative on contract award; initial contract term shall be for three (3) years, with the option to renew for one (1) additional one (1) year period.

CITY OVERVIEW

The City of Merced (City) was incorporated in 1889 and operates under the Council-Manager form of government. The City is a dynamic community of approximately 93,058 people, with friendly small-town living in a mid-size city. The University of California Merced campus, opened in 2005, provides additional 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. 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. Annual events and festivals bring regional and even national recognition.

Merced’s Valley location southeast of San Francisco provides easy access to the central California coast, Sierra Nevada Mountains and national parks, and major cities. Merced has historically been considered to be the “Gateway to Yosemite”, and residents also enjoy short drives to skiing, beaches, fishing, and other outdoor attractions.

OVERVIEW/BACKGROUND

The City of Merced relies entirely upon groundwater and is extracted by traditional turbine-motor driven deep-well pumps that range from 100 to 300 HP. Fifteen (15) of the twenty-one (21) wells have PLC/VFD systems, while 6 wells still have pressure actuated soft-starts that will eventually be converted to PLC/VFD. All wells have a very robust SCADA monitoring system accessed through Ignition. There are several custom-built software programs in place used to standardize and facilitate error-free reporting. We have approximately 24,000 service connections and pump between 6 and 8 billion gallons annually to meet the demand. We have one GAC treated well. All wells are “water lube”. City Water has a Well Source Assurity Program that includes detailed well inspections and maintenance at each source.

SCOPE OF SERVICES

The Scope of Service is to be used as a general guide and is not intended to be a complete list of all services that may be requested. The City water utility includes twenty-one (21) wells which may occasionally require evaluation and/or repair. This contract is to provide planned and emergency maintenance and repair services for the City of Merced's wells, pumps, and electric motor assemblies, on an on-call, as-needed basis for a period of three years with the option to renew for one (1) additional one (1) year period. Typical services to be provided include:

- Respond to the City's Municipal Well needs in a timely manner. Contractor is expected on-site no later than 14 days after the City makes contact.
- The City's intent is to enter into an agreement with a single and/or multiple contractor(s) for the provision of these services on an as-needed basis. All performance pursuant to this agreement shall be on an "on-call" or "as-needed" basis. Any tasking shall be initiated solely by the City. Further, execution of an agreement by the City does not in any way guarantee that any tasking or request for on-call services will be issued to any party. Moreover, execution of an agreement by the City shall not entitle the other party to any form of payment or compensation from the City without first having issued tasking or request for services from the contractor.
- Some services may include, but are not limited to, repair, removal, installation, rehabilitation, replacement of pumps, motors, well columns, base plates, lube assembly, etc., and the furnishing of parts and labor in conjunction with such work. All work and general conditions shall be performed in accordance with the current Standard Specifications for Public Works Construction (the Green Book), the State Water Resource Control Board (SWRCB), the American Water Works Association (AWWA) Standards, and the National Electrical Manufacturers Association (NEMA) Standards.
- The proposer may utilize the services of specialty subcontractors on those parts of the work that, under normal contracting practices, are performed by specialty subcontractor for specialized services directly related to the well service being provided, such as cranes, air-lifting, casing cleaning, CCTV (videos), swags, roofing, or fencing contractors. It is understood that at least 50 percent of the work to be performed shall be performed by the successful contractor. Any subcontractor used must adhere to the same terms and conditions as the successful contractor. The proposer is representing to City that proposer and any subcontractor has all appropriate licenses, certifications, and registrations to perform the work hereunder.
- When requested, provide professional opinion and guidance with regards to response, scope, methodology, materials, equipment, and various other forms of input that are unique to a well service professional with regards to urgent repairs, long term planning.
- This agreement will not include the drilling of new wells.

METHOD OF COMPENSATION

Any necessary services outside the scope of the work must be identified and approved in advance by the City of Merced Public Works Director or his designee. In addition, no change orders or contract amendments will be considered without prior authorization from the City Public Works Director or his designee.

Payments, upon invoice, will be made monthly based on actual hours worked or otherwise agreed upon fee structure. Invoicing shall include a detail of costs for work performed during the payment period, a summary of current invoice amounts, previous payments, and total payments to date.

SPECIAL ISSUES AND REQUIREMENTS

Form and Execution of Contract. **Attachment A** is the form of the contract (***On-Call Municipal Well Services Contract***) the successful proposer will be expected to execute. Any exceptions to the form of the contract must be clearly stated in the proposal and may be grounds for being declared non-responsive.

Labor Code. The Contractor shall comply with Sections 3700 et seq. of Labor Code of the State of California, requiring every employer to be insured against liability for worker's compensation.

Civil Rights Laws. Contractor, its employees, and any subcontractors shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and all other applicable non-discrimination civil rights requirements.

Insurance. The Contractor shall also meet the insurance requirements in Section 9 of the contract, including liability insurance in the amount of \$1,000,000, naming the City of Merced as additional insured.

Conflict of Interest. The Contractor must be aware of and comply with conflict-of-interest rules included in the California Political Reform Act, and Section 1090 et. Seq. of the Government Code. The Political Reform Act requires City/Agency officers and committee members to file statements of interest and abide by a Conflict of Interest Code. Section 1090 limits or prohibits a public official from contracting with a body of which an official is a member. Section 1090 applies even where the officer only reviews the contract for the approving body.

City of Merced Business License. Contractor shall obtain and maintain a City of Merced Business license throughout the contracted period.

PROPOSAL CONTENT

The City requires the proposer to submit a concise proposal clearly addressing all of the requirements outlined in this RFQ; it must contain information covering the following topics:

- a. Cover Letter. The RFQ shall include a cover letter signed by the team representative authorized to sign contracts stating interest and ability to perform the work, and ability to perform to above schedule (three year contract period).
- b. Experience and Services. The RFQ shall list and describe previous experience and expertise with providing integrator services at a scale comparable to this RFQ.
- c. Project Understanding. The RFQ shall include a summary of the teams understanding of the services to be provided to the City of Merced as well as any recommendations regarding additional services.
- d. Special Requirements. The RFQ shall include a statement of understanding and compliance with the special requirements listed herein.
- e. References. The RFQ shall include information on three (3) references that may be contacted to discuss the reference's experience with the team; include telephone number and email address.
- f. Fee Estimates. Each Contractor selected shall provide a quote per each work scope called upon to perform and be issued an "*Authorization of Service Agreement*" prior to performing any work. Prevailing wages apply.
- g. Required Licenses. The successful Contractor and any subcontractor(s) must possess a current and valid California Contractor State Licensing Board (CSLB) license(s) in the classification(s) required by law to perform the work. As per CSLB, all water well construction must be performed by a licensed C-57 Water Well Contractor and must meet applicable local and state well standards. Installation, repair, or replacement of a well pump must be performed by a person who possesses a valid C-57, C-61 or Class A contractor's license. The successful Contractor(s) will be required to obtain a City of Merced Business License.

PLEASE NOTE: The City does not pay for services in advance. Therefore, do not propose contract terms that call for upfront payments or deposits.

PROPOSAL SELECTION

RFQ submittal will be reviewed for completeness and qualifications by City representatives.

This RFQ does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City reserves the right, without qualification, to:

- Select any proposal when such action is considered to be in the best interest of the City;
- Reject any and all proposals;
- Issue subsequent Requests for Qualifications;

- Postpone opening for its own convenience;
- Approve or disapprove the use of particular subcontractors;
- Accept other than the lowest offer;
- Exercise discretion and apply its judgment with respect to selection of any proposals submitted;
- Waive informalities and irregularities in the Proposals;
- Negotiate with any, all or none of the Proposers;
- Select proposals, based on initial proposals received, without discussion or after detailed discussions or contract negotiations;
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the Proposer.

PROTEST PROCESS

BID PROTEST AND APPEAL: Potential bidders, proposers, contractors, and sub-contractors wishing to protest or appeal a procurement or contracting decision made by the Purchasing Division must follow the procedures provided by this section. Protests or appeals which are not submitted in accordance with these procedures will not be reviewed.

PROTEST SUBMISSION

- (1) Any interested party (actual or prospective bidder or proposer) may file a written protest with the Purchasing Supervisor (PS) no later than five (5) working days after the date of mailing a Notice of Intent to Award (NIA).
- (2) The written protest may be delivered in person or via certified mail to the PS.
- (3) The protest must be physically received by the PS by 4:00 p.m. PST, by the fifth day during the protest period.
- (4) The protest filed with the PS shall meet the following prerequisites:
 - a. The name, address, and business telephone number of the protestor.
 - b. Identify the project under protest by name, RFP/quotation/bid number, and RFP/quotation/bid date.
 - c. Contain a concise statement of the grounds for protest; however, the RFP or bid procedures (including evaluation criteria) shall not constitute grounds for protest.

Concerns related to those issues must be raised and addressed prior to the bid or proposal opening date to allow adjustments before evaluation of bids or proposals.

- d. Include all supporting documentation, if any. Documentation submitted after filing the protest will not be considered during review of the protest or during an appeal.

PROTEST REVIEW AND APPEAL

- (1) Upon receipt of a protest, the PS shall review all the submitted materials and shall create and retain a written record of the review. The PS shall respond in writing at least generally to each material issue raised in the protest not later than ten (10) working days after receipt of the protest.
- (2) If the protested procurement involves federal funds, the PS shall give notice to the interested party that he or she has the right to appeal to the appropriate federal agency which shall be identified by name and address. An appeal hereunder shall be filed with the appropriate agency within five (5) working days of the dispatch of rejection notices to the interested parties.
- (3) The PS' decision may be appealed in writing to the City Manager (CM) or his or her designee(s), with a copy to the PS, not later than ten (10) working days after the date the PS' decision is mailed to the protesting party. A bid appeal review committee comprised of the CM or designee, and any other person(s) he or she selects shall review and decide the appeal based on the grounds and documentation set forth in the original protest to the PS. The appealing party may be represented by legal counsel, if desired. Each party shall bear its own costs and expenses involved in the protest and appeal process, including any subsequent litigation. The decision of the bid appeal review committee shall be final.
- (4) If the protested procurement involves federal funds, interested parties may have the right to appeal to the appropriate federal agency. When applicable, the PS shall give notice to the interested party that he or she has the right to such an appeal and shall identify the federal agency by name and address. When applicable, an appeal hereunder shall be filed with the appropriate agency within five (5) working days of the dispatch of rejection notices to the interested parties.

PUBLIC RECORD

Responses to this RFQ become the exclusive property of the City of Merced. At such time as the Public Works Department recommends a firm to the City Council, all proposals received in response to this RFQ becomes a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary". The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act. Any proposal which contains language

purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Merced may not accept or approve that the information that a Proposer submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City shall provide the Proposer who submitted the information with reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction.

WITHDRAWAL OF PROPOSALS

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFQ by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

All submittals shall be submitted in writing. Any exceptions to the requirements stated herein shall be clearly stated in the submittal and may be grounds for being declared non-responsive.

All correspondence or communications in reference to this RFQs shall be directed to:

Johnnie Baptista, Public Works Manager -Water
City of Merced
1776 Grogan Avenue
Merced, CA 95341
(209) 384-4180
baptistaj@cityofmerced.org

All cost for preparation of the submittals shall be borne by the applicant, and submittals received shall become the property of the City, whether accepted or rejected. Incomplete submittals may be rejected as non-responsive. The City reserves the right to reject any and all proposals submitted in response to the RFQ.

ATTACHMENT A

CITY OF MERCED ON-CALL MUNICIPAL WELL SERVICES CONTRACT

THIS CONTRACT is made at Merced, California, by and between the City of Merced (“City”), a California Charter Municipal Corporation, and _____, a _____, located at _____, (“Contractor”) for the purpose of providing Municipal Well Inspection, Recommendation, and Repair Services.

WHEREAS, City does not have sufficient personnel to perform Municipal Well Inspection, Recommendation, and Repair Services, and thereby necessitating this Contract.

NOW, THEREFORE, the Parties covenant and agree, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, as follows:

SECTION 1. CONTRACTOR SERVICES

- A. Subject to the terms and conditions set forth in this Contract, Contractor shall provide to City the services described in Exhibit “A,” attached and incorporated herein. City and Contractor shall enter into an “Authorization of Service Agreement,” substantially in the form of Exhibit “B” attached hereto and incorporated herein by this reference, for each project. City’s City Manager shall have the authority to execute on City’s behalf the Authorization of Service Agreement without additional approval by the City Council so long as the funding is available within the budget. In the event additional funding is required, such Authorization of Service Agreement will require prior City Council approval. In the event of a conflict between the term of this Contract and the terms of the Authorization of Service Agreement, the terms and conditions set forth herein shall prevail over those set forth in the Authorization of Service Agreement.
- B. Pursuant to Government Code § 7550, if the compensation set forth in Section 2 exceeds the sum of five thousand dollars (\$5,000), each document or report prepared by Contractor for City pursuant to this Contract shall, in a separate section of the document or report, contain the numbers and dollar amount of the Contract and all subcontracts

under the Contract relating to the preparation of the document or written report. If multiple documents or written reports are the subject of the Contract or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

- C. Contractor shall perform the Contractor's work as called for in the scope or work description in Exhibit B and in accordance with currently approved methods and standards of practice.
- D. Contractor will be responsible for the technical accuracy of its services and documents resulting therefrom, and City will not be responsible for discovering deficiencies therein. Contractor will correct any deficiencies in its work promptly upon discovery without any additional compensation.

SECTION 2. COMPENSATION AND REIMBURSEMENT OF COSTS

- A. City shall pay Contractor for services rendered pursuant to this Contract, at the times and in the manner set forth in each Authorization of Service Agreement. The payments specified in the Authorization of Service Agreement shall be the only payments to be made to Contractor for services rendered pursuant to this Contract.

SECTION 3. TERM AND TERMINATION

- A. The term of this Contract shall be for three (3) years commencing on the date of this Contract. The City shall have the option to extend this Contract for one (1) one-year term.
- B. If Contractor fails to perform its duties to the satisfaction of City, or if Contractor fails to fulfill in a timely and professional manner its obligations under this Contract, then City shall have the right to terminate this Contract effective immediately upon City giving written notice thereof to Contractor. Time is of the essence for the performance of this Contract.
- C. Either Party may terminate this Contract without cause on thirty (30) calendar days' written notice.

- D. City may terminate this Contract immediately upon written notice to Contractor if funding ceases or is materially decreased during the term of this Contract.
- E. In the event that City gives notice of termination, Contractor shall promptly provide to City any and all finished and unfinished reports, data, studies, photographs, charts, or other work product prepared by Contractor pursuant to this Contract. City shall have full ownership, including, but not limited to, intellectual property rights, and control of all such finished and unfinished reports, data, studies, photographs, charts, or other work product.
- F. In the event that City terminates the Contract, City shall pay Contractor the reasonable value of services rendered by Contractor pursuant to this Contract; provided, however, that City shall not in any manner be liable for lost profits which might have been made by Contractor had Contractor completed the services required by this Contract. Contractor shall, not later than ten (10) calendar days after termination of this Contract by City, furnish to City such financial information as in the judgment of the City's representative is necessary to determine the reasonable value of the services rendered by Contractor.
- G. In no event shall the termination of this Contract be construed as a waiver of any right to seek remedies in law, equity, or otherwise for a Party's failure to perform each obligation required by this Contract.

SECTION 4. MISCELLANEOUS TERMS AND CONDITIONS OF CONTRACT

- A. City shall make its facilities accessible to Contractor as required for Contractor's performance of its services under this Contract, and, upon request of Contractor at times convenient to City.
- B. Unless otherwise agreed to in the Authorization of Services Agreement, City shall obtain, arrange, and pay for all advertisements for bids, permits, and licenses required by local, state, or federal authorities.

- C. Pursuant to the City's business license ordinance, Contractor shall obtain a City business license prior to commencing work.
- D. Contractor represents and warrants to City that it has all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required for Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, and approvals that are legally required for Contractor to practice its profession.
- E. Contractor shall, during the entire term of this Contract, be construed to be an independent contractor and nothing in this Contract is intended, nor shall it be construed, to create an employer/employee relationship, association, joint venture relationship, trust, or partnership or to allow City to exercise discretion or control over the professional manner in which Contractor performs under this Contract; provided, however, that the services to be provided by Contractor shall be provided in a manner consistent with the professional standards applicable to such services. The sole interest of City is to insure that services are rendered and performed in a competent, efficient, and satisfactory manner. Contractor shall be fully responsible for payment of all taxes due to state and federal governments which would be withheld from compensation if Contractor were a City employee. City shall not be liable for deductions for any amount for any purpose relating to Contractor's compensation. Contractor shall not be eligible for coverage under City's workers' compensation insurance plan, benefits under the City's retirement plan, or be eligible for any other City benefit. No party shall be the agent of, or have a right or power to bind, the other Party without its express written consent.

In the event Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract 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, Contractor 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 Contractor 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.

- F. No provision of this Contract is intended to, or shall be for the benefit of, or construed to create rights in, or grant remedies to, any person or entity not a party hereto, including any third-party beneficiary.
- G. No portion of the work or services to be performed under this Contract shall be assigned, transferred, conveyed, or subcontracted without the prior written approval of City. Contractor may use the services of independent contractors and subcontractors to perform a portion of its obligations under this Contract with the prior written approval of City. Independent contractors and subcontractors shall be provided with a copy of this Contract and Contractor shall have an affirmative duty to assure that said independent contractors and subcontractors comply with the same and agree to be bound by its terms. Contractor shall be the responsible party with respect to all actions of its independent contractors and subcontractors, and shall obtain such insurance and indemnity provisions from its contractors and subcontractors as City's Risk Manager shall determine to be necessary in his/her sole discretion.
- H. Contractor, at such times and in such form as City may require, shall furnish City with such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs or obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
- I. Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by City to assure proper accounting for all project funds. These records shall be made available for audit purposes to state and federal authorities, or any authorized representative of City. Contractor shall retain such records for three (3) years after the expiration of this Contract, unless prior permission to destroy them is granted by City or unless a longer retention period is required by a funding source for this Contract.

- J. Contractor shall perform all services required pursuant to this Contract in the manner and according to the standards observed by a competent practitioner of Contractor's profession. All products of whatsoever nature, which Contractor delivers to City pursuant to this Contract, shall be prepared in a professional manner and conform to the standards of quality normally observed by a person practicing the profession of Contractor and its agents, employees, and subcontractors assigned to perform the services contemplated by this Contract.
- K. Unless Contractor is specifically advised in writing by City to verify data, Contractor shall be entitled to rely upon the accuracy and completeness of all data furnished by City to Contractor that is used by Contractor in providing its services under this Contract. Contractor may retain and use all data furnished to it, except such data which may be marked "confidential" and required to be returned, and may use all plans, designs, specifications, and other work product created by Contractor in providing services hereunder. Any use of such work product that includes proprietary information shall not identify City; nor shall the manner of such use have the effect of identifying City. In any reuse by Contractor for any non-City purpose of any data, drawings, plans, etc., prepared for City, Contractor shall fully release, protect, defend, indemnify, and hold harmless City, its officials, officers, employees, and agents from all claims, costs, expenses, damage, or liability arising out of or resulting from the reuse or modification of any reports, data, documents, drawings, specifications, or other work product prepared by Contractor for City for any entity or purpose other than for City's benefit.
- L. All completed reports and other data or documents, or computer media including diskettes, and other materials provided or prepared by Contractor in accordance with this Contract are the property of City, and may be used by City. City shall have all intellectual property rights including, but not limited to, copyright and patent rights, in said documents, computer media, and other materials provided by Contractor. City shall release, defend, indemnify, and hold harmless Contractor from all claims, costs, expenses, damage, or liability arising out of or resulting from the use or modification of any reports, data, documents, drawings, specifications, or other work product prepared by Contractor, except use by City on those portions of the project for which such items were prepared.

- M. Contractor, including its employees, agents, and subcontractors, shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Contract. Contractor shall comply with all requirements of the Political Reform Act (Government Code § 81000 *et seq.*), Government Code Section 1090 *et seq.*, and other laws relating to conflicts of interest, including the following: 1) Contractor shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Contractor's economic interest, and 2) if required by City Clerk, Contractor shall file financial disclosure forms with the City Clerk.
- N. This Contract does not grant to Contractor any exclusive privileges or rights to provide services to City. City may contract with other public entities, private companies or individuals for similar services.
- O. Contractor shall comply with the provisions of Government Code Section 8350 *et seq.*, otherwise known as the Drug-Free Workplace Act.
- P. Neither Contractor, nor City, shall be responsible for delays in delivery, acceptance of delivery, or failure to perform when such delay or failure is attributable to Acts of God, war, strikes, riots, lockouts, accidents, or other matters or conditions beyond the control of either Contractor or City.

SECTION 5. INSURANCE

- A. As a separate and independent covenant from any indemnity obligation hereunder, during the term of this Contract, Contractor shall maintain in full force and effect at its own cost and expense, the following insurance coverage:
 - 1. 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.

2. General Liability.

- (a) Contractor 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.
- (b) Contractor shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage.
- (c) The City, its officers, employees, 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 Contractor.
- (d) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor 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.
- (e) Contractor 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, and agents 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.

3. Automobile Insurance.

- (a) Contractor 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.

- (b) The City, its officers, employees, and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired, or borrowed by the Contractor.
 - (c) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor 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.
- B. 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:
 - 1. An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
 - 2. 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).
- C. Certificate of Insurance. Contractor shall complete and file with the City prior to engaging in any operation or activity set forth in this Contract, 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 Contract, 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 Contractor's insurance policies are not current.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS

- A. As a separate and independent covenant and irrespective of any insurance policy or policies or limitations thereof and to the fullest

extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Contractor shall indemnify, protect, defend, (with legal counsel selected by the City), save, and hold City, its officers and employees, harmless from any and all claims or causes of action for death or injury to persons, or damage to property, or expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation), that arise out of, pertain to, or relate to, the negligence, recklessness, willful misconduct of Contractor or its employees, subcontractors, or agents in the performance of this Contract. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. This indemnification and hold harmless clause shall survive the termination of this Contract 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 Contract, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

SECTION 7. CONTRACT INTERPRETATION, VENUE AND ATTORNEY FEES

- A. This Contract shall be deemed to have been entered into in Merced, California. All questions regarding the validity, interpretation, or performance of any of its terms or of any rights or obligations of the parties to this Contract shall be governed by California law, and any action brought by either party to enforce any of the terms of this Contract shall be filed in the Merced County Superior Court. If any claim, at law or otherwise, is made by either party to this Contract, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.
- B. This document, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding each may have had prior to the execution of this Contract. This Contract shall not be altered, amended, or modified except by a writing signed by City and Contractor. No verbal

agreement or conversation with any official, officer, agent, or employee of City, either before, during, or after the execution of this Contract, shall affect or modify any of the terms or conditions contained in this Contract, nor shall any such verbal agreement or conversation entitle Contractor to any additional payment whatsoever under the terms of this Contract.

- C. If any portion of this Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Contract shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- D. The headings in this Contract are inserted for convenience only and shall not constitute a part hereof. A waiver of any party of any provision or a breach of this Contract must be provided in writing, and shall not be construed as a waiver of any other provision or any succeeding breach of the same or any other provisions herein.
- E. Each Party hereto declares and represents that in entering into this Contract, it has relied and is relying solely upon its own judgment, belief, and knowledge of the nature, extent, effect, and consequence relating thereto. Each Party further declares and represents that this Contract is made without reliance upon any statement or representation not contained herein of any other Party or any representative, agent, or attorney of the other Party. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Contract and that the decision of whether or not to seek the advice of counsel with respect to this Contract is a decision which is the sole responsibility of each of the Parties. Accordingly, no party shall be deemed to have been the drafter hereof, and the principle of law set forth in Civil Code § 1654 that contracts are construed against the drafter shall not apply.
- F. In the event of a conflict between the term and conditions of the body of this Contract and those of any exhibit or attachment hereto, the terms and conditions set forth in the body of this Contract proper shall prevail. In the event of a conflict between the terms and conditions of any two or more exhibits or attachments hereto, those prepared by City shall prevail over those prepared by Contractor.

- G. This Contract and all exhibits or documents referenced in this Contract supersede all previous Agreements either oral or in writing and constitute the entire understanding of the parties hereto.

SECTION 8. SURVIVAL

The provisions set forth in Sections 5 and 6 of this Contract shall survive termination of the Contract.

SECTION 9. COMPLIANCE WITH LAWS - NONDISCRIMINATION

- A. Contractor shall comply with all applicable laws, ordinances, and codes of federal, state, and local governments.
- B. In the performance of this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, ancestry, national origin, religious creed, sex, sexual orientation, disability, age, marital status, political affiliation, or membership or nonmembership in any organization. Contractor shall take affirmative action to ensure applicants are employed and that employees are treated during their employment without regard to their race, color, ancestry, national origin, religious creed, sex, sexual orientation, disability, age, marital status, political affiliation, or membership or nonmembership in any organization. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff, or termination, rates of pay, or other forms of compensation and selection for training.

SECTION 10. PREVAILING WAGES – (Applies only if marked on the Authorization of Service Agreement Form)

- A. A determination of the general prevailing rates per diem wages and holiday and overtime work where the work is performed is available for review upon request at the City of Merced, located at 678 West 18th Street, Merced, California 95340. Contractor and subcontractors will not pay less than the prevailing rates of wages. Contractor will post one copy of the prevailing rates of wages at the job site.

- B. Contractor shall forfeit as penalty to City the sum of Fifty Dollars (\$50.00) for each calendar day or portion thereof, and for each worker paid less than the prevailing rates under the Agreement.

SECTION 11. REPRESENTATIVES

- A. City's representative for this Contract is _____, telephone number (209) 385-6800. All of Contractor's questions pertaining to this Contract shall be referred to the above-named person, or to the representative's designee.
- B. Contractor's representative for this Contract is _____, telephone number (____) _____ fax number (____) _____. All of City's questions pertaining to this Contract shall be referred to the above-named person.
- C. The representatives set forth herein shall have authority to give all notices required herein. City's City Manager is authorized to execute any amendment to this Contract, which does not increase the amount of compensation allowable to Contractor.

SECTION 12. NOTICES

- A. All notices, requests, demands, and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender (may be other than the representatives referred to in Section 11) and delivered by facsimile, with a hard copy mailed first class, postage prepaid; or when sent by a courier or an express service guaranteeing overnight delivery to the receiving party, addressed to the respective parties as follows:

To City: City of Merced

1776 Grogan Avenue
Merced, CA 95341

City Clerk City of Merced
678 West 18th Street
Merced, CA 95340

To Contractor:

- B. Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.
- C. Notice shall be deemed effective upon: 1) personal service; 2) two days after mailing or transmission by facsimile, whichever is earlier.

SECTION 13. AUTHORITY TO CONTRACT

Each of the undersigned signatories hereby represents and warrants that they are authorized to execute this Contract on behalf of the respective parties to this Contract; that they have full right, power, and lawful authority to undertake all obligations as provided in this Contract; and that the execution, performance, and delivery of this Contract by said signatories has been fully authorized by all requisite actions on the part of the respective parties to this Contract.

SECTION 14. CONFORMANCE TO APPLICABLE LAWS

Contractor 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 Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, 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, Contractor 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.

SECTION 15. WAIVER

In the event that either City or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, 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.

SECTION 16. AMENDMENT

This Contract shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto by the authorized representative thereof.

SECTION 17. COUNTERPARTS

This Contract 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.

SECTION 18. DATE OF CONTRACT

The date of this Contract shall be the date it is signed by City.

IN WITNESS WHEREOF, City and Contractor have executed this Contract on the days and year set forth below:

**CITY OF MERCED,
A California Charter-law
Municipal Corporation**

Dated: _____

**D. Scott McBride
City Manager**

**ATTEST:
D. SCOTT MCBRIDE, CITY CLERK**

By: Assistant/Deputy City Clerk

**APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY**

City Attorney **Date**

**ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER**

Verified by Finance Officer

{Signatures continued on next page}

CONTRACTOR

Dated: _____

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. _____

ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

Attachments:

Exhibit A (Scope of Work)

Exhibit B (Authorization for Service Agreement)

EXHIBIT “A” SCOPE OF SERVICES

The Scope of Service is to be used as a general guide and is not intended to be a complete list of all services that may be requested. The City water utility includes twenty-one (21) wells which may occasionally require evaluation and/or repair. This contract is to provide planned and emergency maintenance and repair services for the City of Merced’s wells, pumps, and electric motor assemblies, on an on-call, as-needed basis for a period of three years with the option to renew for one (1) additional one (1) year period. Typical services to be provided include:

- Respond to the City’s Municipal Well needs in a timely manner. Contractor is expected on-site no later than 14 days after the City makes contact.
- The City's intent is to enter into an agreement with a single and/or multiple contractor(s) for the provision of these services on an as-needed basis. All performance pursuant to this agreement shall be on an "on-call" or "as-needed" basis. Any tasking shall be initiated solely by the City. Further, execution of an agreement by the City does not in any way guarantee that any tasking or request for on-call services will be issued to any party. Moreover, execution of an agreement by the City shall not entitle the other party to any form of payment or compensation from the City without first having issued tasking or request for services from the contractor.
- Some services may include, but are not limited to, repair, removal, installation, rehabilitation, replacement of pumps, motors, well columns, base plates, lube assembly, etc., and the furnishing of parts and labor in conjunction with such work. All work and general conditions shall be performed in accordance with the current Standard Specifications for Public Works Construction (the Green Book), the State Water Resource Control Board (SWRCB), the American Water Works Association (AWWA) Standards, and the National Electrical Manufacturers Association (NEMA) Standards.
- The proposer may utilize the services of specialty subcontractors on those parts of the work that, under normal contracting practices, are performed by specialty subcontractor for specialized services directly related to the well service being provided, such as cranes, air-lifting, casing cleaning, CCTV (videos), swags, roofing, or fencing contractors. It is understood that at least 50 percent of the work to be performed shall be performed by the successful contractor. Any subcontractor used must adhere to the same terms and conditions as the successful contractor. The proposer is representing to City that proposer and any subcontractor has all appropriate licenses, certifications, and registrations to perform the work hereunder.
- When requested, provide professional opinion and guidance with regards to response, scope, methodology, materials, equipment, and various other forms of input that are unique to a well service professional with regards to urgent repairs, long term planning.
- This agreement will not include the drilling of new wells.

EXHIBIT "B" CITY OF MERCED AUTHORIZATION OF SERVICE AGREEMENT

Description of Services to be Provided:		<i>Official Use Only</i>
Check Box If Applicable To Project:		
Business License (2)*	Bonds (6)*	<input type="checkbox"/> Insurance (14)
Workers' Compensation (15)*	Prevailing Wages (16)*	License (1)
<i>* Numbers correspond to paragraph numbers on the Terms and Conditions attached hereto.</i>		
<input type="checkbox"/> Contractor:	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/> Scope of Services	<input type="checkbox"/>
1. _____ 2. _____ 3. _____		
Total Amount \$ _____		
<p>(a) By completing and executing this document, Contractor agrees to be bound to the Terms and Conditions in the On-Call Municipal Well Services Contract dated _____, to the Terms and Conditions attached hereto and incorporated by reference, and any other terms and conditions imposed by the City and attached hereto or in the Merced Municipal Code, and makes the City an offer for the above-mentioned services at the above-mentioned price. This agreement is not binding on the City until executed by the City Manager, or his/her designee, and a Purchase Order is issued to Contractor. Any terms and conditions proposed by Contractor shall not be binding upon the City unless expressly agreed to in writing by the designated representative of the City.</p>		
<p>The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.</p>		
Contractor		
_____ Print Name	_____ Name of Business Entity	
_____ Signature	_____ Date	
_____ Position/Title	Contractor's License No.: _____ (If Applicable)	
Accepted by City of Merced		<i>Official Use Only</i>
_____ City Manager or Designee		Date _____