



REQUEST FOR PROPOSALS

Park Master Plan & Playground Design-
General Vang Pao Park

City of Merced
Parks & Community Services
632 W 18th Street
Merced CA 95340



City of Merced

Site Plan for General Vang Pao Park and Aletha June Playground

Request for Proposal

I. Project Description and Objectives

The City of Merced is soliciting the design of the newest Community Park, General Vang Pao Park, located on the corner of Cardella Road and Freemark Avenue. The property is cornered by residential developments to the North and East and bound to the West by a protected waterway, Fahrens Creek. Cardella Road runs along the southern boundary and is planned to provide four lanes of traffic to run East to West across the City. The site consists of approximately 1.05 acres of dedicated playground space (Site A) and 7.86 acres of dedicated park space (Site B). The park space serves the neighborhood as an overflow flood basin (Site B). The City desires to retain a landscape architecture or multidisciplinary design firm with expertise in culturally themed community park master planning and all-inclusive playground design to complete a site master plan for General Vang Pao Park and construction-ready plans for an all-inclusive themed playground. The objective is to engage with a firm to develop the initial park master plan and phased site development that prioritizes the all-inclusive Aletha June Playground construction in the first phase (Site A) and the rest of the park development through no more than two additional phases. Site planning and playground design should allow the City to move directly from design development into phase one of construction.



Site A- Blue General Area

Site B- Orange General Area

Community Description

The City of Merced is home to just under 90,000 residents and is in the northern section of the San Joaquin Valley. The community has grown significantly to the north towards the growing University of California, Merced. The Great Recession considerably interrupted development in the northern area, leaving dedicated park lands vacated and underfunded. The area has since rebounded and is home to hundreds of single-family homes containing residents of all ages and abilities. Merced has a thriving Hmong community with significant ties to their culture's and Merced's success and growth. The City of Merced Recreation and Parks Commission named one of the vacated parks after a significant historical figure of the Hmong community. General Vang Pao supported thousands of Hmong refugees from Laos to find refuge in the United States after the Vietnam War, including the City of Merced. General Vang Pao is credited with breaking down barriers and paving the way for the Hmong people to find freedom, prosperity, and success worldwide. The park site will become a landmark for the Hmong community and should include a significant representation of the Hmong culture. The City of Merced was recently awarded a First 5 of Merced County grant for developing playgrounds that make play safer and more inclusive. General Vang Pao Park was established as the future home for Aletha June Playground, the City of Merced's first all-inclusive playground.



Initial Design Aspects

Based on the City's current understanding of Park needs, it is anticipated that the initial design should include the following elements:

- Cultural representation of the Hmong community including a monument dedicated to General Vang Pao (Site A & B)
- Use of water wise landscaping, materials, and design features (Site A & B)
- Incorporation of looping walking trail atop of basin with planned linkages to existing walking path to the south and north (Site A & B)
- Open space grass at bottom of basin for dynamic uses (Site B)
- All-Inclusive Themed Playground with play areas dedicated to 2–5-year-olds and 5–13-year-olds (Site A) including use of solid surfacing and nature themed playground equipment.
- Parking area off Freemark Avenue (Site A)
- Seating areas at various points of park (Site A & B)
- Visual barrier to Pump Station atop of basin (Site B)

II. Required Scope of Services

The City is embarking on a collaborative journey seeking intentional community input on park and playground design from four subgroups of the community; Merced Lao Family Community Inc., Challenged Family Resource Center, Bellevue Ranch neighbors as well as the Recreation and Parks Commission. Each of these subgroups will be invited to commit three representatives to the General Vang Pao Park Design Steering Committee. This committee will meet

regularly with City staff and the Design consultant to ensure community needs and interests are incorporated in the park and playground design.

The following is an outline of the scope of services to be carried out by the consultant:

Analysis and Program Design Phase

1. Project initiation- Conduct an organizational start-up meeting with a key city team from Parks & Community Services, Engineering, Planning, and Public Works Departments to review the required scope of the project and project schedule and collect other required & relevant information.
2. Compile and review base data- The consultant shall work with the city team to compile and review available baseline information to prepare the park site master plan. Consultant shall advise the City of additional data required before implementing planning efforts. At a minimum, it is expected that the consultant become familiar with the following:
 - a. Most recent Parks and Recreation Master Plan
 - b. Existing Site Survey- boundaries, topography, and existing features
 - c. Availability or proximity of utilities required for park and playground operation.
 - d. Information about the priorities of the subgroups identified- History of Hmong culture and the impact of General Vang Pao on the Merced community, adaptive playground surfacing and equipment trends in all-inclusive playgrounds, and the features of interest considering the development plan and current conditions of the Bellevue Ranch community.
 - e. Traffic and transportation plans that may affect the site.
 - f. Environmental documents
 - g. Code requirements
 - h. City standards for park and public works construction, including requirement for subcontractors.
3. Analysis of opportunities and constraints- Conduct a minimum of two site visits with the city team of Parks & Community Services, Engineering, Planning, and Public Works Department staff to review the opportunities and constraints of the site of the project area. The first visit will review existing site conditions, map opportunities and limitations and discuss how the proposed park site should relate to the rest of the neighborhood. The second visit is intended to provide the opportunity to review the consultant's observations with the city team. Consultants shall prepare analysis maps suitable for use in presentations to the General Vang Pao Park Design Steering Committee and public meetings.
4. Initial Programming Meetings- Conduct separate meetings with the following to review the overall project goals, opportunities, and constraints, and to establish a preliminary design for the project:
 - a. City Team- Parks & Community Services, Engineering, Planning & Public Works
 - b. General Vang Pao Park Design Steering Committee- Lao Family Resource Council, Challenged Family Resource Center, and Bellevue Ranch neighborhood group.
5. Schematic design alternatives- Develop up to three schematic design alternatives that illustrate how the preliminary design program can be developed on the site. These schematic design alternatives are intended to be basic bubble diagrams that illustrate how general area requirements for the major facilities, interrelationships between facilities, and primary pedestrian and vehicular circulation patterns would interact.
6. Review meetings & community workshops- Conduct a separate follow up meeting to review the schematic design alternatives and refine the design program.
 - a. City Team- Parks & Community Services, Engineering, Planning & Public Works

- b. General Vang Pao Park Design Steering Committee- Lao Family Resource Council, Challenged Family Resource Center, Bellevue Ranch neighborhood group.
- 7. Public input meeting- The Planning Commission and Recreation & Parks Commission will conduct a joint public meeting to present the site analysis, preliminary design program for the park site and playground, and schematic alternatives and to provide opportunities for input from the general public.
- 8. Refine design from public input- Based on input from the meetings with the General Vang Pao Steering Committee and the public through the planning and parks joint commission meeting, refine the design program and prepare a summary report for presentation and discussion with the city team and General Vang Pao Steering Committee. Prepare modifications to the schematic design alternatives to reflect input from both groups.

Master Plan Development Phase

- 1. Conceptual Design Alternatives of Park Site and Playground for Consideration- Develop conceptual design alternatives that reflect the direction of the city team and steering committee. In each alternative plan, delineate major facilities' size, orientation, and configuration.
- 2. Review Meeting for Park Design- Meet with the city team and General Vang Pao Steering Committee to review the conceptual alternatives. Work with the Steering Committee to finalize the Site Master Plan design, select a possible alternative, and identify development phasing priorities.
- 3. Review Meeting for Playground Design (construction ready plans)- Meet with the city team and General Vang Pao Steering Committee to review final orientation, fixtures, equipment, and amenities to be installed for Aletha June all-inclusive playground.
- 4. City Council Study Session- present proposed Park Site Master Plan and playground design to the city council for feedback and direction.
- 5. Public Review Session- Conduct public meeting to review and refined preferred alternative(s) and receive input.
- 6. Finalize the Master Plan and develop the Park Site Master Plan report- based on input from the Steering Committee, the city team, and the public; provide master plan design and prepare illustrative master plan graphics for the park and playground highlighting the final park illustration and the prioritized phased approach to construction.
- 7. Present the final General Vang Pao Park Master Plan, including construction-ready plans for Aletha June Playground, to the city council to obtain feedback and possible revisions.
- 8. Upon the city council's approval, publish three hard copies and electronic copies of the Master Plan for General Vang Pao Park and Aletha June all-inclusive playground.

III. Additional Desired Scope of Services (Optional)

Park Build Budget Analysis by Phase

- i. Preliminary Opinion of Probable Cost for Construction- develop a master plan-level opinion of probable costs to establish a suggested budget allocation annually to complete the construction of General Vang Pao Park.
- ii. Funding Option and Strategies for General Vang Pao Park- identify and summarize funding options for design development and operation of the remainder of General Vang Pao Park and assist the City in developing strategies to pursue funding options.

IV. Response Requirements

1. Form and Execution of Contract. Attachment A is the form of the contract (Agreement for Professional Services) 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.
2. Labor Code. The consultant shall comply with Sections 3700 et seq. of the Labor Code of the State of California, requiring every employer to be insured against liability for worker's compensation.
3. Civil Rights Laws. Consultant, 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.
4. Insurance. The Consultant shall also meet the insurance requirements in Section 10 of the contract, including liability insurance for \$1,000,000, naming the Agency as additional insured.
5. Conflict of Interest. The Consultant must be aware of and comply with conflict-of-interest rules 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.
6. The proposer must 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 bid 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.
7. City of Merced Business License. Consultant shall obtain and maintain a City of Merced Business license throughout the contracted period.

V. Proposal Contents

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

1. Cover Letter. The RFP 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 (through June 30, 2025).
2. Experience and Services. The RFP shall list and describe previous experience and expertise in providing Landscape Architecture or Multifaceted Park Design services at a scale comparable to this RFP.
3. Project Understanding. The RFP shall include a summary of the team's understanding of the services to be provided to the City of Merced and any recommendations regarding additional services.
4. Special Requirements. The RFP shall include a statement of understanding and compliance with the special requirements.
5. References. The RFP shall include information on three (3) references that may be contacted to discuss the reference's experience. Telephone and email information should be included.
6. Fee Estimates. Each proposal shall include a fee estimate for providing services and must be contained in a sealed envelope separate from the proposal. Specify hours by billing grades, hourly rates, costs by task, details of any other charges, a not-to-exceed for each task, and the total.
7. PLEASE NOTE: The City does not pay for services in advance. Therefore, do not propose contract terms for upfront payments or deposits.

VI. Project Schedule

1. May 30, 2024: Issue Request For Proposals
2. June 7, 2024: Pre-response meeting (online)- email JensenC@cityofmerced.org for details
3. July 10, 2024: Request for Proposal due to City of Merced
4. August 12, 2024: Interviews with top respondents
5. August 26, 2024: Select consultant

VII. Protest Process

BID PROTEST AND APPEAL: Potential bidders, proposers, contractors, and subcontractors wishing to protest or appeal a procurement or contracting decision made by the purchasing division must follow the procedures provided in this section. Protests or appeals 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 to the PS in person or via certified mail.
- (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 before the bid or proposal opening date to allow adjustments before evaluating bids or proposals.
 - d. Include all supporting documentation, if any. Documentation submitted after filing the protest will not be considered during the review of the protest or an appeal.

PROTEST REVIEW AND APPEAL

- (1) Upon receipt of a protest, the PS shall review all the submitted materials and 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 notify the interested party that they have 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 their 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 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 notify 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 RFP become the exclusive property of the City of Merced. When the Engineering Department recommends a firm to the city council, all proposals received in response to this RFP becomes a matter of public record and shall be regarded as public records, except those elements in each proposal that the Proposer defines as business or trade secrets and 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 that 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 RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

VIII. Submissions

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 RFPs shall be directed to:

Christopher Jensen
Director, Parks & Community Services
City of Merced
632 W 18th Street
Merced, CA 95340
(209) 385- 6855
JensenC@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 all proposals submitted in response to the RFP.

SAMPLE AGREEMENT (DO NOT FILL OUT)

AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHOOSE WHICH INDEMNITY PROVISION APPLIES –

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

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

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

9. INDEMNITY.

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

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

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

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

b. General Liability.

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

c. Automobile Insurance.

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

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

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

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

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

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

11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public works" the 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:
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: _____