



PARKS, RECREATION, & OPEN SPACE MASTER PLAN

Request For Proposals



Issue Date: June 7th, 2024

Deadline: July 17th, 2024

INTRODUCTION, BACKGROUND & PURPOSE

Introduction

The City of Merced invites qualified landscape architecture or park & recreation planning consultants to submit a response (the "Proposal") to the Request for Proposals ("RFP") for managing, facilitating, and preparing the City of Merced's Parks, Recreation, and Open Space Master Plan ("the Plan" or "the PROS Plan"). This Plan will provide an update to the City's 2004 Parks and Open Space Master Plan as well as the City's most recent General Plan and current growth patterns. The Plan will set the framework for decision-makers in the planning for maintenance, development, and/or rehabilitation of Merced's parks, open space and recreation facilities and programs over a 10-year horizon. Importantly, the Plan will provide a system-wide approach for sustainable development, maintenance and operation of parks and recreation for both current and future development in order to meet community needs and interests.

Proposals that provide the scope of work in the most cost-effective manner will be viewed more favorably but may not ultimately be selected for award. All proposals received will be reviewed to ensure that all tasks within the scope requirements of the RFP have been met, in addition to evaluating the ability of the proposer to provide the required services. Failure to meet the requirements may be cause for rejection (evaluation of proposals shall be at the discretion of the City of Merced).

All proposals that meet the requirements will be submitted to the Evaluation Committee for further evaluation. The Evaluation Committee will review qualified proposals and determine a ranking based on the proposals submitted. The Evaluation Committee may at its discretion, and during its evaluation, arrange a site visit and/or interview/presentation with a short list of selected Consultants who were deemed to provide the best proposals.



Background

The City of Merced, known as the "Gateway to Yosemite", is less than two hours by automobile from Yosemite National Park to the east and Monterey Bay to the west. It sits in the northern section of the San Joaquin Valley and has a strong history of agriculture, small town charm, and a strong urban forest canopy with over 45,000 trees of various species and ages growing within the City. The City has seen slow but steady growth with a comparably lower cost of living than many neighboring City's in the area. Merced's population is growing at a moderately faster rate among college aged youth due to the growth and popularity of University of California Merced. The median household income in Merced is relatively low for California making parks, open space, and easily accessible recreation programs an important factor in the health and wellbeing of its residents.

The Merced Parks system consists of both active and passive recreational areas, including a variety of park types and an extensive bicycle path system. The City of Merced has approximately 187 acres of active parkland, more than 120 acres of linear corridors for alternative active transport or recreation, and more than 30 acres of undeveloped parkland.

Recreation facilities consist of several small, neighborhood centric community centers, a medium sized senior community center, a medium sized youth/recreation center, and a soccer, baseball and softball facility that are each used year-round. The City also owns two public swimming pools. The newest recreational amenity is a turf soccer field that was built in 2010. The aging infrastructure and equipment are under ongoing types of repair which limits these assets' true utility to the community.

Parks, recreation, and open space are developed, operated, and maintained by two separate departments within the City of Merced; Parks & Community Services administers field, facility, and recreation program operations while Public Works oversees field, facility, and open space maintenance.

Both entities are funded in part by the City's general fund with supplemental contributions from retail cannabis tax as well as grants when available. Funding from these sources alone is rarely sufficient for the work required to keep facilities open, staffed and in good working order. Neither Department is supported on a regular basis by sufficient general fund contributions, grants, or philanthropic support. Much of the aging park and recreation infrastructure requires extensive repairs or modifications.

Major considerations to be taken in the development of the Parks, Recreation, and Open Space master plan include the planned residential & mixed use development north towards UC Merced, the influence of statewide infrastructure through the development of High Speed Rail and the Merced Station, and the potential annexation of land south of Highway 99 and East of Highway 59, adjacent to Community Park 42; Merced's developing regional sports complex. Lastly, an assessment of the management, use, and maintenance of Bear Creek is of particular interest to explore the potential use for recreational purposes.



Purpose

Merced's existing park infrastructure and recreational facilities are no longer sufficiently meeting the needs of the growing community and will require rehabilitation, relocation and or redesign to meet current and future recreational needs and align with community development priorities. There are a few opportunities for new park development as well. The PROS Plan is intended as a tool to be used in guiding City decision-making related to parks and recreation planning, programming, and funding on a long-term basis. When complete, the Plan will support planning and programming by achieving the following results (more detail is provided in the Description section):

- Establish Plan's Vision, Goals & Objectives to create a PROS Master Plan that is viable for at least 10 years
- Evaluate existing conditions of parks and open space, incorporating related City planning documents
- Outreach to community and stakeholders through various formats and with specific stakeholders based on geographical location, feasibility, or cultural groups
- Complete a needs assessment including a gap analysis
- Develop recommendations through documentation of the priorities and interests of community and staff
- Implementation: Development and prioritization of an implementation plan that outlines capital improvement projects, anticipated costs, potential funding sources, and operation and maintenance implications.
- Development of suggested steps to financial suitability of programming, maintenance and improvements required.

In addition to Department staff involvement, a PROS Plan Executive Team (PPET) will be established to help oversee the development and progress of the master plan. The City has established a tentative total project budget of \$150,000.

DESCRIPTION OF REQUESTED SERVICES

The following general description of the scope of services is not definitive and is intended as a guide to illustrate minimum project requirements. Consultants are encouraged to present their own path to producing a comprehensive PROS Plan.

Tasks

A. Establish Plan Vision, Goals & Objectives

- Incorporate themes of sustainability, inclusion, environmental stewardship, park and facility maintenance versus operation, preservation, and historical and cultural character.
- Consider future trends and planning best practices for use of public space for recreation, active transportation, open space and community building



B. Evaluate Existing Conditions

- Review City's existing plans and policies which are relevant to the Parks & Open Space System and recreational offerings. This includes the City's General Plan, Climate Action Plan, Parks and Open Space Master Plan, Bellevue Ranch Development, Community Park 42 site plan, Virginia Smith Trust General Plan, Applegate Zoo Master Plan, McCombs Youth Center & Merced Senior Community Center plans, Public Works Park, Path and Tree Maintenance Plans, Community Facility Districts and areas without such districts. Specifically related to the City's General Plan; text and policies of Chapter 7, Parks, Open Space, and Conservation, of the Merced Vision 2030 General Plan should be reviewed. The new PROS plan will be used to inform the City's new General Plan to be updated within the next several years.
- Compile an inventory and assessment of the existing parks, trails, water ways, open space, athletic fields and facilities and community centers, including fields and facilities shared with the Merced City School and Merced Union High School Districts. The analysis should consider the capacity of each amenity (playgrounds, ball fields, sports courts, trails, natural areas, amenities, etc.) as well as their functionality, accessibility, condition, comfort, and convenience.
- Evaluate opportunities in currently undeveloped or proposed park and open space areas. Evaluate opportunities to leverage or connect with adjacent parks and open spaces.

C. Outreach

- Administer a community-wide survey through multiple outreach channels (e.g., online survey, stakeholder focus groups, community events, pop up sites, neighborhood meetings) to assess community priorities and degree of satisfaction with current amenities and offerings. Survey results will be analyzed by neighborhood and citywide.
- Analyze correlations between various groups and park amenity use.
- Prepare handouts and other media for posting on the City's website and at community meetings.
- Facilitate one parks & fields and one open space public workshop.
- Administer an online engagement tool to share ideas with community members and keep them apprised of updates.
- Meet with Parks and Recreation Department and other key staff members to assess park conditions, understand community issues, and vet recommendations.

D. Conduct and Publish Needs Assessment

- Perform a comparative analysis of the parks system with communities of a similar size and density.
- Analyze the park system usage, needs, desires, and interests of the community today and projecting for 10 years from today based on anticipated demographic, economic, and sociologic changes. General Plan growth projections and level of service standards will provide some of the framework for this analysis. Review recent planning permit project status lists to identify areas with current development. Use City's registration data for recreational programming statistics.
- Conduct park usage study to highlight with type of park and which parks specifically get more use by residents in Merced
- Identify emerging trends and needs from national and regional studies, regional collaborations, and stakeholder input.
- Seek opportunities for incorporation of technology and art in non-traditional ways to enhance existing and new amenities.
- Seek opportunities to enhance inclusion at existing and new amenities.
- Consolidate findings into a gap analysis report.



E. Analyze Needs Assessment and Create Recommendations

- Document goals and criteria for evaluating and prioritizing recommended projects to achieve stated goals.
- Identify and prioritize modifications to existing parks, fields, and open space system, incorporating the existing conditions and costs of all recommended modifications.
- Identify and prioritize opportunities for acquisition and/ or development of new Park & recreation spaces.

- Identify and prioritize implementation of new programs and/or projects in existing or new parks and facilities.
- Identify new or modified citywide and specific park, field, and open space policies.
- Recommended funding and support mechanisms to reduce the variability in programming, operations, and maintenance of parks, recreation and open spaces

F. Finalize Implementation Plan

- Establish a detailed, prioritized implementation program for achieving the plan's vision.
- Provide estimates of annual costs (capital, operating, maintenance, and replacement) and funding sources.

Deliverables

The anticipated work products include, at minimum, the following:

- A timeline with milestones for the completion of the plan
- Periodic status reports to the City PROS Executive Team
- A public input questionnaire – administered online and through outreach
- Project website which includes periodic updates.
- Public workshop and meeting materials
- Technical memorandums which summarize existing conditions and needs assessments
- One (1) Adobe Portable Document Format (PDF) copy of the Administrative Draft
- One (1) Adobe Portable Document Format (PDF) of the Final Draft, incorporating revisions
- Ten (10) bound copies, one (1) electronic copy in Adobe Portable Document Format (PDF) of the Final Plan



Meetings & Presentations

The project will require, at minimum, a variety of meetings, such as the following:

- A. One (1) kick-off meeting with staff
- B. Eight (8) project management meetings
- C. Four (4) PROS Plan Advisory Committee meetings
- D. Ten (10) stakeholder focus group discussions
- E. Two (2) public workshops
- F. Three (3) outreach/ pop up events
- G. Four (4) Recreation and Parks Commission meetings
- H. Two (2) Planning Commission meeting
- I. Three (3) City Council meetings

The City of Merced will provide the following:

- A. City Project Manager
- B. PROS Plan Advisory Committee including representation from stakeholder groups, City decision makers and City Staff.
- C. Access to all available plans, data, maps, forecasts, etc.
- D. Assistance with logistics and execution of all community meetings.



Submittal Requirements

The content of your submittal should include six (6) sets of the following in summary form: Proposals shall have a 30-page limit (not including front and back cover, table of contents or sealed fee proposal). Double sided is encouraged. Each consultant should adhere to the following order and content for proposal sections. Each section should be labeled for ease of reference:

A. Cover Sheet with Contact Information

The cover sheet should have the primary contact information including name, organization, phone number, email, and address.

B. Transmittal Letter

The transmittal letter should state the team's interest in the project and summarize the unique qualities and approach to the master plan, anticipated interaction and involvement with City staff, approach to community outreach, and a clear mission statement of how a master plan should be developed.

C. Qualifications

This section will discuss in detail the proposing team's qualifications, experience, and ability in managing municipal master planning projects. Include:

- Lead firm description.
- Sub-consultant(s) description(s).
- Team member resumes. Clearly identify the lead firm's project manager and include up to three (3) resumes of lead firm staff and one (1) resume for each sub consultant.
- Organizational chart illustrating the management structure of the entire project team.
- Similar projects. Include the name, location, completion date, and project description of a minimum of three (3) similar master plan projects completed in the last 10 years. In each example, provide the name(s) of team members involved who will be assigned to this project and client contact references (including name, title, phone number, and email address). The City of Merced reserves the right to contact any of the organizations or individuals listed.

D. Approach and Methodology

Describe your firm's approach to master planning projects, the form or character of the final product, and suggested methodologies for issues anticipated and tasks to be completed. The City is open to any creative suggestions to the Scope of Work outlined in the RFP that will improve the project.

E. Detailed Scope of Services

Using the general scope provided in this RFP as a guide, describe the sequential work tasks planned to carry out in accomplishing each of the components including a detailed, itemized description of each task and service to be completed, meetings with

staff and the community as well as associated deliverables.

F. Project Schedule

Provide a project schedule indicating anticipated milestones and meetings, with the estimated length of time for completion of the Master Plan process. Time estimates should be expressed in number of days/weeks without reference to a specific starting date. The schedule should identify when draft and final work products will be submitted to City staff.

G. Contract Exceptions

Indicate any concerns with the terms of the City's "Agreement for Professional Services" attached as "Attachment A". Please make comments as specific as possible.

H. Conflict of Interest Statement

Include a statement disclosing any involvement with plan/development projects in the City of Merced by the consultant (and sub-consultants) within the last two years. The City of Merced reserves the right to reject any proposals having the potential for conflict of interest.

I. Hourly Rates

Include an hourly rate schedule for all personnel who may participate in current or future projects.

J. Fee Proposal

Submit with the proposal, under separate sealed envelope, one (1) hard copy of your compensation summary in a spreadsheet format to include breakdowns of the phases and the costs for each. The consultant is free to format tasks/milestones under each phase as deemed appropriate based on experience and understanding of the project. Also include the hourly rates (for the lead firm and all sub-consultants), and any other applicable fees or expenses. The City may elect to contract for all or only some of the phases of work.

K. Other Information

Include any other information you consider to be relevant to the proposal.



SELECTION PROCESS

Proposals may be evaluated using the following criteria and ranked accordingly:

- Demonstrated ability to perform the services described.
- Experience, qualifications, and expertise of the individuals assigned to the project.
- Experience in leading and delivering master planning services for Parks and Recreation Departments.
- Quality of work as verified by references.
- Ability to complete the project on schedule.
- An understanding of the City of Merced and its needs in a consultant.
- Willingness to accept the City's contract terms.
- Cost effectiveness.
- Any other factors the selection committee deems applicable.

The City of Merced reserves the right to reject any late or incomplete submission, and all proposals for whatever reason.

The selected consultant will be asked to enter into a Professional Services Agreement with the City of Merced and comply with the insurance requirements set forth therein. Merced Parks and Community Services Department staff will supervise the project and coordinate the work. Proposals will be evaluated for qualifications, references, project approach, project cost and schedule. California law requires selection of Architectural and Engineering (A&E) contract services based on demonstrated competence and professional qualifications. Negotiations shall begin with the most qualified consultant. Should negotiations not result in a price the City considers to be fair and reasonable, negotiations shall be formally terminated, and the City shall then undertake negotiations with the second most qualified consultant. If the negotiation with the second most qualified firm is not successful, negotiations shall be formally terminated, and the City shall then undertake negotiations with the third most qualified consultant, etc. until the price is determined to be fair and reasonable by the City. (California Government Code, Chapter 10, Sections 4525 through 4529.5).

Date/Time	Item
June 30, 2024, 5 pm	Deadline for Consultant questions
July 8, 2024, 5 pm	Response to Submitted questions
July 17, 2024, 4 pm	Deadline for Proposals
July 23, 2024	Selection of up to 4 consultants for additional information
Week of July 27, 2024	In person interviews with up to 3 consultants
July 31, 2024	Selection of most qualified consultant and begin negotiation of Agreement
TBD	Finalize Agreement Negotiation, Scope of Work, and Cost
TBD	Merced City Council authorization to execute agreement

SCHEDULE

As part of a Professional Services Agreement, city staff and the selected consultant will discuss and agree to a schedule for each of the deliverables outlined in the scope of work. The consultant is encouraged to submit a tentative schedule of their services to be included in the RFP submittal.

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 RFP become the exclusive property of the City of Merced. When the Parks & Community Services Department recommends a firm to City Council, all proposals received in response to this RFP 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 RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

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.

FEES

Consultant fees shall be negotiated and established on time and materials basis with a not to exceed amount, supported by an agreed schedule of rates and mark-ups. Consultant must provide the city with the firm's current fee schedule including fees for associates and subconsultants. Progress invoices will be paid monthly related to the progress of the work. City reserves the right to change the funding of the project.

Please deliver six (6) copies of your proposal no later than 4:00pm on July 17th, 2024 to:

**Attn: Christopher Jensen, Director
Parks & Community Services
632 W 18th Street
Merced, CA 95340**

Questions about the requirements of this RFP or the submissions to be included will be taken until June 30th and should be directed to:

**Christopher Jensen, Director
City of Merced Parks & Community Services
JensenC@cityofmerced.org
(209) 385-6855**

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: _____