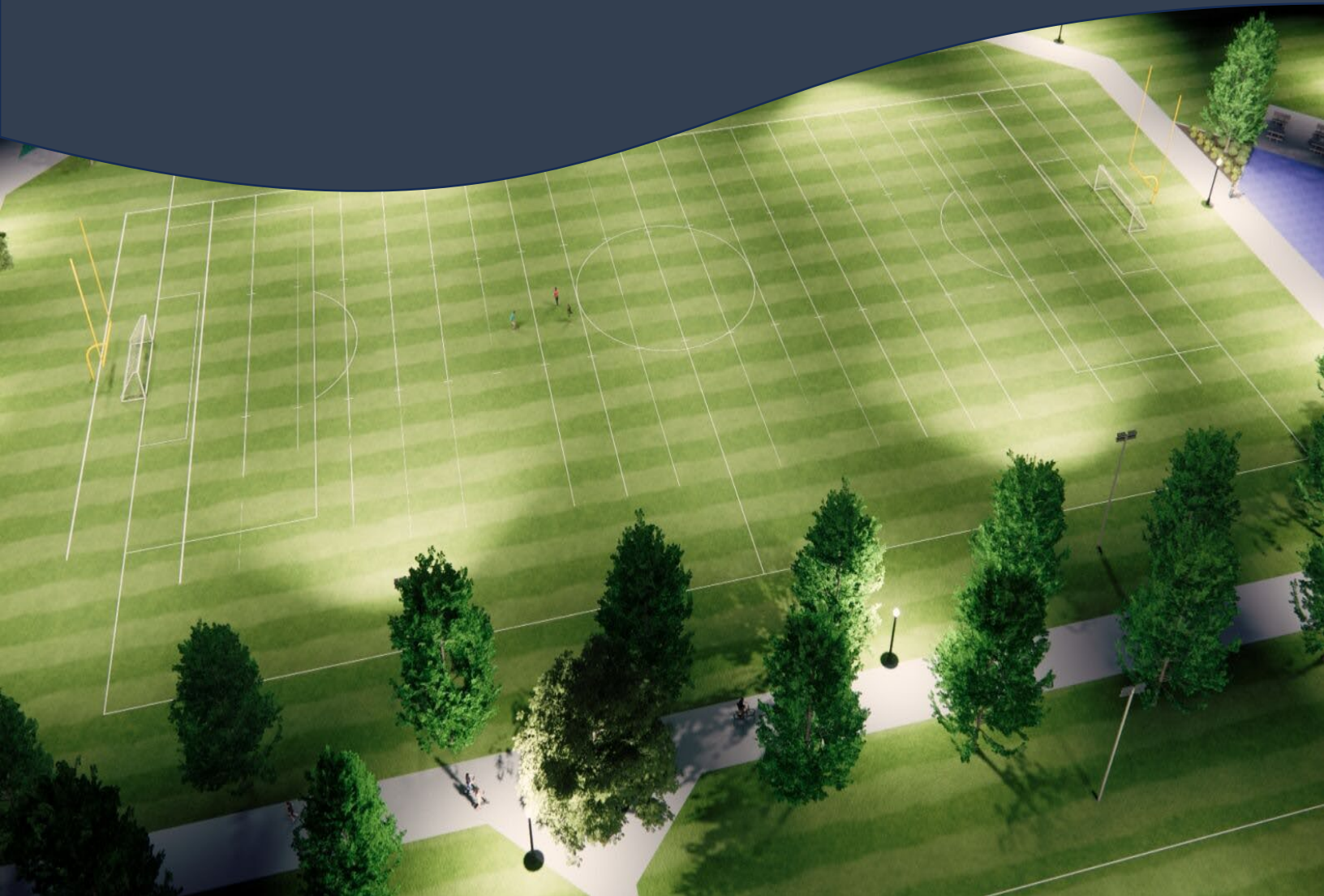


City of Merced- Request for Proposals

Optimization Study, Site Analysis & Conceptual Site Master Plan Community Park 42 North

Due October 11th, 2024



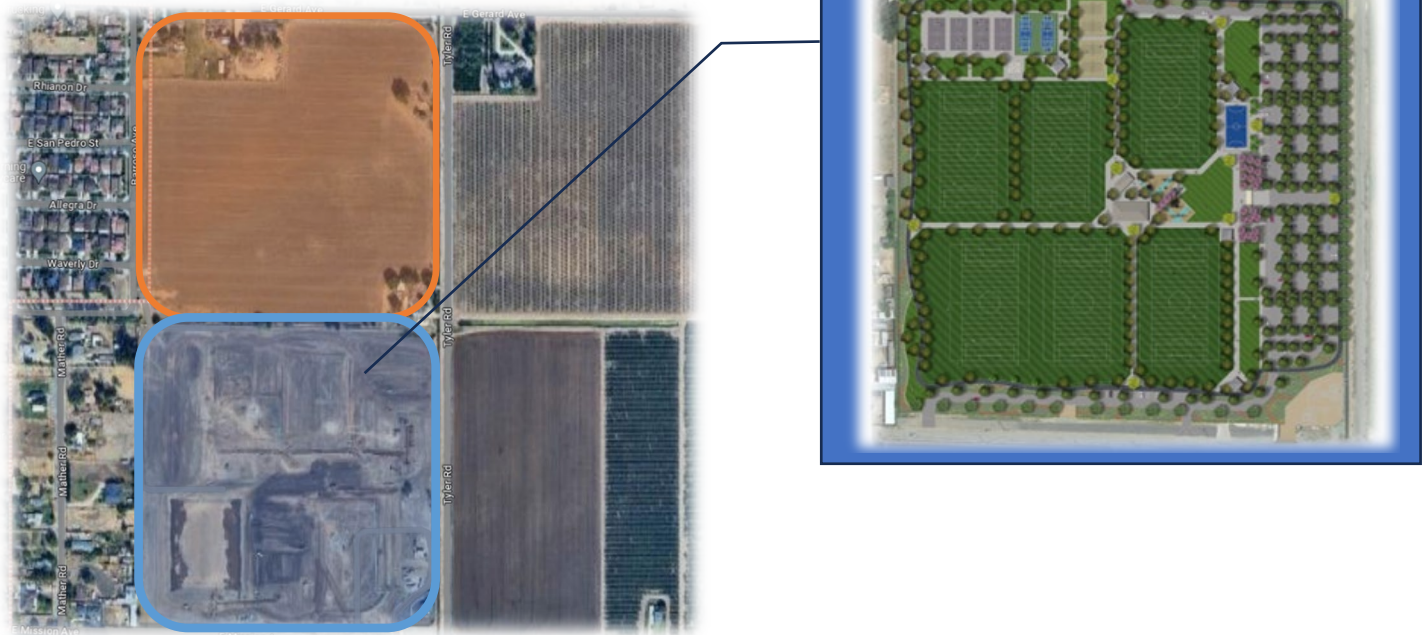
Optimization Study, Site Analysis & Conceptual Site Master Plan for Community Park 42 North

I. Project Description and Objectives

The City of Merced is soliciting an optimization study, site analysis & conceptual design of Community Park 42 (CP-42), a regional sports complex, located on the corner of Gerard Avenue and Tyler Road in the City of Merced. The property is situated on the Southeastern most corner of the City, between residential and agricultural properties, and sits along the Atwater Merced Business loop, surrounded by three highways, UC Merced, and a new commercial shopping plaza including a new convention center. The first phase of the park's development is currently underway and is referenced as CP-42 South (phase 1). The second phase of the park's development has been initiated by contributions from local school districts who dedicated land to the use of the park as a regional sports complex. This parcel is referred to as CP-42 North and will serve as the overall parks second phase of development.

CP 42 South- In development

CP 42 North- Call for Design



PROJECT SUMMARY

The City of Merced is soliciting proposals for a feasibility, optimization, and recreation master plan of Community Park 42-North (located at the southwest corner of Gerard Avenue and Tyler Road, APN 259-130-010). Community Park-42 North is approximately 40 acres and has been dedicated to support baseball, softball, soccer, or other outdoor activities until funding can be acquired for an indoor and/or aquatics facility. To allocate use of the space in a cost-effective manner, the City of Merced is seeking proposals from firms, landscape architects, or facility planners that include a feasibility, optimization, and subsequent recreation site master plan of CP-42 North. The City is soliciting firms with experience and capacity to develop research models reflective of quantitative and qualitative data, economic analysis, statistics, community engagement, stakeholder analysis, and facility master planning in the sports and recreation industry.

II. Required Scope of Services

The City seeks to retain the most qualified and experienced firm to provide consulting services, and assist in developing an optimization study and site master plan based on sports facility trends and community interest. The project aims to, but is not necessarily limited to the following:

- Conduct site optimization study in consideration of suggested use of CP-42 North, in consideration of planned use of CP-42 South;
- Prepare preliminary mixed use site concept, including cost estimates for either baseball and softball fields, indoor gymnasium to support mixed use of basketball and volleyball and/or future aquatic facilities;
- Study market potentials and identify deficiencies of proposed site use;
- Prepare Pro forma to ensure financial sustainability;
- Provide final site master plan, including architectural renderings and cost projections.

Additionally, the scope includes consideration of Maintenance facilities and security measures to ensure the proper upkeep and security of the site.

PROJECT TIMELINE

This project is funded through American Rescue Plan Act and must be in contract with the City of Merced by November 31st 2024, with all work completed no later than June 2026.

PROPOSAL CONTENT

Each proposal should include a schedule outlining the completion of each aspect of the project.

Site Analysis and Optimization Study

1. Project Initiation - Conduct an organizational start-up meeting with a key team from City of Merced, Merced County, Merced Union High School District, and Merced County Office and Education to review the required scope of the project, project schedule, and collect other required & relevant information.
2. Compile and Review Base Data - The consultant shall work with the City to compile and review available baseline information to prepare the site optimization study in consideration of suggested use of CP-42 North. 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 plans for CP-42 South;
 - b. Availability or proximity of utilities required for CP-42 North site;
 - c. Traffic and transportation plans that may affect the site;
 - d. Environmental documents;
 - e. Code requirements;
 - f. City standards and zoning restrictions 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 complex. 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 Merced County Office of Education, the Merced Union High School Board, City Council, and Board of Supervisors.

4. Prepare preliminary mixed use site concept, including cost estimates for either baseball and softball fields, an indoor gymnasium to support mixed use of basketball and volleyball, and/or future aquatic facilities.
5. Study market potentials and identify deficiencies of proposed site use based on items 1-4.
6. Prepare Pro forma– in partnership with City, School, and County partners, prepare a Pro forma and potential operations plan that identifies strategies for financial suitability at the site.

Master Plan Development Phase

1. Conceptual Design Alternatives of Site - Develop conceptual design alternatives that reflect the direction of the analysis carried out in Site Analysis phase. In each alternative plan, delineate major facilities' size, orientation, and configuration.
2. Review Meeting for Park Design - Meet with Steering Committee to review the conceptual alternatives. Work with the Steering Committee to finalize the Site Plan design, select a possible alternative, and identify development phasing priorities.
3. City Council Study Session - Present proposed Park Site Master Plan to the City Council, Merced County Office of Education, Merced Union High School District, and Board of Supervisors for feedback and direction.
4. Finalize the Site Plan and Develop the Optimization Plan Report - Based on input from the Steering Committee, provide master plan landscape design and prepare illustrative master plan graphics for final park illustration and the prioritized phased approach to construction.

III. Additional Desired Scope of Services (Optional)

Park Build Budget Analysis by Phase

- i. Funding Option and Strategies for CP-42 North - Identify and summarize funding options for design development and operation of the Site.

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 upon award. 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 December, 2025.
2. Experience and Services. The RFP shall list and describe previous experience and expertise in providing Optimization studies, market research, and site planning 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. September 6, 2024: Issue Request For Proposals
2. September 12, 2024: Pre-response meeting (online)- email JensenC@cityofmerced.org for details
3. October 11, 2024: Request for Proposal due to City of Merced
4. Week of October 21, 2024: Interviews with top respondent(s)
5. November 18, 2024: Select consultant with City Council Authorization

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 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
678 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.

EXHIBIT A
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: _____