



CITY OF MERCED

REQUEST FOR PROPOSALS (RFP)

Civic Center Exterior Painting Project

The City of Merced Public Works Department invites your proposal to provide Exterior Building Painting services of one (1) City-owned building.

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

A **Class C-33** contractor's license is required at the time your proposal is submitted and shall be maintained through project completion.

You are hereby invited to submit a proposal based upon the requirements and conditions set forth in this RFP.

Proposal Submission:

Three (3) copies of the completed proposal must be submitted no later than 4:30 p.m. on Friday, December 17, 2021.

Fee Proposal:

One (1) copy of a separate fee proposal must be submitted in a separate, sealed envelope marked "RFP for Civic Center Exterior Painting Project."

Mailing Instructions:

Wallace Broughton
Public Works Operations Manager
City of Merced Public Works
1776 Grogan Avenue
Merced, CA 95341

Inquiries:

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

Wallace Broughton
Public Works Operations Manager
(209) 385-6800
broughtonw@cityofmerced.org

TABLE OF CONTENTS

Objective.....3

Scope of Services3

Method of Compensation.....5

Special Issues and Requirements5

Proposal Content.....6

Proposal Selection.....7

Protest Process8

Public Record.....8

Withdrawal of Proposals.....9

Attachments:

- A. Form of Agreement
- B. Map
- C. Photos

OBJECTIVE

The City of Merced Public Works Department (“City”) is seeking a qualified vendor to provide Exterior Building Painting services.

Any quantity listed within this RFP or attachments is an estimate of anticipated needs and is given *for informational purposes only*. The estimated quantity should not be construed as an obligation; the actual quantities may vary depending on available funding. No unit price adjustments will be allowed as a result of an increase or a decrease in the quantities listed.

Contract term commencement is tentative on contract award; contract term shall end on June 30, 2022.

Successful proposer will be required to complete the project in 30 days from mutually approved start date.

SCOPE OF SERVICES

The primary scope of work is for the exterior building painting of one (1) City-owned Building which includes, but is not limited to:

Civic Center Building, 678 West 18th Street, Merced, CA 95340

We will be painting the exterior of the City of Merced Civic Center building, with limited painting of the atrium interior. Surfaces to be painted include:

- Stucco/Block Walls
- Painted Overhangs
- Previously painted wood/metal accent Fascia and Trim
- Previously painted metal handrails
- Metal Accents on concrete benches at the right of front entrance
- The identification lettering by the flagpole on the corner on 18th Street and N Street
- Previously painted doors and door frames
- Previously painted windows and window frames
- Gutters and downspouts
- The metal frames on the exterior and interior of atrium at main entrance
- The metal gates at the employees front and rear entrance areas
- The metal gate on the N Street side of building that houses the generator
- The metal gates at the Outside Recycle Dumpster area located in the alley
- Previously painted HVAC vent grates

PREPARATORY WORK:

- Prep work will consist of a thorough pressure wash of all surfaces to be painted. Cracks and blisters in the stucco and areas where stucco is missing will be patched.

Request for Proposals

4

- Wood/Metal surfaces should be scraped and sanded to remove loose and peeling paint to ensure proper adhesion.
- New caulking will be applied at any previously caulked areas.
- Any bare wood/metal, areas where stucco has been patched or areas where metal shows signs of rust will be spot-primed prior to painting.

PROJECT NOTES:

- Bid assumes that the City of Merced will provide sources for water and power.
- Bid assumes that the City of Merced will cooperate with limiting pedestrian and vehicle traffic in the areas being painted.
- Bid assumes that the City of Merced will cut back any landscaping which limits or prevents access to the painting surfaces.
- Bid assumes that doors will be painted on the exterior side only.
- Gutters, downspouts, wires, and conduits will be painted as part of the surfaces they are attached to.

EXCLUDED ITEMS:

- Currently unpainted metal rails and window frames.
- Currently unpainted Cinder Block.

GENERAL DESCRIPTION:

Painting To - Soffit/Overhangs, Stucco/Block, Window Frames, Doors, Door Frames, Atrium Frame, Gutters, Downspouts, Fascia, Metal, Handrails, Metal Iron Gates, and Frames.

INCLUDED DETAILS:

Surface Area	Manufacturer/Paint Type	Color	Coats
Soffit/Overhangs	Sherwin Williams/Semi-Gloss/Superpaint or Equivalent*	TBD*	As project requires
Stucco/Block	Sherwin Williams/Flat/Superpaint or Equivalent*	TBD*	As project requires
Window Frames	Sherwin Williams/Semi-gloss/Superpaint or Equivalent*	TBD*	As project requires
Doors	Sherwin Williams/Semi-gloss/ProIndustrial or Equivalent*	TBD*	As project requires
Door Frames	Sherwin Williams/Semi-gloss/ProIndustrial or Equivalent*	TBD*	As project requires
Identification Lettering	Sherwin Williams/Semi-gloss/ProIndustrial or Equivalent*	TBD*	As project requires
Atrium Frame	Sherwin Williams/Semi-gloss/Superpaint or Equivalent*	TBD*	As project requires
Gutters/Down Spouts	Sherwin Williams/Semi-gloss/Superpaint or Equivalent*	TBD*	As project requires
Fascia	Sherwin Williams/Semi-gloss/Superpaint or Equivalent*	TBD*	As project requires
Metal Railing	Sherwin Williams/Semi-gloss/ProIndustrial or Equivalent*	TBD*	As project requires

Handrails	Sherwin Williams/Semi-gloss/Superpaint or Equivalent*	TBD*	As project requires
Metal Iron Gate and Frames	Sherwin Williams/Semi-gloss/ProIndustrial or Equivalent*	TBD*	As project requires

**Successful proposer shall submit paint specifications for approval prior to work commencement*

CLEAN UP:

To be completed in full daily and upon job completion. All clean up performed shall make sure the property is presentable and fully clean before work is completed. All ladders down and stacked, tools and equipment stored properly each evening in an acceptable safe location determined by the City of Merced and the Site Manager.

NOTES/MISC.:

The goal for this job is to provide the best customer experience possible. This is accomplished by being friendly, courteous, by making sure the building occupants feel comfortable, by doing things right the first time, and by respecting the property.

WARRANTY ON ALL WORK:

Successful proposer shall warranty all work for one (1) year under the contract to be of good quality and free from any defective or faulty material and workmanship. A written warranty shall be submitted upon completion of project.

METHOD OF COMPENSATION

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

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

SPECIAL ISSUES AND REQUIREMENTS

Form and Execution of Contract. **Attachment A** is the form of the contract (*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.

Bonds. Vendor shall, within fifteen (15) days of contract award and before performance of work, file a Performance Bond, with and approved by the City, in the amount of 100 percent (100%) of the contract price. The Performance bond shall remain in effect until recordation of the Notice of

Completion, or if a Notice of Completion is not recorded by the City, for sixty (60) days after completion of the work.

All Bonds shall be furnished by the Vendor at its own cost and expense. All bonds shall be executed by such sureties as are admitted to transact surety insurance in the State of California. Should an objection as to the sufficiency of an admitted surety on a bond be made, California Code of Civil Procedure Section 995.660 shall apply.

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

Civil Rights Laws. 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.

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

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

Prevailing Wage. If the proposal exceeds \$15,000 the contractor shall abide by the following:

The proposer is required to abide by all applicable provisions of the Labor Code, including payment of the minimum prevailing wage rate as determined by the State Department of Industrial Relations (DIR). No contractor or subcontractor may be listed on a 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.

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

PROPOSAL CONTENT

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

- a. 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, 2022).

- b. Experience and Services. The RFP shall list and describe previous experience and expertise with providing painting services at a scale comparable to this RFP. A minimum of one (1) municipal building painting projects shall be included and provide a copy of the **Class C-33** contractor's license used for that project.
- c. Project Understanding. The RFP shall include a summary of the teams understanding of the services to be provided to the City of Merced as well as any recommendations regarding additional services.
- d. Special Requirements. The RFP shall include a statement of understanding and compliance with the special requirements listed herein.
- e. References. The RFP shall include information on three (3) references that may be contacted to discuss the reference's experience with the team; include telephone number and email address.
- f. Fee Estimates. Each proposal shall include a fee estimate for providing services and must be contained in a sealed envelope separate from the proposal. Specify by hourly rates, costs by task, details of any other charges, a not-to-exceed for each task, and the total.

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

PROPOSAL SELECTION

RFP submittal will be reviewed for completeness and qualifications by City representatives. The City representative will negotiate with the top-ranked proposer(s) to determine the final award.

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

- Select any proposal when such action is considered to be in the best interest of the City;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening for its own convenience;
- Approve or disapprove the use of particular subcontractors;
- Accept other than the lowest offer;
- Exercise discretion and apply its judgment with respect to selection of any proposals submitted;
- Waive informalities and irregularities in the Proposals;
- Negotiate with any, all or none of the Proposers;
- Select proposals, based on initial proposals received, without discussion or after detailed discussions or contract negotiations;

- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

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

PROTEST PROCESS

A Vendor that submits a proposal that is disqualified may challenge the disqualification by filing a protest within seven (7) calendar days of the date of the City's notice of disqualification. Staff recommendations to award the agreement(s) to a particular Vendor or Vendors shall be posted on the City's website. An unsuccessful Vendor may file a protest no later than seven calendar days after the recommendation is posted on the website, except for protests regarding disqualification, which must be protested within seven days of the disqualification notice. All protests shall be in writing, filed with the Public Works Director, Ken Elwin, and include the following:

- RFP Name;
- The name, address, and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

The Public Works Director will render a written decision within 30 days after the protest is filed. The City will not request authorization to award the contract until the protest process is completed.

PUBLIC RECORD

Responses to this RFP become the exclusive property of the City of Merced. At such time as the Public Works Department recommends a firm to the City Council, all proposals received in response to this 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.

All proposals 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:

Wallace Broughton
Public Works Operations Manager
City of Merced
1776 Grogan Avenue
Merced, CA 95341
(209) 385-6800
broughtonw@cityofmerced.org

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

ATTACHMENT A

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

D. Vendor 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:
STEPHANIE R. DIETZ, 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. _____

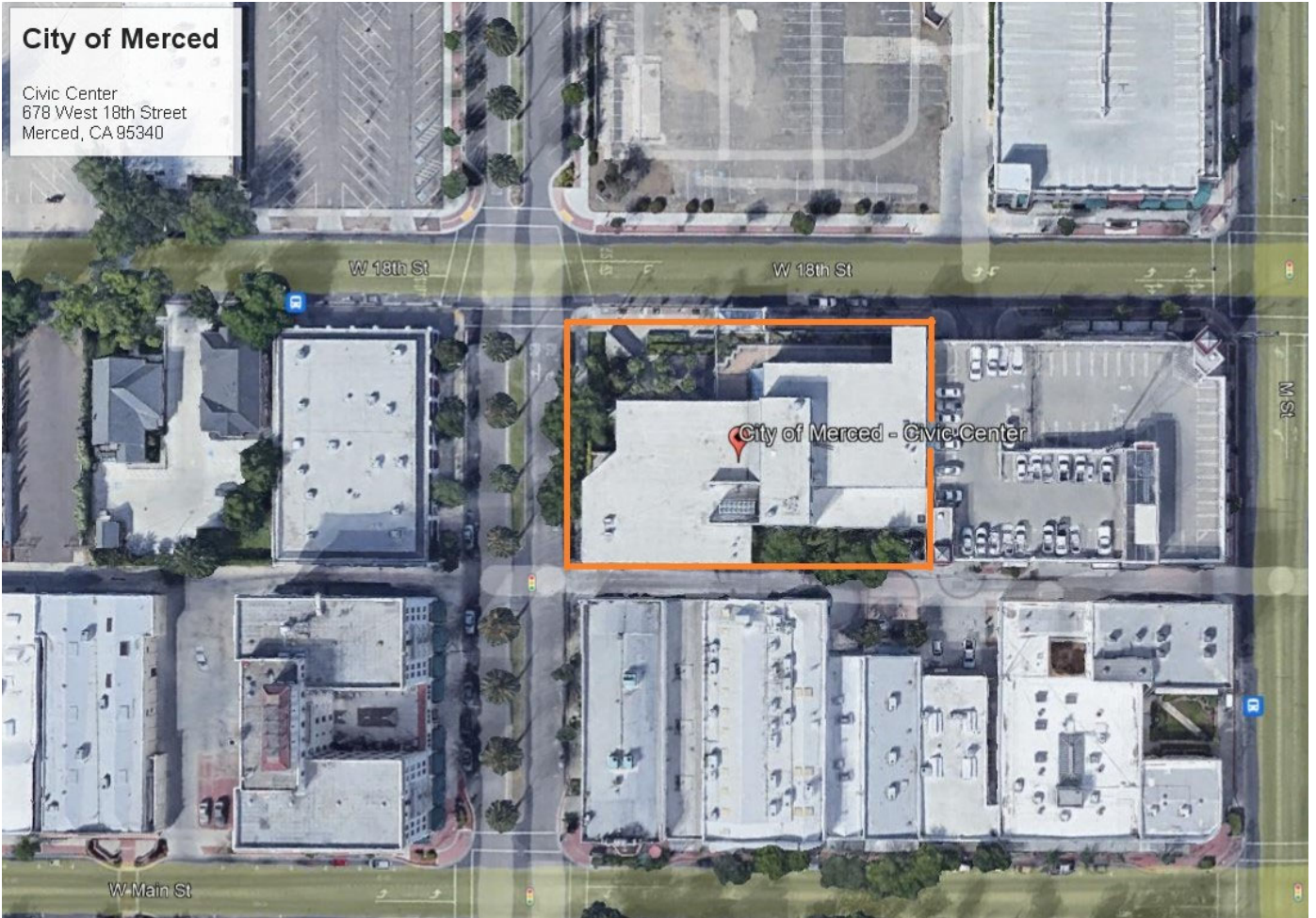
ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

ATTACHMENT B



ATTACHMENT C













