



# CITY OF MERCED

## REQUEST FOR PROPOSALS

### FOR A

### RATE STUDY FOR SEWER AND WATER SERVICE CHARGES, FACILITIES CHARGES, AND CONNECTION CHARGES

#### **Introduction**

The City of Merced (“City”), Public Works Department, is requesting proposals from qualified consultants to conduct a comprehensive sewer and water rate study for service charges, connection charges and related services. The selected consultant shall perform the tasks specified in the “Scope of Work” section of this Request for Proposals (RFP). The consultant is encouraged to suggest additions or modifications to the scope that will enhance or clarify the study; these suggestions should be incorporated in the proposal.

The intent of the Study is to independently assess and evaluate existing sewer and water rates and provide fair and reasonable rate structures that will adequately fund the utility’s operational, capital improvement, and debt service needs for a period of no less than five (5) years and consistent with industry accepted cost-of-service principles, satisfying future revenue requirements and meeting State law requirements. The Study will be based on a comprehensive review of sewer and water enterprise funds’ historical statements of revenue and expense, current year budgets, customer counts and classes, historical usage data, Sewer and Water Master Plans, Merced Vision 2030 General Plan, Capital Improvement Plans, projected growth, and any other information deemed necessary.

The selected consultant will be responsible for ensuring compliance with Proposition 218.

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

#### **Mailing Instructions:**

Ken Elwin, P.E.  
Director of Public Works  
City of Merced  
1776 Grogan Avenue  
Merced, CA 95341

**Inquiries:**

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

Ken Elwin, Director of Public Works, phone number (209) 385-6803, [elwink@cityofmerced.org](mailto:elwink@cityofmerced.org).

**Proposal Submission:**

Firms interested in submitting Proposals for the Rate Study Consulting Services shall submit the following on or before the Submittal Deadline in a sealed envelope marked “City of Merced Sewer and Water Rate Study Proposal”.

- One (1) original unbound Proposal marked “Original”,
- One (1) electronic version in PDF format, and
- Five (5) bound copies marked “Copy”

**Fee:**

One (1) copy of a separate Fee Proposal shall be submitted in a separate sealed envelope marked “**Fee Proposal for Sewer and Water Rate Study**”.

Proposals may be submitted by U.S. Mail, or delivered in person to the City of Merced Public Works Department no later than **4:00 p.m. on, Tuesday, August 8, 2023** and addressed to:

**City of Merced  
Attn: Ken Elwin, P.E.  
Director of Public Works  
1776 Grogan Avenue  
Merced, CA 95341**

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## **CITY OVERVIEW**

The City of Merced is a charter city located on the east side of the San Joaquin Valley, approximately 100-miles south of Sacramento and 60-miles north of Fresno. With a population of approximately 90,000, Merced is home to the University of California system's newest campus-UC Merced. The campus is located on 2,000 acres and is part of an 11,000-acre campus community, adjacent to the City of Merced. The City provides the water supply to UC Merced and offsite wastewater service and treatment.

The City of Merced is currently planning comprehensive sewer and water master plan capital improvement programs. The City implements a Sanitary Sewer Management Plan and Water Operations Plan to comply with State of California regulations.

### ***Water-***

The City's water utility is accounted for as self-supporting enterprise fund, with 100% of its supply sourced from pumped groundwater. Revenue is derived primarily from water service charges and must be adequate to fund the City's operating and capital programs. The City last revised its water service charges in 2017, with set rates through 2021. The revisions maintained an existing yearly inflation index increase beyond the year 2021 [per muni code in 18.36. 045 & 050]. The City recently transitioned all customers to metered billing.

### ***Sewer-***

Residential sewer rates are flat rate regardless of house size and occupancy. With the installation of water meters on all customer classes, the City desires to evaluate water consumption based sewer rates as a part of the study. Also, commercial sewer discharges are based on water consumption including irrigation usage driving up commercial billings during the summer. The water consumption based sewer charges need re-evaluation.

The City adopted its latest Sewer (Wastewater Collection System) Master Plan at its February 9, 2023, Council meeting. The plan included sewer flow revisions based on field monitoring conducted in 2021. The established average wastewater gallons per capita per day (gpcd) flow was reduced from 85 gpcd to 65 gpcd, a reduction of approximately 24%. This change resulted in a longer planning horizon for needed improvements to service future growth.

The plan also included capital improvements projects to address current deficiencies in the wastewater collection system.

In addition to the above, the sewer rates also fund the storm drain division operations and capital improvement projects and will need to be evaluated and accounted for under the determined sewer rate structure.

## **OBJECTIVE**

Develop a 5-year revenue program with incremental adjustments annually, which will meet all requirements of the EPA, California State Water Resources Control Board (SWRCB) Revenue

Program Guidelines, and bond coverage tests. The revenue program must reflect a rate structure that is tailored to meet the specific needs of the City. In general, the scope of work shall involve a comprehensive review of the City's sewer & water enterprise fund's historical and projected revenues, usage, expenses, reserve policies, billing and collection procedures, rates and charges, current budgets, Sewer & Water Master Plans, future Groundwater Sustainability Plans impacts, Capital Improvement Plans, future growth potential, and any other information deemed pertinent.

The rate study and financial plan should address how the capital improvement program and operations plan can be financed relative to proposed rates, and how adequate reserves can be achieved consistent with standard AWWA Manual M1 (latest edition) guidelines.

The study should include a review of existing revenues, operating expenses and non-operating revenues (expenses) to determine if these allocations are generally conforming to standards adopted by voters of the State of California with the passage of Proposition 218 in 1996.

### **SCOPE OF WORK**

Specifically, the Scope of Work will include, but shall not be limited to the following:

- Develop rate structures that will allow the City to meet its financial obligations; specifically, ensuring long term financial stability and health of its sewer & water enterprise funds.
- Review current utility policies and procedures and regulatory requirements as they affect operations, capital projects, revenue program requirements, rate structures, and facility charges.
- Review operating costs as a result of future upgrades and expansion of the water system and wastewater treatment plant.
- Review 2014 Draft Water Master Plan and 2020 Urban Water Management Plan and their impacts on rates and implementation schedule.
- Identify and summarize the City's current rate structure, operating expenses, capital costs, revenue streams, reserve funds, and billing program.
- Review impact of projected new development on rates.
- Determine connection fees in accordance with AB1600 requirements.
- Develop utility rates which are equitable across all account types and land uses.
- Fully fund necessary capacity expansions through an equitable combination of rates and impact fees.

- Determine water service charges and water connection charges that will support upgrade and expansion of infrastructure. Analyze whether to charge a flat fee as opposed to a deposit for connection charges.
- Capital replacement and debt service components for the water fund must be determined.
- Recommend innovative procedures to enhance developer financing.
- Conform to the guidelines of AWWA publications.
- Recommend rate structure(s) rewarding conservation. Assess the potential implementation of drought influenced rate structures intended to curtail use such as tiered volumetric rate structures, and the degree to which such structures affect revenue stability.
- Drought or Loss of Supply Rate Structure: Assess the impact on a rate structure due to drought, loss of supply or other water shortage factors. Evaluate and recommend a drought pricing program that mimics the different water stages of the City's emergency water supply shortage plans and continues to fund water operations and capital projects.
- Prepare a draft report for City review. Incorporate City comments in final report.
- Create a model that easily supplies meaningful information to the public, Elected Officials, and Staff, where the inputs are comprehensive and transparent. Models should also provide flexibility to integrate City's financial system and to compute rates.
- Provide training to City staff in the use of the rate modeling program to allow staff to fully understand how the model operates and how the results of various recommendations may be proposed and illustrated. Include a minimum two-day training seminar for City staff.
- Prepare and deliver presentations designed to facilitate an understanding for the financing. These presentations will be addressed to the public-at-large, developers, landowners, City staff, and City Council. A minimum of six (6) meetings (kickoff, progress, community, City Council, final) shall be included in the proposal.

### **CITY RESPONSIBILITIES**

The City will work cooperatively with the consultant(s), by: 1) providing the consultant with whatever information is available regarding its requirements for the project; 2) examining project-related documents submitted by the consultant and rendering decisions promptly to avoid unreasonable delay in the progress of the consultant's work; and, 3) furnishing information required of it as expeditiously as necessary for the orderly progress of work.

## **SCHEDULE**

The complete draft report shall be submitted to the City within 90-days after award of contract.

The City recognizes performance by consultant is dependent upon performance by City. The City shall make schedule adjustments to reflect any delays caused by City. The final report shall be submitted to City within 30-days of receipt of City comments.

## **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.

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 9 of the contract, including liability insurance in the amount of \$1,000,000, naming the Agency 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.

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.
- b. Description of Study Understanding – Outline of the proposer’s understanding of the study and summarizing the basic approach to the rate study and revenue program.
- c. Methodology – Descriptions, which enable the City to assess the proposer’s capability to conduct this study in a structured and efficient fashion.
- d. Scope of Work – Details with specific task descriptions to demonstrate that the proposer has considered all aspects of the study and that the proposer will cover them thoroughly.
- e. Personnel – Resumes of the individual(s) assigned to the study and other staff personnel available to support the study. Particular attention should be given to the proposer’s organization, which provides internal service for supporting the study team, and facilitates quality assurance auditing of the study work. The consultant will be required to assure that these personnel are available for the study or that substitutes acceptable to the City are provided.
- f. Qualifications – Description of the organization covering background experience connected with sewer and water rate studies, as well as other rate studies and revenue programs.
- g. Representative Study Descriptions and Client References – Submit descriptions of similar assignments, which were conducted by the proposer. List all projects or a list of representative projects of similar complexity and magnitude undertaken in the past five years and provide references and a phone number for each reference.
- h. Special Requirements. The RFP shall include a statement of understanding and compliance with the special requirements listed herein.
- i. 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.
- j. 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.

**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**

The following is an outline of the procedures the City will use in the selection process:

- Screening and Selection Committee reviews the proposals submitted by the prospective consultants.
- Screening and Selection Committee may select one firm or interview-selected firms and make the final selection. Rankings are given to firms interviewed. Fees will not be discussed with the professional consultants during selection interviews.
- Negotiations may take place with the primary firm on the final scope of work, the final contract proposal, and the proposal price.
- If a contract cannot be negotiated for this study, the negotiations with the designated consultant shall be terminated in writing and negotiations shall be started with the next highest rated consultant.
- Selection Committee Chairman will notify the selected firm of the final approval of the contract by the City Council.

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**

**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. 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.

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**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 in writing or email to:

Ken Elwin, P.E.  
Director of Public Works  
City of Merced  
1776 Grogan Avenue  
Merced, CA 95341  
elwink@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 1

**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 18<sup>th</sup> 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:  
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: \_\_\_\_\_