



CITY OF MERCED

REQUEST FOR PROPOSALS (RFP)

CII-LAM-LUCD & 2026-2030 UWUO REPORTING FORMS

The City of Merced Public Works Department invites your proposal to provide engineering services to complete the City's 2026-2030 Urban Water Use Objective (UWUO) reporting forms required by the State Water Resources Control Board (SWRCB) and to support the review and reporting of the City's Commercial, Industrial, and Institutional Landscape Area Measurements and Land Use Classification Datasets (CII-LAM-LUCD). These datasets, provided by the Department of Water Resources (DWR) and NV5, are intended to assist the City in complying with *California's Making Conservation a Way of Life* regulations. The proposer shall provide the services in close cooperation with the City.

The selected Consultant will be expected to demonstrate technical expertise, effective project management, and familiarity with DWR's reporting systems and associated water use efficiency programs.

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 Thursday, June 25, 2026.

Fee Proposal:

One (1) copy of a separate fee proposal must be submitted in a separate, sealed envelope marked "RFP for Consulting Services for CII-LAM-LUCD & 2026-2030 UWUO Reporting Forms."

Mailing Instructions:

Debbie Forte
Water Conservation Coordinator
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:

Debbie Forte, Water Conservation Coordinator, phone number (209) 385-8892 forted@cityofmerced.gov

TABLE OF CONTENTS

Objective.....3

Scope of Services.....3

Method of Compensation.....5

Special Issues and Requirements.....5

Proposal Content.....6

Proposal Selection.....7

Protest Process8

Public Record.....9

Withdrawal of Proposals.....10

Attachments:

- A. Form of Agreement

OBJECTIVE

The City of Merced Public Works Department (“City”) is seeking a qualified Consultant to provide engineering services to complete the City’s 2026-2030 Urban Water Use Objective (UWUO) reporting forms required by the State Water Resources Control Board (SWRCB) by January 1st of each year and to support the review and reporting of the City’s Commercial, Industrial, and Institutional Landscape Area Measurements and Land Use Classification Datasets (CII-LAM-LUCD) per California Code of Regulations (CCR) title 23 Section 969(b)(2) and CCR Title 23, Section 973(a)(1). The Consultant shall keep the City fully informed on project status, key issues, timelines and budget tracking.

SCOPE OF SERVICES

TASK 1 – Project Management and Administration

The Consultant shall provide proactive project management and maintain clear communication with the City to ensure the successful and timely review and delivery of the City’s CII-LAM-LUCD. The City will be kept fully informed on project status, key issues, timelines, and budget tracking. This task shall include internal management of the project including staff scheduling, monthly project updates to the City, budget oversight, project correspondence, document production, review of work, and other general overhead items. The Consultant shall be responsible for monitoring progress, controlling costs, managing subconsultants (if applicable), and maintaining communication with the City’s project manager throughout the duration of the contract.

This task shall also include a project kickoff meeting with City staff to review the scope of services, confirm initial data needs and methods for data collection, and establish a detailed work plan and schedule. The Consultant shall maintain ongoing coordination with City staff through subsequent meetings, as needed, to confirm data accuracy and address information gaps.

TASK 2 - Data Review and Coordination

The Consultant shall review and verify the accuracy of the City’s CII-LAM-LUCD provided by DWR and NV5. The task shall include:

- Coordination with the City and regulatory agencies as needed
- Coordination with the Eagle Aerial Solutions team to review the CalWEP LAM Explorer software and determine if this platform is something that the City can pursue
- Review of dataset structure, attributes, and methodology
- Generation of detailed maps of the data

TASK 3 – CII Large Landscape Inventory (CCR §973 Compliance)

The Consultant shall assist the City in identifying all existing commercial, industrial, and institutional (CII) water users associated with large landscapes in accordance with CCR Title 23 Section 973(a)(1). This task will include:

- Cross-referencing billing, GIS, and parcel data with the LAM dataset
- Identifying landscapes served by Dedicated Irrigation Meters (DIMs)
- Validating and refining DWR/NV5 dataset values, as needed
- Developing a comprehensive inventory of CII customers with large landscapes
- Documenting methodology used to identify and classify large landscapes

TASK 4 – Landscape Area Quantification (CCR §969 Compliance)

The Consultant shall quantify the total irrigated area of CII landscapes with DIMs in accordance with CCR Title 23, Section 969(b)(2). This includes:

- Calculating total square footage of irrigated areas for DIM-served landscapes
- Preparation of a technical memorandum (TM) to summarize the methodology and total irrigated area

TASK 5 – Prepare UWUO Reporting Form (2026-2030)

In 2024, the SWRCB adopted regulations to Make Conservation a California Way of Life. The regulations establish:

- Efficiency standards for urban water use
- Formulas to calculate standard-based budgets and urban water use objectives
- Performance measures for Commercial, Institutional, and Industrial (CII) water use
- Annual reporting requirements

The Consultant shall assist the City in meeting its obligations to prepare and submit the UWUO reporting forms, as required under the Regulations to Make Conservation a California Way of Life. The objectives include the efficient use of water for:

- Residential Indoor Use
- Residential Outdoor Use
- CII Landscapes DIMs
- Real Water Loss
- If applicable, Bonus Incentive
- If applicable, variances and temporary provisions

The Consultant shall submit the completed UWUO reports and certification statements to DWR by January 1 of each year starting with reporting period July 1, 2025 to June 30, 2026 reported by January 1, 2027.

The Consultant shall support the City in completing all required components of the UWUO submittals, which will include:

- Reviewing the SWRCB's Make Conservation a California Way of Life regulations and obtaining the latest UWUO reporting forms.
- Coordinating with SWRCB and DWR.
- Completing the UWUO reporting form in accordance with the regulatory requirements and assisting the City with the certification statement process.
- Incorporating LAM data into its 2030 UWUO reporting form.

Submitting the final UWUO reporting form and certification statement through the Water Use Efficiency (WUEdata) Portal prior to January 1 of each year.

TASK 6 – Provide Compliance Support Recommendations (2026-2030)

The Consultant shall each year review the City's Annual Water Supply and Demand Assessment (AWSDA) and UWUO results and provide recommendations to support compliance with applicable water use efficiency requirements and objectives. The Consultant shall identify areas where the City may need additional actions, improved data tracking, or operational adjustments to help meet current and future regulatory requirements. This task shall include:

- Reviewing the AWSDA and UWUO results to identify potential compliance concerns, data gaps, or performance trends.
- Providing recommendations twice per year to support compliance with applicable State requirements and help the City meet its objectives.
- Preparing a summary memorandum or email outlining observations and recommended actions, as requested by the City.

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 – Design Professional*) 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 schedule (through January 31, 2030).
- b. Experience and Services. The RFP shall list and describe previous experience and expertise with providing CII-LAM-LUCD and UWUO services at a scale comparable to this RFP.
- c. Project Team and Key Personnel. Identification of the key team members, including brief descriptions of their roles and experience relevant to completing the City's 2026-2030 UWUO reporting forms and reporting the City's CII-LAM-LUCD.
- d. Project Understanding. The RFP shall include a summary of the team's understanding of the services to be provided to the City of Merced, as well as any recommendations regarding additional services. A detailed schedule of meetings and deliverables should be included so that the deadline submission to DWR is met.

- e. Special Requirements. The RFP shall include a statement of understanding and compliance with the special requirements listed herein.
- f. 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.
- g. 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

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.

Evaluation Criteria:

Proposals may be evaluated based on:

- Relevant Experience [25%]
- Technical Approach [25%]
- Project Understanding [20%]
- Project Team/Key Personnel [10%]
- Cost Proposal [15%]
- References [5%]

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

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 at Purchasing Division, 2525 O Street, Merced, CA 95340.
- (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.

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 in writing and directed to:

Debbie Forte
Water Conservation Coordinator
City of Merced
1776 Grogan Avenue
Merced, CA 95341
forted@cityofmerced.gov

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

DESIGN PROFESSIONAL SERVICES AGREEMENT

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 Please Select, 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; PERFORMANCE.

A. Consultant shall furnish the following services: Consultant shall provide the _____ services described in Exhibit “A” attached hereto.

B. No additional services shall be performed by Consultant unless approved in advance in writing by 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 Consultant.

C. In meeting its obligations under this Agreement, Consultant shall at all times faithfully and competently perform all tasks described herein in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

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 “Please Select” attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, City and 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____. All indemnification provisions of this Agreement shall survive and remain in effect following the expiration or termination of this Agreement.

4. COMPENSATION. Payment by City to 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 "Please Select" attached hereto and incorporated herein by reference. Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "Please Select". 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 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., prepared by Consultant in the course of providing the services performed pursuant to this Agreement shall be the property of City, and Consultant hereby agrees to deliver the same to 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 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 City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to 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 City.

8. INDEPENDENT CONTRACTOR.

A. Consultant is and shall at all times remain as to City a wholly independent Consultant. The personnel performing the services and tasks under this Agreement on behalf of Consultant shall not be City employees and shall at all times be under Consultant's exclusive direction and control. Consultant and all of Consultant's personnel shall possess the qualifications, permits, and licenses required by state and local law to perform the services and tasks under this Agreement, including, without limitation, a City business license as required by the Merced Municipal Code. Consultant shall determine the means, methods, and details by which Consultant's personnel will perform the services and tasks. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and tasks, and compliance with the customary professional standards. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents.

B. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Consultant and Consultant's personnel shall not supervise any of City's employees; and City's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as a City employee; and Consultant's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services and tasks under this Agreement. Consultant shall acquire and maintain at its sole cost and expense such vehicles, equipment, and supplies as Consultant's personnel require to perform any of the services and tasks required by this Agreement. Consultant shall perform all services and tasks off of City premises at locations of Consultant's choice, except as otherwise may from time to time be necessary in order for Consultant's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Consultant's performance of any services and tasks under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services and tasks. City may make a computer available to Consultant from time to time for Consultant's personnel to obtain information about, or to check on, the status of projects pertaining to the services and tasks performed under this Agreement. Consultant shall not incur or have the power to incur any debt, obligation or liability whatsoever against City, or bind City in any manner.

C. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services and tasks hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services and tasks hereunder. Consultant shall be responsible for and pay all salaries, wages, benefits and other amounts due to Consultant's personnel in connection with their performance of the services and tasks under this Agreement, and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute, or ordinance to the contrary, Consultant and any of its officers, employees, agents, and subconsultants providing any of the services and tasks under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit, or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as a City employee, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

D. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent consultants in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's personnel practices, or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

9. INDEMNITY.

A. Indemnity for Design Professional Services. In connection with its design professional services, Consultant shall hold harmless and indemnify City,

and its elected officials, officers, employees, servants, designated volunteers, and those City agents serving as independent consultants in the role of City officials (collectively, “Indemnitees”), with respect to any and all claims, demands, damages, liabilities, losses, costs or expenses, including reimbursement of attorneys’ fees and costs of defense (collectively, “Claims” hereinafter), including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate in whole or in part to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, sub-consultants, or agents in the performance of its professional services under this Agreement.

B. Other Indemnities. In connection with any and all claims, demands, damages, liabilities, losses, costs or expenses, including attorneys’ fees and costs of defense (collectively, “Damages” hereinafter) not covered by Paragraph A (above) of this Section 9, Consultant shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Damages, including but not limited to, Damages relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to acts or omissions of Consultant or any of its officers, employees, sub-consultants, or agents in the performance of this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of City, as determined by final arbitration or court decision or by the agreement of the parties. Consultant shall defend Indemnitees in any action or actions filed in connection with any such Damages with counsel of City’s choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. Consultant’s duty to defend pursuant to this Section 9.B shall apply independent of any prior, concurrent or subsequent misconduct, negligent acts, errors or omissions of Indemnitees.

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 (\$100,000.00) 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 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 (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage.
- (iii) 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 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 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 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) 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 (\$1,000,000.00). Architects and engineers' coverage is to be endorsed to include contractual liability.

E. Cyber Liability Insurance. Consultant shall obtain and maintain Cyber Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per occurrence or claim, One Million Dollars (\$1,000,000) aggregate.

Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including, but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information **or personally identifiable information (PII)**, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations. Cyber Liability insurance must be maintained, and evidence of insurance shall be provided to CITY for at least two (2) years after completion of work under this Agreement.

F. 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).

G. Certificate of Insurance. Consultant shall complete and file with 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 work”, 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. 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 Consultant from the Department of Industrial Relations. These wage rate determinations are to be posted by 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. PERS COMPLIANCE AND INDEMNIFICATION.

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Consultant agrees that, in providing its employees and any other personnel to City to perform the services and tasks under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Consultant shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants, and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Consultant shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent consultants in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provisions of this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

13. RELEASE OF INFORMATION.

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or sub-consultants, shall not without written authorization from City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party

regarding this Agreement and the work performed there under or with respect to any project or property located within City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Merced
678 West 18th Street
Merced, California 95340
Attention: City Manager

To Consultant:

Attention:

15. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by 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 Consultant under this Agreement will be permitted only with the express written consent of City.

16. TERMINATION FOR CONVENIENCE OF CITY. City may at any time, for any reason, with or without cause, terminate this Agreement 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, 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.

17. LEGAL RESPONSIBILITIES.

A. Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times observe and comply with all such ordinances, laws and regulations. City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of Consultant to comply with this section. 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.

B. At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

C. 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 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 City in connection therewith.

18. 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.

19. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.

A. 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.

B. 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 City are not binding upon City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

20. 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.

21. DEFAULT OF CONSULTANT.

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to Consultant. If such failure by Consultant to make progress in the performance of work hereunder arises out of causes beyond Consultant's control, and without fault or negligence of Consultant, it shall not be considered a default.

B. If the City Manager or his delegate determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve Consultant with written notice of the default. Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by

rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.”

22. GOVERNING LAW; VENUE; PREVAILING PARTY. City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Merced. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

23. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

24. 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.

25. 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.

26. 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.

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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: _____
D. Scott McBride
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: _____
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

CONSULTANT

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. _____

ADDRESS:

TELEPHONE: _____

FAX: _____

E-MAIL: