

**AGREEMENT  
CITY OF FRESNO, CALIFORNIA  
CONSULTANT SERVICES**

THIS AGREEMENT (Agreement) is made and entered into, effective \_\_\_\_\_, by and between the CITY OF FRESNO, a California municipal corporation (City), and Melton Design Group, Inc., a California Corporation (Consultant).

**RECITALS**

WHEREAS, the City desires to obtain professional architectural and engineering services for the design of plans and general construction contract documents for Quigley Park Rehabilitation Project (Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a licensed architect and engineer and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, the Consultant acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for the City by its Public Works Department Director (Director) or designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services.

The Consultant shall perform the services described herein and in **Exhibit A** to complete the Project more fully described in **Exhibit A**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**. The services of the Consultant shall consist of five Parts as described below. A separate Notice to Proceed will be issued for each of the aforementioned Parts. By entry into this Agreement and upon the City's issuance of a written "Notice to Proceed," the City contracts for the services in Part One. The Consultant shall not perform any other Part of the Agreement, and this Agreement shall not be a contract for any other Part, until further performance is authorized by the City's issuance of a written "Notice to Proceed." It shall, however, remain the Consultant's offer to perform all remaining parts described herein. In the event the Consultant performs services without the City's prior written authorization, the Consultant will not be entitled to compensation for such services.

(a) Part One. Schematic Design Phase.

(1) The Consultant shall review the description of the Project set forth in **Exhibit A** and consult with designated representatives of the City to ascertain the requirements of the Project.

(2) The Consultant shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible City department/division that is available in the City's records and is required by the Consultant in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions, and easements. The Consultant shall notify the City if a topographic survey is required.

(3) The Consultant shall provide a preliminary evaluation of the Project taking into consideration the City's estimate of the cost of construction (Construction Budget) of ten million seven hundred thousand dollars (\$10,700,000), including alternative approaches to design and construction of the Project.

(4) Based upon the mutually agreed upon Project requirements and any adjustments authorized by the City in the Construction Budget, the Consultant shall design and prepare schematic design drawings and other documents for review, modification, if required, and acceptance by the City staff sufficient to show the concept and scope of the proposed Project and the scale and relationship of Project components.

(5) The Consultant shall submit a preliminary estimate of construction cost for review and acceptance by the City. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include The Consultant's compensation as herein provided. Such estimate shall include, and shall separately state, the cost of any add or deduct alternatives, the cost of any work which may be let on a segregated bid basis and any equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget.

(6) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

(7) The Consultant may not rely upon any as-builts provided by the City but shall investigate the existing conditions and ascertain the adequacy of such as-builts for the Consultant's design. The Consultant shall bring to the City's attention any discrepancies in the as-builts that are discovered by the Consultant. The City makes no representations regarding any as-builts.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered, and deliverables submitted within one hundred eighty (180) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within twenty one (21) calendar days from receipt of

the City's comments unless an extension of time is approved in writing by the Director.

(b) Part Two. Design Development Phase. After review and acceptance of the schematic design phase and issuance of a written Notice to Proceed with this Part Two:

(1) Based upon the accepted schematic design documents and the Construction Budget, including authorized revisions thereto, the Consultant shall prepare for review and acceptance by the City the design development documents consisting of drawings and other documents to fix and describe the size and character of the Project as necessary to show treatment of significant details. In addition, the Consultant shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents and specifications shall be subject to review and acceptance by the City.

(2) The Consultant shall submit a revised estimate of construction cost for review and acceptance by the City. The revised estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated bid basis, and any furnishings, equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget, including authorized revisions thereto.

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part 1 as that which may be excluded from the general construction contract, the City shall have the option of accepting or rejecting the revised estimate and the Consultant shall, at no additional cost to the City, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by the City. The City shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in the Consultant's compensation.

(4) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval, permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City. Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered, and deliverables submitted within Ninety (90) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within thirty (30) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(c) Part Three. Construction Document Phase. After review and acceptance of the design development phase and issuance of a written Notice to Proceed with this Part Three:

(1) The Consultant shall prepare from the accepted design development documents, detailed plans and specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. The Consultant shall also prepare necessary bidding information, general and special conditions of the general construction contract, technical specifications of the general construction contract, and the bid proposal and general construction contract forms. Such documents shall be subject to the review and acceptance by the City. The Consultant shall cooperate with, assist and be responsive to Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. The City's Standard Specifications must be used by the Consultant where possible. Final drawings shall be drawn, printed, or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high-quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by the City shall be used by the Consultant unless the Director determines they would be impractical for this Project. the Consultant shall be responsible for assuring that the special conditions, technical specifications, and any other documents prepared by the Consultant are consistent with any documents regularly used by the City that are used for this Project.

(2) Upon request of the City, the Consultant shall provide the calculations used to determine the general construction contract quantities; and structural calculations for the purpose of obtaining any building permits.

(3) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval, permit, report, statement, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

(4) The Consultant shall provide the City with one (1) sets of completed plans and one (1) sets of completed specifications for review and final acceptance by the City. Should the plans and specifications as submitted by the Consultant not be accepted by the City, the Consultant shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to the City.

(5) After acceptance of final corrections, if any, the Consultant shall provide the City with one set of accepted reproducible tracings and bid documents for the Project. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: .CAD.

(6) The Consultant shall submit a final estimate of construction cost for review and acceptance by the City. Such estimate shall be calculated as

of the date all general construction contract documents are delivered to the City in final form ready for reproduction and advertising. Such estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated basis, and any equipment, or fixtures which may be incorporated in or excluded from the general construction contract.

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part 2 as that which may be excluded from the general construction contract, the City shall have the option of accepting or rejecting the final estimate. If the City elects to reject the final estimate, the Consultant shall at no additional cost to the City, make such design changes as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by the City.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered, and deliverables submitted within one hundred twenty (120) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within sixty (60) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(d) Part Four. Bidding Phase. After review and acceptance of the construction document phase and if the City elects to proceed to bid, which shall constitute a written Notice to Proceed with this Part Four:

(1) The Consultant shall assist the City in obtaining bids. The Consultant shall not communicate with potential bidders regarding this Project without the express prior written authorization of the City's Purchasing Manager.

(2) The Consultant shall, within 7 calendar days of any request by the City, expeditiously draft and promptly provide addendum as determined by the City to be reasonable or necessary for the bidding process.

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by the City, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, the Consultant shall, within 14 calendar days of any request by the City, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, at no additional cost to the City provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. The Consultant shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to the City for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to the Consultant from the



Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%.

(e) Part Five. Construction Phase and General Construction Contract Administration. The construction phase will begin with the award of the general construction contract, which shall constitute a written Notice to Proceed with this Part Five and will terminate when a Notice of Completion is filed. Upon award of a general construction contract for the Project and under the direction of the Director through the City's designated Construction Manager for the Project:

(1) The Consultant shall attend the pre-construction conference and, if called upon by the City, act on the City's behalf in discussing the various aspects of the construction phase.

(2) The Consultant shall review and recommend in writing to the City acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. The period for the Consultant review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by the City, the Consultant, and the general construction contractor.

(3) The Consultant shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents, and keep the City informed of the progress of the work. In the event that the Consultant's visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, the Consultant shall immediately advise the City and document, in writing, the work the Consultant deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. Based on the Consultant's best knowledge, information and belief, the Consultant shall provide the City a general written assurance that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, the Consultant shall provide a written judgment of the acceptability of the work for payment applications and final acceptance, subject to the City's right to overrule the Consultant.

(4) Upon written request by the City, the Consultant shall render interpretations of the general construction contract documents necessary for the proper execution or progress of the work.

(5) Upon written request by the City, the Consultant shall render written recommendations on change orders, claims, disputes, or other questions arising out of the general construction contract, in a timely manner. Recommendations by the Consultant in favor of a change order that is consequently accepted by the City shall constitute approval by the Consultant who shall then approve the change order in writing. The Consultant shall not unreasonably withhold written approval in the event the City accepts a change

order that the Consultant recommended to be rejected. In the event of any technical disputes, the Consultant shall provide the City with the Consultant's written interpretation of the contract documents. The period for the Consultant review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by the City, the Consultant, and the general construction contractor. If the City, the Consultant, and the respective general construction contractor are unable to mutually agree on such period for the Consultant review, then the City will make the determination and that determination will be final.

(6) Upon written request by the City, the Consultant shall provide such design and specification services as may be requested by the City to implement change orders necessary for clarification or interpretation of the general construction contract documents or which may have resulted from errors or omissions by the Consultant.

(7) Where change orders arise as a result of an increase in the scope of work or are due to unforeseeable conditions, the parties may modify this Agreement, which modification shall include an agreed upon increase in the Consultant's compensation.

(8) Upon written request of the City, the Consultant shall assist the City in the preparation of Progress Payment Estimates and other related construction reports.

(9) The Consultant shall provide the City with two sets of original as-grade plans wet-stamped and signed by the Consultant's Engineer of Record for the Project submitted for final approval by the City's Building and Safety Services Division of the Development and Resource Management Department on all projects located outside the Right of Way.

(10) the Consultant shall prepare Record Drawings by updating the accepted general construction documents in Part 3 to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the City, (iii) the Consultant provided Request for Information responses, and (iv) any the Consultant bulletins, amendments, or clarifications. The Consultant shall provide the City with one set of vellum Record Drawings for the Project within twenty one (21) calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Resubmittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within twenty one (21) calendar days from receipt of the City comments unless an extension of time is approved in writing by the Director. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of Record Drawings in the following format: .CAD.

## 2. The City's responsibilities. The City will:

(a) Provide, upon request and cooperation of the Consultant, access to,

and make all provisions necessary to, enter upon public or private lands as required for the Consultant to perform such services and inspections as are required in development of the Project; provided, however, if the City is unable to obtain access to enter upon public or private lands, the Consultant shall not be relieved from performing its services as to those public and private lands that are accessible. If the Consultant notifies the City that a topographic survey is required by the Consultant in connection with the consulting services, then the City will be responsible for conducting the topographic survey.

(b) Manage and be responsible for all negotiations with owners in connection with land or easement acquisition and provide all required title reports and appraisals.

(c) With the exception of preparing correspondence required for design, hold all required special meetings, serve all public and private notices, receive and act upon all protests, and perform all services customarily performed by owners as are necessary for the orderly progress of the work and the successful completion of the Project, and pay all costs incidental thereto.

(d) Select the testing laboratory and pay the cost of borings, samplings, and other work involved in soils testing during construction.

(e) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release the Consultant from its responsibility to make periodic site visits under Section 1(e) for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to the City.

(f) Prepare all change orders during construction in cooperation with the Consultant.

(g) Prepare all Progress Payment Estimates in cooperation with the Consultant following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon the Consultant's best knowledge, information, and belief.

(h) Pay, or cause to be paid, plan check fees, conditional use permit fees and site plan review fees.

(i) Arrange for and pay, or cause to be paid, any fees associated with Environmental Impact Reports or Statements.

(j) Give reasonably prompt consideration to all matters submitted by the Consultant for acceptance to the end that there will be no substantial delays in the Consultant's program of work. For an acceptance, approval, authorization, a request, or any direction to the Consultant to be binding upon the City under the terms of this Agreement, such acceptance, approval, authorization, request, or direction must be in writing, duly authorized by the City and signed on behalf of the City by the Director.

### 3. Compensation.

(a) The Consultant's sole compensation for satisfactory performance of



all services required or rendered pursuant to this Agreement shall be a total fee of eight hundred sixty-nine thousand and two hundred dollars (\$869,200), and a contingency amount not to exceed Eighty Thousand Dollars (\$80,000) for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by the Consultant in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of City business. Such statements shall be for an amount no greater than that attributable to the Part upon which the Consultant is then engaged as provided in Section 3(c) below.

(c) For purposes of determining the division of the total compensation to the Consultant as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by the City as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of the Consultant's performance as follows: Part 1 – 11%, Part 2 – 27%, Part 3 – 53%, Part 4 – 2% and Part 5 – 7%. Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to the Consultant.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to the Consultant's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. The Consultant shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

#### 4. Termination, Remedies, Force Majeure, and Consolidation of Disputes.

(a) This Agreement shall terminate without any liability of the City to the Consultant upon the earlier of: (i) the Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days prior written notice with or without cause by the City to the Consultant; (iii) the City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, the Consultant shall: (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The Consultant shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of the Consultant to

satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.

(d) Upon any breach of this Agreement by the Consultant, the City may: (i) exercise any right, remedy (in contract, law, or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic, and incidental damages for the breach of the Agreement. If it is determined that the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) The Consultant shall provide the City with adequate written assurances of future performance, upon the request of the Director or designee, in the event the Consultant fails to comply with any terms or conditions of this Agreement.

(f) The Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Consultant shall notify the Director or designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or designee of the cessation of such occurrence.

(g) the Consultant agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity, or statute) may, at the City's option, be joined and consolidated with any other dispute or disputes arising from or relating to the Project so that all disputes arising from or relating to the Project may be resolved in a single proceeding. the Consultant hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

#### 5. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of the City, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other

information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Consultant. The Consultant grants the City a copyright license to use such drawings and writings. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the City of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings, and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by the Consultant will be at the City's sole risk and without liability or legal exposure to the Consultant. The Consultant may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

#### 6. Professional Skill.

It is further mutually understood and agreed by and between the parties hereto that inasmuch as the Consultant represents to the City that the Consultant and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, the City relies upon the skill of the Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.

#### 7. Indemnification.

To the furthest extent allowed by law, including California Civil Code section 2782.8 the Consultant shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Consultant, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If the Consultant should subcontract all or any portion of the services to be performed

under this Agreement, the Consultant shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, the Consultant shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than “A-VII” in the Best’s Insurance Rating Guide, or (ii) as may be authorized in writing by the City’s Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Consultant shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Consultant and the City prior to the

commencement of any services by the subcontractor. the Consultant and any subcontractor/sub-consultant shall establish additional insured status for the City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to the City's execution of this Agreement, the Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.

(b) The Consultant shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. Seq., the California Political Reform Act (California Government Code Section 87100 et. Seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. Seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The Consultant shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, the Consultant shall immediately notify the City of these facts in writing.

(c) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either is employed by the City or is a member of any the City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) The Consultant represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct, or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither the Consultant, nor any of the Consultant's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. the Consultant and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If the Consultant should subcontract all or any portion of the work to



be performed or services to be provided under this Agreement, the Consultant shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program.

In the event the Consultant maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, the Consultant at its sole cost and expense shall:

(a) Immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing the City recycling programs is available from the City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact the City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or designee.

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of the Consultant pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit, or other action is commenced before the expiration of said time period, all records shall be retained and made available to the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this

Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

(d) The Consultant's services pursuant to this Agreement shall be provided under the supervision of Greg Melton, and he/she shall not assign another to supervise the Consultant's performance of this Agreement without the prior written approval of the Director.

## 12. Nondiscrimination.

To the extent required by controlling federal, state, and local law, the Consultant shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, the Consultant agrees as follows:

(a) The Consultant will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) The Consultant will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. The Consultant shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to the Consultant's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. the Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) The Consultant will send to each labor union or representative of

workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of the Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 12.

### 13. Independent Contractor.

(a) In the furnishing of the services provided for herein, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the Consultant is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, the Consultant and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to the City employees. The Consultant shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare, and retirement benefits. In addition, together with its other obligations under this Agreement, the Consultant shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of the Consultant's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in the City employment benefits, entitlements, programs and/or funds offered employees of the City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, the Consultant may be providing services to others unrelated to the City or to this Agreement.

### 14. Notices.

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from

time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding.

Subject to Section 16 below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

16. Assignment.

(a) This Agreement is personal to the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by the Consultant, its successors, or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) The Consultant hereby agrees not to assign the payment of any monies due the Consultant from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Consultant directly to the Consultant.

17. Compliance With Law.

In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, the State of California and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver.

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings.

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability.

The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation.

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees.

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits.

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents.

In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third-Party Beneficiaries.

The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement.

Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Consultant.

29. The City Manager, or designee, is hereby authorized and directed to



execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

By: \_\_\_\_\_  
FRANCISCO V. MAGOS II, PE,  
Assistant Director  
Capital Projects Department

ATTEST:  
TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

No signature of City Attorney required.  
Standard Document #DPW-S Eng. CSA,  
Long Form Total Fee – Contingency (11-  
2022) has been used without modification, as  
certified by the undersigned.

By: \_\_\_\_\_  
Harlavpreet S. Brar, PE  
Licensed Professional Engineer

REVIEWED BY:

SARAH L \_\_\_\_\_  
Sarah Lambeth  
Senior Management Analyst  
Capital Projects Department

Addresses:

CITY:  
City of Fresno  
Capital Projects Department  
Attention: Harlavpreet S. Brar, PE  
Licensed Professional Engineer  
747 R Street, Second Floor  
Fresno, CA 93721-3620  
Phone: (559) 621-8616  
E-mail: Harlavpreet.Brar@fresno.gov

Melton Design Group, Inc.,  
a California Corporation

By: \_\_\_\_\_  
Name: GREG MELTON

Title: CEO - President  
(If corporation or LLC, Board Chair,  
Pres. or Vice Pres.)

By: \_\_\_\_\_  
Name: CHRISTA MELTON

Title: CFO - Secretary  
(If corporation or LLC, CFO, Treasurer,  
Secretary or Assistant Secretary)

Any Applicable Professional License:

Number: PLA # 4217  
Name: GREG MELTON  
Date of Issuance: Exp: 11/29

CONSULTANT:  
Melton Design Group, Inc.  
Attention: Greg Melton, CEO  
820 Broadway Street  
Chico, CA 95928  
Phone: 530-899-1616  
E-mail: Greg@meltongd.com

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **Consultant Service Agreement between City of Fresno (City) and Melton Design Group, Inc. (Consultant)**

##### **Quigley Park Rehabilitation**

#### **PROJECT UNDERSTANDING:**

The Consultant will perform the requested design services to meet the needs of the City and community as designed during the Master Plan Phase. Key design elements for the rehabilitation project include:

1. Community recreation center (9,000-10,000 SF)
  - a. Steel building with attached modern stick-frame recreation rooms and access points.
  - b. Indoor / outdoor restroom and pump house with access.
  - c. Multi-Use meeting rooms.
  - d. Offices and serving kitchen, if possible.
2. New baseball / softball diamond with lighting.
3. New multi-use courts with lighting.
4. Renovated multi-use fields with lighting (re-use existing where possible).
5. New street improvements on Saginaw to reduce street width to 28' with bulb outs for Parking.
6. New street parking on Saginaw (angled) and Teilman (parallel) with power pole protection.
7. Create curbed bulb-outs at Saginaw and Teilman in all four corners of the intersection. Provide ADA access to each corner.
8. New hardscape walkways and lighting throughout park.
9. New spray park with recirculating system and themed play.
10. New playgrounds (2-5 / 5-12) with themed play.
11. New art pedestals by Consultant with art provided by the City (Consultant provides location on plan).
12. New art murals (art and materials provided by the City)
13. New decorative fence with eight (8) artistic cutouts by Consultant.
14. New restroom and pump house facility with shower for spray ground.
15. Renovate existing playground (interior fixtures).
16. New picnic pavilion with shade structure (artistic prefab structure).
17. New landscape and irrigation improvements throughout the park with LID improvements (dense planting along roadways of trees for carbon sequestration).
18. New security camera system to be coordinated with the City of Fresno's Information Services Department.
19. New steel picket fencing.
20. New monument sign.

Design requirements per the City of Fresno include:

1. Prepare and engage with Community outreach onsite after Master Plan updates and cost assessment.
2. Irrigation to meet a two-day watering window with complete system renovation.
3. Contract administration for four (4) months.
4. Provide location, size, and pedestal for art trail with a payment allotted for art from the grant funds to be determined during the conceptual design process.
5. Provide areas for art and murals.
6. Repurpose lighting if possible.
7. Decorative fencing to be designed by Consultant.
8. Add EV charging stations per City requirements.
9. All of the off-site improvements listed in the Project Understanding section need to be approved by the Department of Public Works (DPW). Any additional changes requested by DPW shall be incorporated into the design.

## **PART 1 – SCHEMATIC DESIGN PHASE**

### **PROJECT LAUNCH, PROGRAM DEVELOPMENT, AND PROJECT COORDINATION**

1. Onsite kickoff meeting with the City and all stakeholders.
2. Develop Program of Elements.
  - a. Discuss all possible opportunities and study constraints directing the design.
  - b. Coordinate with the City to prioritize the project needs listed in the Understanding section and incorporate them into the Program of Elements.
3. Conduct bi-monthly meetings with all the stakeholders.
4. Project management for the Schematic Design Phase.

### **SITE ANALYSIS, BASE DEVELOPMENT, AND EXISTING CONDITIONS**

1. Site visit and analysis – onsite and surrounding analysis to confirm existing conditions.
  - a. Confirm utilities and drainage on plans and onsite per City survey.
  - b. Identify all elements onsite that are to remain and to be removed.
  - c. Obtain all site conditions from sun, wind, views, neighbors, uses, etc.
2. Base map using new topographic survey from the City of Fresno. Survey to include both Teilman and Saginaw roadways and 40' up the corner on Dakota at Teilman and up Teilman past Saginaw.
3. Utility with preliminary drainage, water, electrical and sewer analysis and discussion with the City and County Environmental Health for Spray Ground.

### **FINAL SCHEMATIC DESIGN CONCEPT, PUBLIC OUTREACH, AND COST ESTIMATE**

1. Review previous outreach strategies and integrate into new program.
2. Create architectural floor plans, elevations, and preliminary costs for the recreation center and restroom.



3. Update Schematic Design Plan with building Floor Plan alternatives based on internal stakeholder's meetings and data collected from the community.
  - a. Rendered Drawings.
  - b. Sections / Sketches.
  - c. Inspiration Photos.
  - d. Include artistic sections showing location and fence design.
4. Update preliminary cost estimate based on the initial Conceptual Plan
5. Prepare and conduct one public outreach meeting to gain consensus on design and program.
  - a. Determine and facilitate appropriate channels for outreach, prepare a detailed plan for conducting the meeting, and manage translations.
  - b. One (1) in-person community engagement meeting with the public.
6. Submit Schematic Plans to staff for review and comment.
  - a. Assess design options / concepts and reassess prioritized elements.
  - b. Submit park and building plans to City staff at ongoing meetings.
  - c. Based on comments, update the Master Site Plan and building design and prepare a translated submittal package including:
    - Master Site Plan and elements selection.
    - Floor Plans, sections, and elevations for building and bandstand.
    - Preliminary Planting Plan with irrigation main line routing.
    - Package will be uploaded to the Planning and Development Access Citizen Access (ACA) portal for review and comment.
7. Finalize Schematic Design and Cost Estimate.
  - a. 3D color renderings and perspectives of key elements.
  - b. Element photo board.
  - c. Provide an updated cost estimate.
  - d. Gain approval from City to move on to the Design Development Phase.
8. Provide recommendations for the required geotechnical investigations and soil test reports that shall be necessary for the Construction Documents and any additional study that may be required upon finalizing the Schematic Plan.

## **PART 2 – DESIGN DEVELOPMENT PHASE**

1. Create Design Development Plans for City staff review.
  - a. Design of all elements stated in final program.
  - b. Update the 3D renderings.
  - c. Submittal from all Consultants.
2. Preliminary engineering of storm drain, sewer, lighting, and LID measures.
  - a. Digital Plan with storm water controls.
  - b. Cutsheets of materials and elements.
  - c. Preliminary detail and finishes with photos.
3. Coordinate with City of Fresno Public Works Department and Fresno County for utilities, spray park, and plan review.
4. Architectural design of the recreation center. Architect and Engineer will design the recreation center to meet the latest building codes.
  - a. Architect to create Design Development Plans to include:

- All structures review and design.
- Recreation center (large multi-use room, simple catering kitchen, offices, rec room, bandstand, indoor-outdoor restroom, storage and pumphouse for the spray ground).
- Floor Plans.
- Elevations w/ 3D renderings.
- Roof Plan.
- Door and window schedules.
- Architecture materials board.
- Interior design initial concept.
- Preliminary Electrical and Lighting Plan.
- Preliminary structural review.
- Occupancy calculations.
- b. Development review revisions and quality control measures.
- c. Cost estimate revisions.
- d. Updated schedule for construction drawings.
- 5. Final Design Development Plan and analysis of construction costs.
  - a. Quality control final review for all documents.
  - b. City to provide comments and design changes.
- 6. Submit plans to City and get approvals for the Design Development Plans.
  - a. Prepare and submit required Indirect Source Review (ISR) process documents, as required by the SJVACD. The application fees shall be paid by the City.
  - b. Provide updated cost estimate.
- 7. Gain approval to move on to the Construction Document Phase.
- 8. Project coordination and management.

### **PART 3 – CONSTRUCTION DOCUMENT PHASE**

The final Construction Documents shall include, but are not limited to, the following:

1. Title Sheet – Identify all key package information, list of plans, signature box, and inspection punch list.
2. Demolition Plan – Show location of all elements that require removal and offsite disposal.
3. Grading and Drainage Plans – Show grades at all key points and general topography.
  - a. Identify areas, if needed, requiring imported soil for better drainage and plant health.
  - b. Show drainage patterns with slopes and compaction.
  - c. Detailed grading plan with spot elevations.
  - d. Drainage plans and details.

4. Construction Plan – Show location and layout of proposed hardscape, building footprint, restroom, play area, pathways, spray pad, fencing, fields, signage, lighting, and utilities.
  - a. Material description, element location, model numbers, and finishes.
  - b. Art project areas – pedestals and mural.
  - c. Decorative artistic fencing elevations.
  - d. Restroom / storage buildings.
  - e. Enlargements as needed for key detailed areas (play area, spray area, stage, and restroom).
5. Architectural Building and Elevation Plans for Structural Calculations:
  - a. Provide review of design for recreation center, indoor-outdoor restroom, offices, storage room, utility room, amphitheater, bandstand, and any additional items like sign structures or other modifications. Steel building and wood frame construction.
  - b. Coordinate with prefabricated structure manufacturers to ensure timely delivery.
  - c. Provide full set of building documents for steel building and wood frame.
    - Plot-Site Plan
    - Foundation Plan
    - Elevation views
    - Floor Plan
    - Framing Plan
    - Steel building framing and structural plan
    - Details and sections
    - Electrical Plan
    - Plumbing Plan
    - Mechanical Plan
    - ADA Accessibility Plan
    - Energy requirements
    - Fire sprinklers
    - Details, sections, and cutsheets as needed
6. Electrical and Lighting Plan –
  - a. Identify fixtures, electrical points of connection, footcandles, and one-line diagram.
  - b. Locate on plan all locations and wire runs to panel.
  - c. Provide cut sheets as needed for fixtures and materials.
7. Playground Design Plans –
  - a. Playground element layout with fall dimensions.
  - b. Design of fall material layout with color and texture.
  - c. Prepurchase list and costs in coordination with the supplier.
  - d. Color and material verifications.

8. Structural Engineering – Necessary structural calculations for footings for play, spray, walls, and entry monumentation.
9. Spray Ground Plan – Layout, nozzle, supply, pump system, etc. (system in new restroom pump house)
10. Irrigation Plan – Irrigation plan with complete water use information including all water use calculations for all planting areas (two-day watering system).
  - a. Identify all irrigation water use zones (trees, shrubs, and ground covers) along with mainline, new and existing valves, point of connection, and meters.
  - b. Show new valves, flow valves, and controller layout. Use existing point of connection.
  - c. Provide water use calculations identifying maximum applied water allowance and quantity of water use.
  - d. Develop water use schedule with seasonal adjustments along with estimated water use calculations.
11. Planting Plan – Identify all proposed plant species, water use, size, and type.
  - a. Drought tolerant, low-maintenance, adaptive plants and California natives where possible.
  - b. Provide all surface material, gravel, boulders, etc.
  - c. Coordinate with Tree Fresno.
12. QA/QC – Overall plan and specification review throughout the Construction Document process.
13. Detail Sheets – Construction details of all proposed elements.
14. Specifications/Special Provisions for Specialty Specification Items – Use City of Fresno specifications to describe required materials, workmanship, and construction techniques. Include requirements for contractor-supplied as-built drawings.
15. Final Cost Estimate –
  - a. Calculations and detailed cost estimate to verify budget and bid documents including contingency, escalation, insurance, overhead, profit, and bonds.
16. Submittals - Provide sets of Development Plans for the City; revise construction documents, as required, for approval.
  - b. Review all comments and work with staff and matrix to complete the documents.
  - c. Bid Items to be incorporated into the City-provided Front-End specifications, Divisions I-VI.

- d. The City Project Manager will apply for a Building Permit and will submit the Architect's digital construction documents package to Access Citizen Access (ACA) portal for review and comment.
- e. The Consultant will respond to the comments from authorities having jurisdiction, provide explanations, and resubmit digital package addressing all comments.

## **PART 4 – BIDDING PHASE**

- 1. The Consultant will package PDF plan set, bid sheets, and schedule to include in Bid Documents.
- 2. Attend pre-bid walk of the site and review of plans or attend a virtual pre-bid meet.
- 3. Consultant to provide addenda, Requests for Information (RFIs), and clarifications of the Construction Documents to prospective bidders.
- 4. Review bids to verify that they conform to the standards set forth in the specifications of the project.

## **PART 5 – CONSTRUCTION PHASE AND GENERAL CONSTRUCTION CONTRACT ADMINISTRATION**

- 1. Review and accept or deny required contractor submittals, RFIs, cutsheets, and samples.
- 2. Perform project site visits with the project's Contractor and client staff to review the progress of construction and inspect the site and work at determined milestones.
  - a. Kick-off with contractor to discuss methodology and schedule.
  - b. Demolitions marked prior to removal.
  - c. Rough grading and drainage prior to hardscape construction.
  - d. Site accessories such as fences, utilities, and access.
  - e. Hardscape layout and forming prior to pouring concrete and sample finish.
  - f. Finish grading of new areas along with drainage trench.
  - g. Irrigation installation, trench depth, backfill, clock adjustments and system operations.
  - h. Plant material inspection.
  - i. Pre-maintenance period observation and punch list to confirm completion.
  - j. Final walk-through/post-maintenance period punch list.
  - k. The Consultant to perform all other inspections including play equipment certifications.
- 3. As-built drawings developed from Contractor input.
- 4. Project closeout process.

## **COMPENSATION**

Compensation of all services described above will be based on a percentage of the completion. Fees will be billed monthly in accordance with the work completed.



## Part 1 Schematic Design Phase

Project Launch, Program Development, and Project Coordination	\$25,000
Site Analysis, Base Development, and Existing Conditions	\$5,000
Final Schematic Design Concept, Public Outreach, and Cost Estimate	\$64,000

Part 2 Design Development Phase	\$232,000
Part 3 Construction Document Phase	\$461,700
Part 4 Bidding Phase	\$18,500
Part 5 Construction Phase and General Construction Contract Administration	\$63,000

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<b>Total Professional Service Fee</b>	<b>\$869,200</b>
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## SCHEDULE

Part 1 Schematic Design Phase	180 calendar days
Project Launch, Program Development, and Project Coordination	
Site Analysis, Base Development, and Existing Conditions	
Final Schematic Design Concept, Public Outreach, and Cost Estimate	
Part 2 Design Development Phase	90 calendar days
Part 3 Construction Document Phase	240 calendar days
Part 4 Bidding Phase	60 calendar days
Part 5 Construction Phase and General Construction Contract Administration	120 working days

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**  
**Consultant Service Agreement between City of Fresno**  
**(City) and Melton Design Group, Inc. (Consultant)**  
Quigley Park Rehabilitation

**MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance, or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to the Consultant’s profession.

**MINIMUM LIMITS OF INSURANCE**

The Consultant, or any party the Consultant subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.**
4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY (Errors and Omissions):**
  - (i) \$1,000,000 per claim/occurrence; and,
  - (ii) \$2,000,000 policy aggregate.

### **UMBRELLA OR EXCESS INSURANCE**

In the event the Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the the City, its officers, officials, employees, agents, and volunteers.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

The Consultant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the Consultant shall also be responsible for payment of any self- insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, agents, and volunteers; or
- (ii) The Consultant shall provide a financial guarantee, satisfactory to the City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self- insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. The Consultant shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript insurance company endorsement

providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The Consultant shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: the Consultant and its insurer shall waive any right of subrogation against the City, its officers, officials, employees, agents, and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by the Consultant.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five-year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by the Consultant, the Consultant must purchase "extended reporting" coverage for a minimum of five years after completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to the City. The Consultant is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or

agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the Consultant shall furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the City, the Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

#### **VERIFICATION OF COVERAGE**

The Consultant shall furnish the City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or designee prior to the City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the City, the Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

**SUBCONTRACTORS** - If the Consultant subcontracts any or all of the services to be performed under this Agreement, the Consultant shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by the City Risk Manager or designee. If no side agreement is required, the Consultant shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and the Consultant shall ensure that the City, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with the Consultant, and the City, prior to commencement of any work by the subcontractor.



**EXHIBIT C**  
**DISCLOSURE OF CONFLICT OF INTEREST**  
Quigley Park Rehabilitation

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	X
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	X
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	X
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	X
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	X
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	X
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

Signature

01/26/2024

Date

Gregory Melton

Name

Melton Design Group, Inc.

Company

820 Broadway Street

Address

Chico, CA 95928

City, State, Zip

☐ Additional page(s) attached.