

SAMPLE SERVICE CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and [Contractor Name], [Legal Identity] (Contractor) as follows:

1. CONTRACT DOCUMENTS. The "Notice Inviting Proposals," "Instructions to Proposers," "Proposal" and the "Specifications" including "General Conditions," "Special Conditions", "Federal Conditions", "Functional Specifications" and "Technical Requirements" for the following: [Title] (Request for Proposals No. [Number]) copies of which are annexed hereto, together with all the documents specifically referred to in said annexed documents, including the Performance Bond, if required, are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. PRICE. For the monetary consideration of [WRITTEN \$ AMOUNT] DOLLARS AND [WRITTEN CENTS AMOUNT] CENTS (\$[DOLLAR AMOUNT]), as set forth in the Proposal, Contractor promises and agrees to perform or cause to be performed, in a good and workmanlike manner, and to the satisfaction of City, and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.

3. PAYMENT. City accepts Contractor's Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents.

4. INDEMNIFICATION. To the furthest extent allowed by law, including California Civil Code section 2782 (if applicable), Contractor shall indemnify and hold harmless City and each of its officers, officials, and employees, 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) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses), to the extent caused by the negligence, recklessness or willful misconduct of Contractor, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify and hold harmless City and each of its officers, officials, and employees in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by City shall be subsequent to that of Contractor's, and this Contract shall be binding and effective upon execution by both parties.

<p>CITY OF FRESNO, A California municipal corporation</p> <p>By: _____ [Name], [Title/Dept.]</p> <p>APPROVED AS TO FORM: ANDREW JAN City Attorney</p> <p>By: _____ [Name] Date Senior Deputy City Attorney</p> <p>ATTEST: TODD STERMER City Clerk</p> <p>By: _____ Deputy Date</p>	<p>[CONTRACTOR], [Legal Identity]</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____ (If corporation or LLC., Board Chair, Pres. or Vice Pres.)</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____ (If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)</p> <p>REVIEWED BY:</p> <p>_____</p>
<p>Addresses: CITY: City of Fresno Attention: [Name] [Title] [Street Address] Fresno, CA [Zip] Telephone: (559) [#] E-Mail: [E-Mail address]</p>	<p>CONTRACTOR: [Contractor Name] Attention: [Name] [Title] [Street Address] [City, State Zip] Telephone: [area code and #] E-Mail: [E-Mail address]</p>

III - GENERAL CONDITIONS

III. GENERAL CONDITIONS

1. **DEFINITIONS:** Wherever used in the Specifications, including the Instructions to Proposers, the proposal, or any of the Contract Documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

- (a) "City" and "City of Fresno" shall each mean the City of Fresno, CA, unless otherwise indicated.
- (b) "City Manager" shall mean the City Manager of the City of Fresno.
- (c) "Contract" and "Contract Documents" shall each mean and refer to these Specifications, including the Instructions to Proposers, the proposal and any addenda thereto, the Contract and all City of Fresno specifications, and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
- (d) "Contractor" shall mean each person or entity awarded a Contract hereunder and named or to be named in the Contract with the City of Fresno to furnish the goods or services, or both, to be furnished under the Contract.
- (e) "Council" and "City Council" shall each mean the Council of the City of Fresno.
- (f) "Proposer" shall mean each person or entity submitting a proposal, whether or not such person or entity shall become a Contractor by virtue of award of a Contract by the City.
- (g) "Purchasing Manager" shall mean the Purchasing Manager of the City of Fresno.
- (h) "Specifications" shall mean the Contract Documents.

2. **DELIVERY OF SERVICES:** If Contractor is delayed providing services by (i) any acts or omissions of City or its employees, or others acting under authority of City by contract or otherwise, (ii) acts of God which Contractor could not reasonably have foreseen and provided for, (iii) illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, or (iv) any illegal general lockouts or other defensive action by employers, whether general or by organizations of employers; Contractor shall have no claim for damages against City for any such cause of delay, but shall be entitled to an extension of time as will reasonably compensate Contractor for actual loss of time occasioned thereby. Contractor may apply to the City Manager for such extension. However, no such extension of time shall be granted unless Contractor shall have notified the Purchasing Manager, in writing, within one week after the commencement or occurrence of the condition or event which is expected to cause a delay in delivery, of such condition or event and the actual or estimated number of days of delay anticipated on account thereof. The decision of the City Manager as to the number of additional days, if any, to be allowed for completion of delivery on account of such condition or event, will be given in writing to Contractor.

3. **TERMINATION FOR CONVENIENCE:** The City reserves the right to terminate this Contract for any reason, upon sixty (60) days written notice to the Contractor. In the event of such termination, the Contractor shall be paid for satisfactory service performed to the date of termination.

4. **TERMINATION FOR CAUSE:**

- a. If the Contractor shall fail to complete delivery, within the time or times specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the Contract, the City Manager of the City of Fresno or designee, acting for and on behalf of the City, may at any time after the expiration of the time for cure, terminate the Contract as to the whole thereof,

or in the event partial delivery has been made and accepted, as to such of the items or service to be furnished which have not been delivered or accepted prior to such termination.

b. The City may terminate this Contract if the Contractor materially breaches any of its obligations under this Contract and fails to commence and diligently pursue reasonable efforts to cure such breach within fifteen (15) days after written notice by the City specifically describing the breach.

c. Such termination shall be effective upon receipt by Contractor of written notice of termination from said City Manager or designee, which notice shall be deemed to have been received by Contractor, if mailed by certified mail, within forty-eight hours to Contractor's address as contained in the proposal to the City or, if personally delivered, upon the delivery thereof to Contractor, the authorized representative of Contractor, or to the Contractor's said address.

d. The Contractor may terminate services on the Project upon fifteen (15) days written notice without cause or in the event of substantial failure by the City to fulfill its obligations of the terms hereunder. Contractor shall submit an invoice for services performed up to the effective date of termination and the City shall pay Contractor all outstanding invoices, together with all costs arising out of such termination, within fourteen (14) days. The City may withhold an amount for services that may be in dispute provided that the City furnishes a written notice of the basis for their dispute and the amount withheld represents a reasonable value.

5. CONTRACT DOCUMENTS: Upon award of the Contract, the Contractor shall execute and submit all required documents to the Purchasing Manager, 2600 Fresno Street, Fresno, California 93721, in a form acceptable to the City of Fresno within fifteen (15) calendar days (except in the event federal funding is applicable to this Contract, then 10 working days) from the date of Notice of Award. Failure to provide said documents within the designated period shall be sufficient cause to forfeit the proposal deposit and initiate a City departmental recommendation for City to award the Contract to another Proposer.

6. PERFORMANCE BOND: Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect a "Faithful Performance Bond" from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California, in the amount of **\$5,000.00**. If applicable, this bond is to be renewed annually.

7. INSURANCE REQUIREMENTS.

(a) Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all insurance as required herein 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- II in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein.

(b) If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors 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 Contractor shall be withheld until notice is received by 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 City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Contractor of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by 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 Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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 Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

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.

The most current version of ISO 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).

Workers Compensation insurance as required by the State of California and Employer's Liability Insurance.

Technology Liability (Errors and Omissions) insurance appropriate to CONTRACTOR'S profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by Contractor 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, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

MINIMUM LIMITS OF INSURANCE

Contractor, or any party the Contractor subcontracts with, shall maintain limits of liability of not less than those set forth below.

COMMERCIAL GENERAL LIABILITY:

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

COMMERCIAL AUTOMOBILE LIABILITY:

\$2,000,000 per accident for bodily injury and property damage.

WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.

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.

TECHNOLOGY PROFESSIONAL LIABILITY insurance with limits of not less than:

- (i) \$2,000,000 per claim/occurrence; and,
- (ii) \$4,000,000 policy aggregate

UMBRELLA OR EXCESS INSURANCE

In the event Contractor 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 City, its officers, officials, employees, agents, and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Contractor shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Contractor 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 City's Risk Manager or designee. At the option of the City's Risk Manager or designee,

either:

The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents, and volunteers; or

Contractor shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall 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:

City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Contractor 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 10 01 and CG 20 37 10 01 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.

For any claims relating to this Agreement, Contractor'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 Contractor's insurance and shall not contribute with it. Contractor 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: CONTRACTOR and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents, and volunteers.

If the Technology Liability insurance policy is written on a claims-made form:

The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONTRACTOR.

Insurance must be maintained and evidence of insurance must be provided for at least five (5) 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 (5) year discovery period.

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 CONTRACTOR, CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.

A copy of the claims reporting requirements must be submitted to CITY for review.

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 City. Contractor 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, Contractor shall furnish 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 City, Contractor 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 these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by 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 Contractor shall not be deemed to release or diminish the liability of Contractor, 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 Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS

If Contractor subcontracts any or all of the services to be performed under this Agreement, Contractor 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 City Risk Manager or designee. If no side agreement is required, Contractor shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and Contractor shall ensure that City, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Contractor, and City, prior to commencement of any work by the subcontractor.

VERIFICATION OF COVERAGE

Contractor shall furnish 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 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 City, Contractor 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.

8. INDEMNIFICATION: To the furthest extent allowed by law, including California Civil Code section 2782 (if applicable), Contractor shall indemnify and hold harmless City and each of its officers, officials, and employees 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) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), to the extent caused by the Contractor's negligent acts, errors, or omissions in its performance of this Contract. Contractor's obligations under the preceding sentence shall apply to the extent of any loss, liability, fines, penalties, forfeitures, costs or damages caused by the negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, and hold harmless City and each of its officers, officials, and employees in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

9. PRECEDENCE OF CONTRACT DOCUMENTS: The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Scope of Work.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order precedence.

10. FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986: As a material part of any contract for a City of Fresno project, every Contractor who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, the Contractor will make any employee documentation required to comply with the Act immediately available to the City upon its request for each individual employee working on a City of Fresno project.

11. WORKMANSHIP GUARANTY: The workmanship of the services to be performed for the City by the Contractor will be in accord with the Specifications, and where not specified, in accord with generally accepted standards.

12. ALTERATION OF TERMS: No alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by both parties.

13. CONTRACT CHANGES: No changes or modifications to the Contract shall be made unless agreed to and signed by both parties. No prior, current or post award verbal agreement or agreements with any officer, agent or employee of the City shall affect or modify any terms or obligations of these Specifications or any Contract resulting from this procurement.

14. AMENDMENTS: The City of Fresno reserves the right to add, modify, or delete items from the Contract including Special Conditions or Scope of Work. Any changes shall be made only by means of a formal amendment signed by both the City and Contractor.

15. ASSIGNMENT: The Contract is personal to the Contractor and there shall be no assignment, transfer, sale, or subcontracting by the Contractor of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale, or subcontracting by the Contractor, its successors, or assigns, shall be null and void unless approved in writing by the City.

16. TERMINATION BY CITY FOR NON-APPROPRIATION: In the event of non-appropriation relating to the Contract, City shall have the right to terminate the Contract at the end of any fiscal year of City, in the manner and subject to the terms specified in this paragraph. City shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such fiscal year, and shall notify Contractor of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve-month fiscal period of City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of the Contract by City.

17. INDEPENDENT CONTRACTOR: In the furnishing of the services provided for herein, the Contractor is acting as an independent contractor. Neither the Contractor, nor any of its officers, associates, agents or employees shall be deemed an employee, joint venturer, partner, or agent of the City for any purpose. However, the City shall retain the right to verify that the Contractor is performing its respective obligations in accordance with the terms of the Contract.

Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor 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, Contractor shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Contractor'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 City employment benefits, entitlements, programs and/or funds offered employees of 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, Contractor may be providing services to others unrelated to City or to this Agreement.

18. GOVERNING LAW AND VENUE: The Contract 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 the Contract and any rights and duties thereunder shall be Fresno County, California.

19. COMPLIANCE WITH LAW: In providing the services required under the Contract, Contractor shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, 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 the Contract.

20. SEVERABILITY: The provisions of the Contract are severable. The invalidity, or unenforceability of any one provision in the Contract shall not affect the other provisions.

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

22. 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 the Contract, 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.

23. EXHIBITS: Each exhibit and attachment referenced in the Contract is, by the reference, incorporated into and made a part of the Contract.

24. MAINTENANCE OF RECORDS: Records of Contractor pertaining to the services hereunder shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of the Contract and for a period of three years after final payment and for the period of time required by law. In addition, all books, documents, papers, and records of Contractor pertaining to the Contract shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of the Contract.

25. RECYCLING: In the event Contractor 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, Contractor at its sole cost and expense shall:

- (a) After award, 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 City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (b) Immediately contact the 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 City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

26. NOTICES: Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally 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 the Proposal in the case of the Contractor and at the address in the Special Conditions for mailing of invoices in the case of City, 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.

27. BINDING: Subject to Section 15 of these General Conditions, once this Contract 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.

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

29. 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.

30. NO THIRD PARTY BENEFICIARIES: The rights, interests, duties and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties.

31. EXTENT OF AGREEMENT: Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract 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 Contract may be modified only by written instrument duly authorized and executed by both City and Contractor.

32. HEADINGS: The section headings in this Contract 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 Contract.