

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

THIS AGREEMENT is made and entered into effect on _____,
by and between the CITY OF FRESNO, a California municipal corporation (City), and
Community Works Design Group, a California Limited Liability Corporation (Consultant).

RECITALS

WHEREAS, the City desires to obtain professional engineering and design services for developing a Master Plan for Milburn/Dakota Park (Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a engineering and design company 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 PARCS Director (Administrator) or designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises 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 to the satisfaction of the City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through June 30, 2020, subject to any earlier termination in accordance with this Agreement. The services of the Consultant as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 not to exceed Ninety Thousand Dollars (\$90,000.00), paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of City

business. The City shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) 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.

4. Termination, Remedies and Force Majeure.

(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 Administrator's request, 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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 Administrator. 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, 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 writings and 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. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(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, 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 and litigation expenses) 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 his/her 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 10 01 and CG 20 37 10 01 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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, the Consultant shall remain responsible for complying with Section 9(b), above.

(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:

- (i) 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.
- (ii) 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.
- (iii) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) 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 Administrator 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.

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.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

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

CITY OF FRESNO,
a California municipal corporation

Community Works Design Group,
a California Limited Liability Corporation

By: _____
[Name],
[Title]

By: [Signature]

Name: TIM MALONEY

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney's Office

Title: PRESIDENT
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: [Signature] 2/5/20
Kristi M. Coste Date
Senior Deputy City Attorney

By: [Signature]

Name: SCOTT RICE

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

Title: Vice President
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

By: _____
Deputy

Any Applicable Professional License:
Number: 2110
Name: TIM MALONEY
Date of Issuance: 1992

Addresses:

CITY:
City of Fresno
Attention: TJ Miller,
Interim PARCS Director
1515 E. Divisadero
Fresno, CA 93721
Phone: (559) 621-2909
FAX: (559) [#]

CONSULTANT:
Community Works Design Group
Attention: Timothy Maloney,
President
4649 Brockton Avenue
Riverside, CA 92506
Phone: (951) 369-0700
FAX: (951) 369-4039

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 Community Works Design Group (Consultant) Master Plan Milburn/Dakota Park

TASK 1 - RESEARCH - PROGRAM SCOPING

Our initial efforts will involve working in a design support role to the City and their grant writing team. Below is our proposed scope of work to best supplement the Proposition 68 Grant submittal process:

1. We will actively participate in initial meetings with the City, key stakeholders, and the grant writing consultant to determine the timing and protocol for our exhibit preparation. Due to the Park's location, this may involve coordination with Central Unified School District and perhaps the County who's property is south of W. Dakota Avenue.
2. To accurately assess total project costs, we will meet with the City staff regarding maintenance concerns and anticipated use patterns of the site. We will research and discuss utility requirements with appropriate City departments and other providers of public utility service.
3. We will attend all Project Development Team meetings as required during this phase of the project. Because City/team communication is so important, our team will be available for as many meetings as desired by the City throughout the life of the project, with no cost to the City for additional meetings.
4. We will confer with the City regarding Special Interest/Focus groups and Stakeholder Groups to include in the development of a Milburn/Dakota Task Force.
5. We will work with the City Team regarding the survey questions to be included in the Community Survey. All survey questionnaires will be provided for review and submissions in English and Spanish. The survey will be electronically prepared for use and disbursement by the City. Our team will set up and monitor the survey via Survey Monkey. We will also develop and utilize Facebook Target Advertising to promote the survey. All surveys and results will be compiled and presented by our team in English and Spanish.
6. We will work to provide a preliminary design schedule, which will be dovetailed and dependent upon the grant application schedule. Our schedule will be prepared utilizing Critical Path Method via Microsoft Project.

TASK 1- PROGRAM ASSESSMENT- DELIVERABLES

- Regular e-mail progress updates and ongoing coordination documentation
- QA/QC Plan for City Review and Approval
- Community Survey Preparation
- Stakeholder Coordination

- Preliminary Schedule

TASK 2 - CONCEPTUAL PARK PLANNING

As described in Task 1, we will work with the City and their consultants to develop conceptual exhibits and cost estimates, in order to secure grant funding for the park.

1. We will attend the City's Task Force and public input meetings in order to get a full understanding of the needs and wants. We will be available to answer general design questions, especially relating to rough costs of various desired amenities, and ideal synergy in placing park features in relation to one another (such as ensuring public restrooms are as close as possible to play areas, restrooms include exterior shower facility for splash pad, etc.)
2. We will work with the City to coordinate disbursement of the electronic Park Survey. Our team will coordinate the Park Survey with Survey Monkey and Facebook Target Advertising. All information from all survey means and methods will be compiled and survey results presented to the City. All survey information and reports will be provided in English and Spanish.
3. We will meet with the City Staff and the City appointed Task Force to receive input regarding the desired uses of the park. We are planning on coordinating five (5) Community/Special Event workshops/design input meetings. CWDG will facilitate a minimum of three (3) Community Workshops - various dates and times to be determined. The City will coordinate and facilitate a minimum of two (2) additional input meetings in conjunction with up-coming special events and festivals. All meetings will be conducted in English with Spanish translations available. CWDG will coordinate with the City's consultant for these on-site translation services. We will coordinate with the City regarding hearing impaired or other communication disabilities.

We will coordinate with City Parks Staff and City Councilmember Esmeralda Soria regarding the preparation of all meeting flyers and materials.

We will coordinate the Community Workshops with the City and the Task Force. A general outline of our approach follows:

- A. Meet with City Staff
 1. Discuss City desires.
 2. Discuss "Community Park Workshop" process.
 3. Present variety of "typical" Neighborhood Park amenities on boards for input.
 4. Schedule meetings with community task force/special interest groups.

B. Stakeholder Task Force/Special Interest Meetings

1. Introduce design team/City representatives.
2. Present format for Community Input and “typical” park planning and design for Neighborhood Designed Parks.
3. Present the Conceptual Park Plans based on previous outreach results.
4. Discuss “Community Park Workshop #1” process.

C. “Community Park Workshops and Special Events”

1. Start with food, refreshments game booths, etc.
2. At the meeting or CWDG Booth, present a drone video site tour and park overview.
3. Discussion of site plan opportunities/constraints, adjacent uses, etc
4. Share current results of Community Survey
5. Share “typical” Neighborhood Park Amenities Boards
6. Utilize “dots” to gain input and preferences for park amenities (on Park Amenities Boards).
7. Utilize “Park Parts” puzzle pieces for individual park design.

Throughout the various Workshops and Special Events we will be working with the Community to prepare various individual and team Conceptual Park plans. As the process moves along we will be working with Staff and the Task Force to “funnel” the various prepared plans and survey input information into the development of two (2) Conceptual Park Plans. These two Conceptual Plans will be presented to the community to select the various pieces and parts from each to funnel into a single Park Master Plan which will then be processed thru the various City Departments and Commissions for final approval by the City Council. All public meetings will be presented in English with Spanish translations All survey and flyer materials will be prepared in English and Spanish as well.

At these later Community Workshops each participant will have the opportunity to vote anonymously with the use of the Edi-Vote, our push button handheld voting devices which produces instant voting results. Each participant will be show on the monitor the colored park conceptual plan. They will have the opportunity to vote on what elements they like from the plan. Each participant gets to select if the like the amenities and also may have a voice in where they prefer the amenity be located and/or how many of each amenity they desire.

1. Present the Conceptual Park Plans to the Community based on outreach results.
2. Review all concepts and discuss pros and cons of each option.
3. Conceptual Plan “Funneling Process” via the Edi-Vote system.
4. We will funnel the community input data, synthesis and inventory into the preparation of two Conceptual Plans for the park site, that maximizes “green”

opportunities while maintaining the integrity and overall goals of the park design. The two initial Preliminary Plans will be presented to the City in blackline format for initial discussion and feedback.

5. A corresponding estimate of construction costs will be provided at a “rough order of magnitude” level, so that the costs of the improvements can be evaluated in relation to available budget.

6. Upon City review and discussion, we will revise the blackline concepts and cost estimates as needed.

TASK 2- CONCEPTUAL PARK PLANNING - DELIVERABLES

- PDF copies of all documents
- Regular e-mail progress updates and ongoing coordination documentation
- Design, coordination, and preparation of meeting agendas
- Documentation of QA/QC Plan Implementation
- Preliminary Cost Estimates
- Preliminary Survey/Questionnaire Report
- Electronic copies of all presentations and documents
- Color Conceptual Park Plans (Two)

TASK 3 - MASTER PLANNING

From the community’s votes of Concepts and alternates above, and the “funneling” process of two or three plans down to one Park Master Plan. We will present the plan to the Task Force and department staff for review and input. The Master Plan shall be presented on black line prints with color as well as electronic format and Optional 3-D renderings and Fly-thru. Reduced 11x17 copies will be provided to staff. All presentation materials will become the property of the City.

1. Once the City has determined the Preliminary Plan and Cost Estimate accurately reflect their vision for Milburn/ Dakota Park, we will fully develop, detail, render and present electronically the plan view and Optional 3-d model of the preferred design alternative for the City’s use in soliciting grants and updating the community about the park project.

2. We will work with 4Creeks to produce all CEQA studies and prepare the Initial Study and Mitigated Negative Declaration report for City submittal and approval. 4Creeks will be available to review the report with City Staff and will be available for response to questions regarding the report.

Biological Resources Evaluation:

4Creeks will maintain ongoing management, analysis, and requested coordination for a biological assessment for the project. 4Creeks will determine the level of technical study/memo required based on the environmental assessment and initial study.

Cultural Resource Analysis:

4Creeks will conduct required CHRIS data research and determine if additional cultural resource evaluations will be required:

- Preparation of a full California Historical Resources Information System (CHRIS) data research;
- Background research of the area;
- Field work and summary of findings from field visit;
- Preparation of exhibits as requested;
- May require meetings with local tribes if reply for commenting on project
- City of Fresno will conduct necessary tribal consultation in compliance with AB 52 and provide results to 4Creeks,
- Draft report, final report in electronic format and one hard copy final report.

Environmental Assessment Application and Initial Study for CEQA compliance:

- Meet with City of Fresno staff to determine full project description, timing, and other important details for processing the proposed project;
- 4Creeks will conduct necessary research to determine the intent, scope and details of the project. Field reconnaissance will be conducted to observe existing site conditions and take any required photographs in order to gain a thorough understanding of the project site, surrounding areas, and sensitive nearby land uses;
- Utilizing the project description, technical studies, and other sources, 4-Creeks will prepare the Initial Study consistent with the requirements of CEQA, relevant case law, and specifications of the district.

The Initial Study/Mitigated Negative Declaration (IS/MND) will include the analysis for the following sections:

- Introduction - The introduction chapter will provide the basic, non-technical explanation of the Initial Study, as well as additional information relevant to the reading and understanding of the document.
- Environmental Assessment Process – A brief explanation of the CEQA environmental review process including initial study, NOI, and NOD requirements.
- Project Description – This Chapter will be prepared using the detailed description and research from 4Creeks. A list of discretionary actions required by the district, other agency approvals required to proceed with implementation of the proposed project, and a list of responsible and other agencies expected to use the Initial Study in their decision making will also be included.

- Evaluation of Environmental Impacts and Mitigation Measures – Impact evaluation criteria or thresholds for determining the significance of impacts will be described for each environmental impact of the proposed development project. A thorough review and analysis of each section topic will be provided in detailed responses. This section will include the level of significance of any project related impacts and if mitigation would be required. Potentially significant impacts that can be mitigated below the threshold of significance will be identified with appropriate mitigation measures or project alternatives.
 - Biological Study: This is required and estimated in Task 2
 - Cultural Study: This is required and estimated in Task 3
 - Once the Draft Initial Study is completed, 4Creeks staff will provide a report to City of Fresno to go over the findings and impacts. The Committee or persons reviewing will provide comment and determination to continue to process the CEQA document;
 - Prepare the NOC for the CEQA document (Verify if City will prepare NOC and NOD);
 - Prepare Final environmental documents for CEQA compliance as required by the City of Fresno.
 - Provide necessary correspondence with City staff and other involved agencies throughout the process in order to provide continued processing of the CEQA document and keep all parties involved of the status.
3. A water retention study will be prepared for the park site. The report will provide proposed mitigation measures for increased peak and zero run-off as may be required. Various grading and paving options will be explored to create a “green” reduction of run-off.
 4. We will assure that all associated agencies are consulted in regards to all utilities etc. and that all constraints are addressed, so that we can ensure that sufficient funding is being sought within the grant application(s).
 5. Updated construction estimates prepared by our office will be presented at this time.
 6. We will present the Final Master Plans, Phasing Plans and Master Plan Reports to the Stakeholder Task Force Committee and PARCS.Staff for all approvals.

TASK 3- PRELIMINARY/ MASTER PLANNING - DELIVERABLES

- PDF copies of all documents
- Regular e-mail progress updates and ongoing coordination documentation
- Design, coordination, and preparation of meeting agendas
- Documentation of QA/QC Plan Implementation
- Final Cost Estimates
- Final Survey/Questionnaire Report

- Electronic copies of all presentations and documents
- IS/MND Report and Findings
- Optional 3-D concepts of Final Master Plan

]

SCHEDULE OF FEES AND EXPENSES

COMMUNITY WORKS DESIGN GROUP - NORMAL HOURLY RATES

Principal Landscape Architect's
time at the fixed rate of: \$195.00 per Hour

Certified Access Specialist's
time at the fixed rate of: \$225.00 per Hour

Senior Landscape Architect's
time at the fixed rate of: \$155.00 per Hour

Project Manager's
time at the fixed rate of: \$135.00 per Hour

Principal Civil Engineer's
time at the fixed rate of: \$195.00 per Hour

Certified Irrigation Designer's
time at the fixed rate of: \$135.00 per Hour

Project Design Engineer's
time at the fixed rate of: \$165.00 per Hour

Resource Statistician's
time at the fixed rate of: \$185.00 per Hour

Landscape Designer's
time at the fixed rate of: \$115.00 per Hour

Professional Translator's

time at the fixed rate of: \$105.00 per Hour

Professional Staff's

time at the fixed rate of: \$ 75.00 per Hour

OUTSIDE CONSULTANTS

Services of outside consultants not listed in this proposal, at our direct cost, plus 15% of the actual cost of their services for coordination.

REIMBURSABLE ITEMS

Reimbursable items, such as the cost of plotting, graphic reproduction and shipping, at our direct cost plus 15%. Auto travel shall be charged at the current IRS Standard Mileage Rates. Reimbursable items are billed in addition to the stated fee.

TERMS AND CONDITIONS OF PAYMENT

We will bill in proportion to the percentage of work complete at the time of billing. All billing statements are due upon receipt. Interest will be charged at the rate of 2% per month on the past due balance thirty days and over.

EXHIBIT B

INSURANCE REQUIREMENTS Consultant Service Agreement between City of Fresno (City) and Community Works Design Group (Consultant) Master Plan Milburn/Dakota Park

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 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). If personal automobile coverage is used, the City, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
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. Architect's and engineer's coverage is to be endorsed to include contractual liability.

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 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 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 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 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.

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 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 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 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 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.

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 will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

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.

**EXHIBIT A
DISCLOSURE OF CONFLICT OF INTEREST**

RFQ: Milbourn/Dakota Park Master Plan Consulting Services

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

Explanation: _____

_____ Signature 

_____ 9/3/2019

_____ Date

_____ Scott Rice

_____ (name)

_____ Community Works Design Group

_____ (company)

_____ 4649 Brockton Avenue

_____ (address)

_____ Riverside, CA 92506

Additional page(s) attached. _____ (city state zip)

ALL-B 3.0 /01-24-18

