

## SERVICE CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and Wells Fargo Bank, N.A., a National Banking Association (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: Request for Proposals (RFP) Requirements Contract for Banking Services (Request for Proposals No. 12500077) 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 EIGHT HUNDRED SIXTY-NINE THOUSAND FIVE HUNDRED SEVENTY-THREE DOLLARS AND NINETY-SEVEN CENTS \$869,573.97, as set forth in the Proposal attached hereto as Exhibit A. 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. During the term of this Agreement, CONTRACTOR will indemnify, defend and hold harmless the CITY and its officers, directors, employees, agents and assigns (the "Indemnified Parties") from and against all losses or damages (collectively, "Losses") arising out of, resulting from or relating to the performance of the services provided hereunder which are, in each case, directly caused in whole or in part by the negligent or intentional misconduct of CONTRACTOR or any of its officers, directors, employees, agents, subcontractors or assigns, except to the extent such Losses are caused by the negligence or intentional misconduct of the CITY.

The Service Documentation requires the CITY to indemnify CONTRACTOR. The CITY and CONTRACTOR agree that this Contract shall in no way act to abrogate or waive any immunities available to CITY under the Tort Claims Act of the State of California.

5. LIMITATION OF LIABILITY. In no event will either party be liable for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to either of the parties, and regardless of the form of the claim or action or the legal theory on which it is based.

6. DISPUTE RESOLUTION. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration in the County of Fresno under the provisions of the California Arbitration Act (CCP §§1280 et seq.) before an arbitrator. Any decision or award as a result of any such arbitration proceeding shall be

in writing and shall provide an explanation for all conclusions of law and fact and shall include any apportionment of fault, the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by a local retired judge/justice mutually agreed to by the parties and shall include a written record of the arbitration hearing. The matter must be heard before three arbitrators if the amount in dispute is U.S. \$5,000,000 or more or its equivalent in any other currency, and before one arbitrator for amounts in dispute of less than U.S. \$5,000,000 or its equivalent in any other currency. This arbitration requirement does not limit the right of CONTRACTOR or CITY to: (a) exercise self-help remedies including setoff or (b) obtain provisional or ancillary remedies such as injunctive relief or attachment, before, during or after the pendency of any arbitration proceeding.

**[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.

CITY OF FRESNO,  
A California municipal corporation

WELLS FARGO BANK, N.A.  
a national banking association

By: \_\_\_\_\_  
Melissa Perales,  
Purchasing Manager

By: Love  
Name: Madaline Love  
Title: Managing Director,  
Senior Relationship Manager

APPROVED AS TO FORM:  
ANDREW JANZ, City Attorney

REVIEWED BY:

City Attorney  
Signed by: \_\_\_\_\_  
By: Brandon Collet 3/20/2025  
Brandon Collet Date  
Senior Deputy City Attorney

\_\_\_\_\_

ATTEST:  
TODD STERMER, CMC City Clerk

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

Addresses:  
CITY:  
City of Fresno  
Attention: Santino Danisi  
Controller  
2600 Fresno Street  
Fresno, CA 93721  
Telephone: (559) 621- 7006  
E-Mail: Santino.Danisi@fresno.gov

CONTRACTOR: Wells Fargo Bank, N.A.  
Attention: Madaline Love  
Managing Director, Senior Relationship Manager  
2141 Rosecrans, 4<sup>th</sup> Floor  
El Segundo, CA 90245  
Telephone: 213-434-1337  
[lovely@wellsfargo.com](mailto:lovely@wellsfargo.com)

Attachments:  
Exhibit 1 - Proposal  
Exhibit 2 - General Conditions  
Exhibit 3 - Special Conditions

**EXHIBIT 1  
PROPOSAL**



## EXHIBIT 2 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; neither party shall have a claim for damages against the other.

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 this Contract if the City materially breaches any of its obligations under this Contract and fails to commence and diligently pursue reasonable efforts to cure such breach within one hundred and twenty (120) days after written notice by the City specifically describing the breach.

5. CONTRACT DOCUMENTS: Upon award of the Contract, the Contractor shall execute and submit all required documents to the Purchasing Manager, 2101 G Street, Bldg. A, Fresno, California 93706, 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. 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-VII" 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..

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.

(b) 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:

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).

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

4. Cyber Liability (Privacy and Data breach) The Cyber Liability insurance shall cover claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information (including credit monitoring costs), alteration of electronic information, extortion and network security. Such coverage is required for claims involving any professional services for which CONTRACTOR is engaged with the City for such length of time as necessary to cover any and all claims



## 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.:

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. CYBER LIABILITY insurance with limits of not less than:

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 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.

## OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. Additional Insured status under the General Liability policy shall be broad as that contained in ISO Form CG 20 10 04 13 or CG 20 26 04 13.

2. The coverage shall contain no special limitations on the scope of

protection afforded to CITY, its officers, officials, employees, agents and volunteers.

3. 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 in excess of CONTRACTOR'S insurance and shall not contribute with it. CONTRACTOR shall establish primary and non-contributory status under the General Liability policy by use of 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 General Liability and Automobile Liability insurance policies are to policies of insurance shall 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. The City shall not be required to file a claim on its insurance prior to filing a claim against CONTRACTOR's insurance.

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.

CONTRACTOR may satisfy any or all of the above insurance requirements by use of self-insurance, deductible, and/or a captive insurance company (and any rating requirements set are not applicable to CONTRACTOR's use of self-insurance, deductible, or to policies issued by a captive insurance company). The responsibility to fund any financial obligation for self-insurance, the election not to insure, and the amount of any deductible are assumed by, for the account of, and at the sole risk of CONTRACTOR. The application of coverage within this self-insurance, election not to insure, and/or deductible is deemed covered in accordance with any policy forms set forth in this contract.

If the Cyber Liability 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 CONTRACTOR.

2. These requirements shall survive expiration or termination of the Agreement. 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 polices 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.

#### VERIFICATION OF COVERAGE

CONTRACTOR shall furnish CITY with all certificate(s) effecting coverage required hereunder. All certificates 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.

#### SUBCONTRACTORS

If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall 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.

7. 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; (6) Wells Fargo's Service Documentation.

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

8. 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.

9. WORKMANSHIP GUARANTY: Contractor warrants the services to be provided will be in accordance with Wells Fargo's Service Documentation, which governs the accounts and services to be provided.

10. 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.

11. 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.

12. 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.

13. 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; provided, however, that Contractor may assign Agreement without consent in connection with a merger, acquisition or corporate restructuring involving Contractor."

14. 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. In the event of termination by non-appropriation, the Contractor shall be paid for satisfactory service performed to the date of termination.

15. 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 audit relevant records with reasonable prior notice during normal business hours in accordance with Contractor's policies for the purpose of verifying the accuracy of amounts charged or compliance with contractual financial and record-keeping requirements. Contractor cannot allow audits or inspections of its data center, facilities, systems, networks or equipment for security and confidentiality reasons. 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.

16. GOVERNING LAW AND VENUE: The Contract shall be governed by, and construed and enforced in accordance with, (i) applicable Federal laws, and (ii) 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.

17. 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. In the event Bank becomes aware of a new law or requirement after the execution of this Agreement with which Bank is unable to maintain or comply, Bank shall provide the City with 120 days' notice of its intent to terminate the Agreement.

18. 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.

19. 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.

20. 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.

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

22. MAINTENANCE OF RECORDS: Records of Contractor pertaining to the services hereunder shall be kept on a generally recognized accounting basis. Financial transaction records shall be available for a period of seven years after final payment and for the period of time required by law. In addition, the records referenced in section 15 shall be made available for seven years in accordance with said section. This section shall survive expiration or termination of the Contract.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

### **EXHIBIT 3 SPECIAL CONDITIONS**

#### **Term of Contract**

This Contract shall be in effect for five (5) years from the date of the Notice to Proceed. The Contract may be extended, with the mutual written consent of both parties, for two (2) one- year increments with price increases/decreases in accordance with the provisions set forth herein, all other terms and conditions specified herein remaining the same. If either the City or Contractor elects not to extend the Contract, or upon expiration of the final one-year extension term, the Contractor shall aid the City in continuing, uninterrupted, the requirements of the Contract, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Purchasing Manager, for a specified term not to exceed twelve (12) months. Such continuance shall be subject to price increases/decreases in accordance with the provisions set forth herein, and all other terms and conditions remaining the same as if the contract had been extended for such a temporary period by an amendment hereto.

#### **Pricing Conditions**

If any particular needs arise at any time during the term of the Contract, the City and the bank reserves the right to request adjustments, modifications, or additions to services to the Contract with mutual agreement.

#### **Notice to Proceed**

The Contractor shall not commence any work, nor shall it enter the premises until it has received a written Notice to Proceed from the Purchasing Manager.

#### **Changes to Contract Documents**

No changes or modifications to the Contract shall be made unless agreed to and signed by both the Contractor and the Purchasing Manager. 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 the Specifications or any Contract resulting from this procurement.

#### **Compensation Escalation Due to Change in Minimum Wage**

In the event the Contractor is required by a collective bargaining labor agreement or by the Federal Government increases the minimum wage then the contract rates as defined in this proposal shall be subject to negotiation between the Contractor and the City of Fresno. In the event that negotiated changes in contract rates cannot be agreed upon by the City of Fresno and the Contractor, then the Contract may be terminated by either party in accordance with the General Conditions of This Contract. If the Contractor and the City of Fresno agree to a negotiated change in contract rates as defined in this proposal, the Contractor shall increase the minimum hourly wages and salaries paid to its employees performing services under this Contract in accordance with new



negotiated wages and salaries.

\*Note: The Minimum wage rate in California is currently at \$16.00 an hour for all employers, effective January 1, 2024. Proposers should consider wage rates, when completing their proposal. (IF APPLICABLE)

**Payment**

The Proposer shall invoice the City of Fresno in order to initiate the payment process. Invoices shall conspicuously display the City's purchase order number and shall be submitted to:

City of Fresno  
ATTN: Santino Danisi / Controller  
Finance Department  
2600 Fresno Street, Second Floor, Rm 2156  
Fresno, CA 93721

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