



REQUEST FOR PROPOSALS
FOR PROFESSIONAL SERVICES
COMMUNITY GARDEN LIAISON

PROPOSAL NUMBER: 12302452

PROPOSAL SUBMISSION DEADLINE: Prior to 3:00pm on April 28, 2023

PROPOSAL CONTACT: Jennifer Soliz

Parks, After School, Recreation & Community Services Department

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CITY OF FRESNO REQUEST FOR PROPOSALS (RFP)

THE CITY OF FRESNO IS INVITING QUALIFIED, MULTI-DISCIPLINARY CONSULTANTS TO SUBMIT PROPOSALS TO SERVE AS A COMMUNITY GARDEN LIAISON WITHIN CITY OF FRESNO PARKS AND/OR COMMUNITY CENTERS

I. OVERVIEW

The City of Fresno (City) is seeking proposals from qualified, multi-disciplinary consultants to serve as a Community Garden Liaison within City of Fresno parks and/or community centers.

Fresno (pop. 537,100) is located on 115 square miles in the lush San Joaquin Valley in the heart of California, mid-way between San Francisco and Los Angeles. Fresno is the state's fifth largest city and the San Joaquin Valley's largest metropolitan city. The population of Fresno County is over one million residents. Fresno is a rapidly growing community within a world-renowned agricultural setting, featuring a culturally diverse population. Farming and agriculture are deeply rooted in Fresno's economy and culture.

According to the Parks Master Plan, the goal of community gardens are to provide ornamental vegetation, produce locally grown food, and create community gathering spaces. Community gardens also improve air quality, improve water quality, reduce the heat island effect, reduce flooding and sewer overflow, create wildlife and pollinator habitats, provide recreation opportunities and create community social spaces.

There are currently three community garden locations open to Fresno residents.

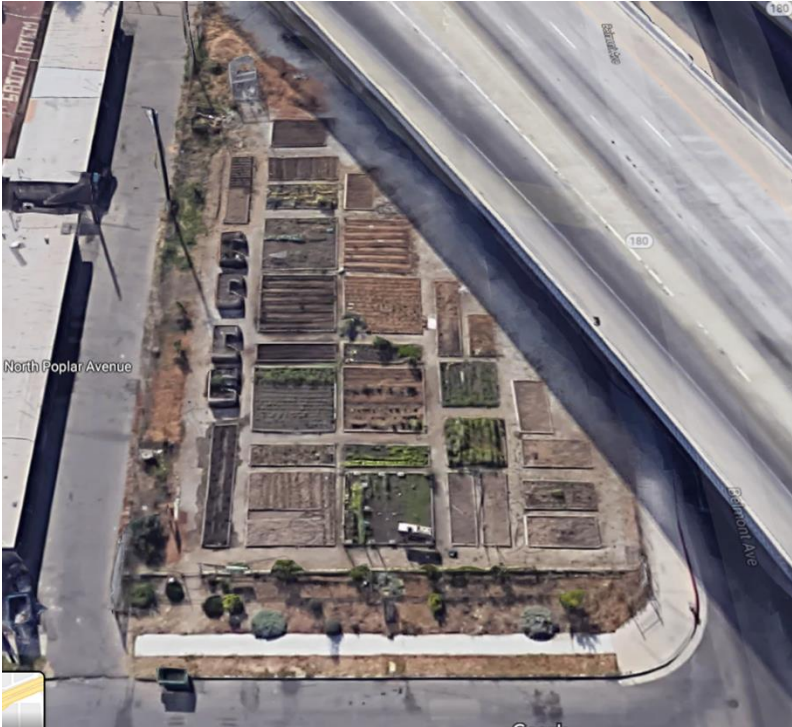
The Peach and Butler Community Garden is approximately 2.5 acres and is located in Southeast Fresno. This location has 96 garden plots with additional Hmong collaborative farm rows. There is currently a waitlist of 77 community members at this location.



Al Radka Community Garden is approximately 1.14 acres and is located in East Fresno on Belmont and Fowler Ave. This location has 55 garden plots and currently has a waitlist of 38 community members.



Lowell Community Garden is approximately 0.60 acres and is located on Belmont Ave and Poplar Ave. This location has 32 garden plots with a waitlist of 13 community members.



II. SCOPE OF SERVICES/SPECIFICATIONS

The scope of services for the Community Garden Liaison is to manage multiple community garden locations within City of Fresno Parks and/or Community Centers.

Tasks include but are not limited to:

1. Gardener selection and completion of sign-up agreements. Agreements must include risk language and must be reviewed by the City.
2. Establish and maintain an equitable gardener selection process, including waitlist procedures, rules related to plot use and site use.
3. Monitor and enforce rules related to plot use.
4. Maintain hours of operations of the sites.
5. Require and enforce drip irrigation and water wise practices.
6. Manage green waste and refuse through composting and proper disposal.
7. Collect and manage rent according to the City of Fresno Master Fee Schedule. Proceeds from rent monies collected shall be accumulated and invested back into the community garden twice per year. Eligible uses will be approved by the City and receipts must be submitted to the City.
8. Assume responsibility for the security of individual plots and any storage facilities. Coordinate with City of Fresno as needed to identify security solutions.
9. Visit community gardens on a regular basis to conduct garden inspections and log findings.
10. Organize and promote bi-monthly meetings for each existing garden site for members who are renting plots.
11. Host annual meetings with neighborhoods located within 1-mile of the community garden site to invite participation in community gardening, as well as discuss any impacts or concerns.
12. Must be able to encumber the cost of community meetings.
13. All communication material must be made available in English, Hmong, Punjabi, and Spanish.
14. Adhere to reporting requirements which include quarterly reporting and invoicing for services provided. Quarterly reports shall include the following information:
 - a. Total number of garden plots at each location including number of garden plots rented, number of plots available for rent, and number of plots fallow due to need for repairs.
 - b. Total number of people on waiting lists at each location.
 - c. Photos from each garden highlighting what is being grown.
 - d. A description of training, supplies or materials provided.
 - e. A summary of any challenges or recurring issues.
 - f. Other data that illustrates outcomes, success stories and impacts of community garden operations: for example, pounds of compost, pounds of food grown, etc.

- g. Reports should be submitted electronically to:
PARCSContracts@Fresno.gov
15. Meet with the City at least twice per year to provide an update on the gardens.
 16. Communicate with City of Fresno PARCS staff to report maintenance needs by utilizing FresGo and "311".
 17. Maintain all records. Copies of applications and other records shall be available to the City upon request and retained for three (3) years after the conclusion of the contract.

The City will provide the following assistance:

1. Prepare garden locations, including but not limited to, ground preparation, soil testing as warranted, work necessary to bring water to each plot, fencing and permit costs prior to gardeners' possession.
2. Provide an assessment of existing ADA conditions and include required ADA improvements in the PARCS Department's ADA Transition and Capital Improvement Plans.
3. Pay utilities including water utilized for drip irrigating each garden site.
4. Notice and promote community garden plots, as needed, in conjunction with selected consultant.
5. Repair and replace raised beds and irrigation as determined necessary.
6. Provide trash and green waste receptacles.
7. Provide a point of contact for each garden site.

III. BUDGET AND TERMS

The RFP service request is for a two (2) year contract with the option of two (2) one (1) year extensions. The total budget is \$40,000 per year.

IV. SUBMITTAL INSTRUCTIONS AND PROPOSAL REQUIREMENTS

Proposals shall be submitted electronically only via Planet Bids.

Proposals will be accepted by the City until 3:00 P.M. on April 28, 2023. Proposals may be submitted via the City's web site: www.fresno.gov, Doing Business (at the top of the screen), *Bid Opportunities*. All Responses received after this deadline will not be considered.

Responses shall be submitted in 8½" X 11" inch format. Proposals shall not exceed 20 pages. Proposals should include the following:

1. Title page including project name and consultants contact information (not included in page maximum).
2. Summary of experience and performance on similar projects, including at least three references.

3. Resumes for the Project Manager, key support staff, and subconsultants including education, relevant past project experience, any applicable licensing and certifications, and a description of their assignment on this project.
4. Provide audited and certified financial statements for your organization's last three years of operations.
5. Please list the languages your organization can provide written and verbal communication in. Note, translation and interpretation can be included in the budget request as an eligible expense.
6. Describe your organization's past experience in working with public entities, including cooperative efforts and results. Also include experience in community outreach and the efforts and strategies applied.
7. Describe how you will complete the scope of work.
8. Describe the proposed approach to managing community gardens. Include examples of procedures and policies, innovative maintenance ideas, and community outreach strategies.
9. Prepare a line-item budget to support your proposed scope of work using the budget template attached in Appendix A (not included in page maximum).
10. Proposal must be signed by an official authorized to enter into a contractual agreement on behalf of the organization.

V. SCHEDULE

The tentative schedule for engaging the Respondent(s) is as follows:

- RFQ Responses due to City by 3:00 pm on April 28, 2023
- Invitations to Interview – Week of May 15, 2023 (if needed)

All dates are subject to change, Respondent(s) will be notified via email of any schedule changes.

VI. SELECTION PROCESS

RFP Responses will be evaluated by a Review Committee (Committee). Following the evaluation of the responses, the Committee may elect to interview some or all the Respondents or may otherwise seek clarification or amplification of the material submitted or may reject all responses. The Committee reserves the right to hold interviews or select a preferred response without interviews.

The recommendation for selection will be made based on criteria related to demonstrated qualifications, ability to meet the scope of work requirements, outreach strategies and goals, capacity to perform the proposed scope within the timeframe, and any other factors, whether quantifiable or not.

The Committee reserves the right to reject all responses; or to waive minor irregularities. The Committee will make its recommendation to the City. The City reserves the right to make the selection of a Respondent based on any or all factors of value, whether quantitatively identifiable or not, including, but not limited to, the anticipated initiative and ability of the Respondent to perform the services set forth

herein. The City may enter into negotiations with one or more Respondents concurrently. The City has no obligation to enter into an agreement with any party as a result of their response to this offering.

This RFP does not commit the City to enter into a contract or to pay any costs incurred in the preparation of the RFP. The City of Fresno reserves the right to accept or reject any RFP's, and to negotiate with any qualified Respondent, or to cancel in part or in its entirety this solicitation for RFP's.

VII. QUESTIONS, CLARIFICATIONS, AND CONCERNS

The scope of services/specifications describing this project have been carefully prepared. Any questions or concerns relating to the scope of services/specifications shall be directed in writing to the designated Proposal Contact (see cover page) and may be submitted electronically by utilizing the Question and Answers field on Planet Bids.

Questions will be accepted only up to five (5) working days prior to the proposal date to allow the City, if necessary, to issue an addendum to all proposers stating revisions, deletions, or additions to be made to the Specifications as a result of any questions. If questions arise after the deadline, please contact the designated Proposal Contact, but the City will not guarantee a response.

The City will not be responsible for verbal responses made by parties other than the designee.

VIII. LOCAL PREFERENCE

Fresno Municipal Code Section 4-109, LOCAL PREFERENCE IN CONTRACTING FOR SERVICES, provides for a local preference. Portions pertinent to this Contract are paraphrased as follows:

Except for those contracts funded by the federal or state government when such funding would be jeopardized because of this preference, the City of Fresno shall, in contracting for consulting services, give a primary preference to local firms, when such firms have the necessary qualifications, experience and expertise to complete the project being proposed, as determined by the City. A secondary preference shall be given to non-local firms which form an association for pecuniary profit with local firms for the project, wherein the benefit to the local firm(s) is an amount greater than 15% of the total contract price. The Respondent shall certify, under penalty of perjury, that the Respondent qualifies as a local firm. The preference is waived if the certification does not appear on the proposal.

"Local firm" shall mean a firm with a fixed primary or branch office within a twenty-five mile radius of Fresno City Hall, located at 2600 Fresno Street in the City of Fresno, and a majority of the work on the project will be performed by employees who are

permanently assigned to such office prior to the city requesting proposals for the project and whose regular duties would include local work on other than City projects.

Respondent shall submit the form CERTIFICATION FOR LOCAL PREFERENCE with their proposal if they seek the benefit of local preference.

IX. GENERAL INFORMATION

The Proposals received shall become the property of the City of Fresno and are subject to public disclosure. Those parts of a Proposal which are defined by the Proposer as business or trade secrets as that term is defined in California Civil Code, Section 3426.1, and are reasonably marked "Trade Secrets", "Confidential", or "Proprietary", and placed in a separate envelope shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most or all of their Proposal as exempt from disclosure may be deemed non-responsive.

Upon City's acceptance of a Proposal, the successful Proposer will be required to execute and return a City Standard Consulting Agreement without changes (a copy of which is provided as Appendix B) and all certificates of insurance within ten (10) calendar days from the date of Notice of Award issued by the City. Should the successful Proposer fail or refuse to execute the Agreement or provide the additionally required instruments and documentation, the City reserves the right to accept the proposal of the Proposer offering the next best value to the City.

The City of Fresno reserves the right to establish a competitive range and/or reject any and all Proposals.

A. DEBARMENT

A Bidder may be debarred from bidding or proposing upon or being awarded any contract with the City, or from being a subcontractor or supplier at any tier upon such contract, in accordance with the procedures in Fresno Municipal Code Section 4-104 adopted by Council on May 17, 2018. The initial period of any such debarment shall not be less than one year and may be permanent depending on the violation. A Bidder may request a hearing, in accordance with Fresno Municipal Code Section 4-104, upon receipt of a notice of proposed debarment from the City Manager or designee. A copy of the ordinance may be obtained from the City Clerk's Office, 2600 Fresno Street, Fresno, California 93721.

B. REGULATED COMMUNICATIONS

The Regulated Communications in City Procurement Process Ordinance (Article 6, Chapter 4 of the Fresno Municipal Code) became effective April 29, 2004. With certain specified exceptions, the Ordinance provides that no Respondent, Bidder, Proposer (as the case may be) shall initiate, engage in, or continue any communication to or with any City elected official concerning or touching upon any matter which is the subject of this competitive procurement process.

Any Respondent, Bidder, Proposer, or elected official (as the case may be) who initiates, engages in, continues in, or receives any regulated communication shall file the written disclosure required by the Regulated Communications in City Procurement Process Ordinance.

Any Respondent, Bidder, or Proposer violating the Regulated Communications in City Procurement Process Ordinance may be disqualified from participating in this procurement process and/or determined to be non-responsible. Additionally, the City may set aside the award of a contract, prior to its execution, to a party found to have violated the Ordinance.

Note: The full text of Fresno Municipal Code, Chapter 4, Article 6 may be viewed on the City's website at, <http://www.fresno.gov>. Under Departments, Finance, Municipal Code, or view the Fresno Municipal Code directly at:

https://library.municode.com/ca/fresno/codes/code_of_ordinances

X. AGREEMENT DOCUMENTS

The City will be utilizing a standard city agreement (Appendix B).

XI. APPENDICES

Appendix A – Budget Template

Appendix B – Standard Service Provider Agreement including insurance requirements and conflict of interest form

APPENDIX A
BUDGET TEMPLATE

**City of Fresno Community Garden
Liaison Proposed Project Budget
Template**

Name of Organization: _____

A. Proposed Operational Expense Breakdown: Includes expenses for outreach and marketing materials for community outreach events such as interpretation, translation, flyers, etc. Overhead shall not exceed 10 percent of contract total. Detailed itemization and receipts required.			\$
(Example) interpretation for 12 community meetings per year			\$2,400.00
(Example) flyers for community meetings			\$100.00
TOTAL PART A. PROPOSED OPERATIONAL EXPENSES			\$
B. Proposed Staff Costs: Includes staff who will work on the project, their costs with hourly rates required to complete project and details about work performed.			
Staff Member & Work Performed	Hourly Rate	Hours	
(Example) Name, CFO, manage financials and reporting	\$30	312	\$9,360.00
(Example) Name, Program Manager	\$22	520	\$11,440.00
TOTAL of PART B. PROPOSED STAFF COSTS			\$
C. Travel Expenses: Mileage must use the federal standard mileage rate of \$0.625 per mile Detailed itemization required.			
(Example) Round-trip mileage from address A to address B. 16 miles (one-way) x \$0.625			\$20.00
TOTAL PART C. TRAVEL EXPENSES			\$
TOTAL AMOUNT REQUESTED			\$

APPENDIX B
STANDARD SERVICE PROVIDER AGREEMENT

**SERVICE AGREEMENT
CITY OF FRESNO, CALIFORNIA**

THIS AGREEMENT (Agreement) is made and entered into, effective on _____, by and between the CITY OF FRESNO, a California municipal corporation (City), and [Service Provider NAME], [Legal Identity] (Service Provider).

RECITALS

WHEREAS, City desires to obtain [Kind of Service] services for [Describe Project] (Project); and

WHEREAS, Service Provider is engaged in the business of furnishing such services as a [Service Provider's Industry] and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, Service Provider acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107; and

WHEREAS, this Agreement will be administered for City by its [SELECT TITLE] (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. Service Provider shall perform to the satisfaction of 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 [End Date], subject to any earlier termination in accordance with this Agreement. The services of Service Provider 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) Service Provider's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement and shall not exceed \$[Fee Amount], paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**. Such fee includes all expenses incurred by Service Provider in performance of the services.
 - (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. 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 Service Provider'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. Service Provider 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 City to Service Provider upon the earlier of: (i) Service Provider's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Service Provider; (ii) seven calendar days' prior written notice with or without cause by City to Service Provider; (iii) 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, Service Provider shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to City any and all unearned payments and all properties and materials in the possession of Service Provider that are owned by City. Subject to the terms of this Agreement, Service Provider shall be paid compensation for services satisfactorily performed prior to the effective date of termination. Service Provider 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 Service Provider to satisfactorily perform in accordance with the terms of this Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement which may then exist on the part of Service Provider, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.
- (d) Upon any breach of this Agreement by Service Provider, 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 City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

- (e) Service Provider shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Service Provider fails to comply with any terms or conditions of this Agreement.
- (f) Service Provider shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Service Provider and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Service Provider 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 Service Provider pursuant to this Agreement shall not be made available to any individual or organization by Service Provider without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, Service Provider shall not, without the prior written consent of 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 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 City.
- (b) Any and all writings and documents prepared or provided by Service Provider pursuant to this Agreement are the property of City at the time of preparation and shall be turned over to City upon expiration or termination of the Agreement. Service Provider shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.
- (c) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider 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. Level of Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as Service Provider represents to City that Service Provider and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, City relies upon the skill of Service Provider and its subcontractors, if any, to do and perform such services in a skillful manner and Service Provider agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance

of such services by City shall not operate as a release of Service Provider or any subcontractors from said industry and professional standards.

7. Indemnification. To the furthest extent allowed by law, Service Provider shall indemnify, hold harmless and defend 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 Service Provider, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall require each subcontractor to indemnify, hold harmless and defend 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, Service Provider 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 City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to 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, Service Provider 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 Service Provider 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 Service Provider of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has

commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

- (c) The fact that insurance is obtained by Service Provider shall not be deemed to release or diminish the liability of Service Provider, 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 Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Service Provider, its principals, officers, agents, employees, or persons under the supervision of Service Provider, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.
- (d) Upon request of City, Service Provider 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.
- (e) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider 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 Service Provider and City prior to the commencement of any services by the subcontractor. Service Provider and any subcontractor/sub-consultant shall establish additional insured status for 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 City's execution of this Agreement, Service Provider 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, Service Provider shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Service Provider in such statement.
- (b) Service Provider 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 City, Service Provider shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Service Provider and the respective subcontractor(s) are in full compliance with all laws and regulations. Service Provider 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, Service Provider shall immediately notify City of these facts in writing.

- (c) In performing the work or services to be provided hereunder, Service Provider shall not employ or retain the services of any person while such person either is employed by 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) Service Provider 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) Service Provider 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, Service Provider shall remain responsible for complying with Section 9(a), above.
 - (f) If Service Provider should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Service Provider 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 Service Provider 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, Service Provider at its sole cost and expense shall:
- (a) Immediately establish and maintain a viable and ongoing recycling program, approved by 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 City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

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

11. General Terms.

- (a) Except as otherwise provided by law, all notices expressly required of 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 Service Provider's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of 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 Service Provider 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 City until such action is resolved, or until the end of said time period whichever shall later occur. If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider 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 City, Service Provider shall have provided evidence to City that Service Provider is licensed to perform the services called for by this Agreement (or that no license is required). If Service Provider should subcontract all or any portion of the work or services to be performed under this Agreement, Service Provider shall require each subcontractor to provide evidence to 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, Service Provider 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, Service Provider agrees as follows:

- (a) Service Provider 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) Service Provider 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. Service Provider 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 Service Provider'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. Service Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- (c) Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider 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) Service Provider 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 Service Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider 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, Service Provider is acting solely as an independent contractor. Neither Service Provider, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Service Provider shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Service Provider is performing its obligations in accordance with the terms and conditions thereof.

- (b) This Agreement does not evidence a partnership or joint venture between Service Provider and City. Service Provider shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Service Provider shall bear its own costs and expenses in pursuit thereof.
 - (c) Because of its status as an independent contractor, Service Provider and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Service Provider 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, Service Provider shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Service Provider'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, Service Provider may be providing services to others unrelated to 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 Service Provider and there shall be no assignment by Service Provider of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by Service Provider, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

- (b) Service Provider hereby agrees not to assign the payment of any monies due Service Provider from City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Service Provider directly to Service Provider.
17. Compliance With Law. In providing the services required under this Agreement, Service Provider shall at all times comply with all applicable laws of the United States, the State of California and 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 City and Service Provider.
29. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

EXHIBIT A

SCOPE OF SERVICES
Service Agreement between City of Fresno
and [Service Provider Name]
[Project Title]

[Insert Scope]

EXHIBIT B

INSURANCE REQUIREMENTS Service Agreement between City of Fresno (City) and [Service Provider Name] (Service Provider) [Project Title]

MINIMUM SCOPE OF INSURANCE

- (a) 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.

MINIMUM LIMITS OF INSURANCE

SERVICE PROVIDER, or any party the SERVICE PROVIDER subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to 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.

UMBRELLA OR EXCESS INSURANCE

In the event SERVICE PROVIDER 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

SERVICE PROVIDER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and SERVICE PROVIDER 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 his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) SERVICE PROVIDER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her 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. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. SERVICE PROVIDER 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 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, SERVICE PROVIDER'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 SERVICE PROVIDER'S insurance and shall not contribute with it. SERVICE PROVIDER 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: SERVICE PROVIDER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. SERVICE PROVIDER 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, SERVICE PROVIDER 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, SERVICE PROVIDER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

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

The fact that insurance is obtained by SERVICE PROVIDER shall not be deemed to release or diminish the liability of SERVICE PROVIDER, 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 SERVICE PROVIDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SERVICE PROVIDER, its principals, officers, agents, employees, persons under the supervision of SERVICE PROVIDER, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

VERIFICATION OF COVERAGE

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

SUBCONTRACTORS

If SERVICE PROVIDER should subcontract all or any portion of the services to be performed under this Agreement, SERVICE PROVIDER shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and SERVICE PROVIDER shall ensure that CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with SERVICE PROVIDER and CITY prior to the commencement of any work by the subcontractor.

EXHIBIT C
DISCLOSURE OF CONFLICT OF INTEREST

[Project Title]

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input 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 type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input 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 any significant role in the subject matter of this service?	<input type="checkbox"/>	<input 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 type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Additional page(s) attached.

Signature

Date

Name

Company

Address

City, State, Zip