

SAMPLE SERVICE CONTRACT

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

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

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

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

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

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, 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 Contract.

[Signatures follow on the next page.]

Attachments:

A - Scope of Work

B - Cost Proposal

C - General Conditions and Minimum Limits of Insurance

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Attachment A - Scope of Work

HAZARD TREE FELLING

1. Contractor shall perform all work to safely fell trees identified by the US Forest Service for removal. Hazard trees identified by the US Forest Service for removal are marked with a blue line and a unique tree identification marker that corresponds to the Forestry staff who marked it.
2. The Contractor shall take all actions necessary to avoid damages caused by felling operations and must protect the Camp's water and sewer infrastructure, structures, roads/driveways, landowner belongings and other private property.
3. Wherever possible, the Contractor shall avoid damaging or removing live trees that are not marked for removal.
4. All work must be completed in a safe manner that prioritizes safety of the public, City, Forestry Department, and Contractor.
5. Trees may be removed by conventional felling methods (hand felling), by climber, by bucket truck or by crane operations. All other methods shall first be approved by the City. Tree removal methods chosen by the Contractor must both ensure safety of workers and public and maximize cost effectiveness.
6. Contractor shall limb all felled trees. Stumps shall be cut as close to the ground as is practical while avoiding damage to Contractor's equipment.
7. Contractor shall work with the City of Fresno and the US Forest Service to determine tree disposal methods, which may vary based on log size and may include: truck or tractor hauling all log segments resulting from project felling operations to approved sites, chipping, stacking, etc.

LOG & STUMP REMOVAL

1. Contractor shall grind and remove stumps.

SLASH TREATMENT

1. Upon written approval of the US Forest Service Contractor shall treat slash resulting from project felling operations by chipping and spreading it on site for erosion control and site restoration. Mastication is also an acceptable method of slash treatment.
2. The Contractor may haul excess slash to approved sites.

SITE RESTORATION

1. Contractor shall make every reasonable effort to restore disturbed sites to their original condition.
2. All temporary access routes or significantly disturbed areas shall be graded to blend back with natural original terrain.
3. Erosion control measures shall be applied to blend with surroundings consistent with standard timber removal practices.
4. If approved by the US Forest Service, wood chips may be used as suitable

erosion control. Contractor shall ensure that treated slash does not cover any at-grade Camp facilities (i.e. water meters and sewer manholes) and shall make reasonable efforts to clear drainage culverts and structures of treated slash.

5. If directed by the US Forest Service, slash, excess logs and/or wood chips may need to be hauled off site for disposal.
6. Contractor shall restore, replace or re-install any fences, private belongings, structures, etc. that have been temporarily moved or damaged during Contractor's operations.

TRAFFIC CONTROL

1. Contractor shall be responsible for providing all necessary traffic control to ensure the safety of property owners, motorists and the public. Contractor must be knowledgeable and capable of providing traffic control systems and measures that meet the requirements of local ordinances, codes and regulations.
2. Personal vehicles of the Contractor's employees shall not be parked on the traveled way or shoulders. Vehicular access to Camp shall not be restricted during evening hours and Contractor shall provide access to Camp during construction operations, so long as it is safe. Contractor shall be responsible for maintaining safe emergency exiting for Contractor, City, Forestry and Camp staff at work site(s).
3. The Contractor must inform the Forest Service, County of Fresno and the emergency dispatcher of all road closures prior to closure.

Attachment B - Cost Proposal

Section 1 –Tree Removal Only (no stump grinding)

Actual quantities and sizes ordered may vary from the estimates below.

ITEM #	ITEM	QTY	UNIT	UNIT PRICE
1	Mobilization	1	LUMP SUM	\$
2	Tree only removal per dia. inch 7" - 12" DBH	23	TREES	\$
3	Tree only removal per dia. inch 13" - 18" DBH	48	TREES	\$
4	Tree only removal per dia. inch 19" - 24" DBH	45	TREES	\$
5	Tree only removal per dia. inch 25" - 30" DBH	22	TREES	\$
6	Tree only removal per dia. inch 31" - 36" DBH	19	TREES	\$
7	Tree only removal per dia. inch over 36"+ DBH	9	TREES	\$
8	Log deck back/stacking on-site.	1	LUMP SUM	\$
9	Haul & dispose of excess slash on-site.	1	LUMP SUM	\$
10	Haul & dispose of excess slash off-site; contingent upon forest service direction	1000 Miles	LOADED MILE	\$
11	Traffic Control	1	DAY	\$
12	Miscellaneous Items (please describe below if applicable)	1	LUMP SUM	\$
SECTION 1 SUB-TOTAL:				\$

(Continued)

(Submit with Proposal)

Proposer's Name:

Section 1, Line item 12: Miscellaneous cost description:

Section 2 – Stump Grinding

Provide cost per tree; actual quantities may vary. Chips to remain on site pending US Forest Service approval. May transport off-site contingent upon results of fuel load survey conducted by US Forest Service.

13	Mobilization	1	LUMP SUM	\$
14	Stump grinding per diameter inch 0"-6" DBH	1	TREES	\$
15	Stump grinding per dia. inch 7" - 12" DBH	1	TREES	\$
16	Stump grinding per dia. inch 13" - 18" DBH	1	TREES	\$
17	Stump Grinding per dia. inch 19" - 24" DBH	1	TREES	\$
18	Stump Grinding per dia. inch 25" - 30" DBH	1	TREES	\$
19	Stump Grinding per dia. inch 31" - 36" DBH	1	TREES	\$
20	Stump Grinding per dia. inch over 36"+ DBH	1	TREES	\$
21	Haul & dispose of excess chips off-site	1,000	LOADED MILE	\$
22	Miscellaneous Items (please describe below, if applicable)	1	LUMP SUM	\$
SECTION 2 SUB-TOTAL:				\$

Section 2, Line item 22: Miscellaneous cost description:

(Continued)

(Submit with Proposal)

Proposer's Name:

The Total Amount of Proposal is _____
Dollars and _____ Cents.

The above amount shall include any and all applicable taxes.

The quantities listed on the proposal page(s) are estimates for the initial term. The actual requirement of the City may be more or less than the quantities specified. The City will pay for only those items which it actually delivered or received during the term of the Contract.

The City reserves the right to reject any and all proposals.

Section I – Lines 8 and 9 are Lump Sum items, both Lump Sum items are for 175 trees each.

Attachment C - General Conditions and Minimum Limits of Insurance

General Conditions

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

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

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

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

4. **TERMINATION FOR CAUSE:**

- a. If the Contractor shall fail to complete delivery, within the time or times specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the Contract, the City Manager of the City of Fresno or designee, acting for and on behalf of the City, may at any time after the expiration of the time for cure, terminate the Contract as to the whole thereof, or in the event partial delivery has been made and accepted, as to such of the items or service to be furnished which have not been delivered or accepted prior to such termination.
- b. The City may terminate this Contract if the Contractor materially breaches any of its obligations under this Contract and fails to commence and diligently pursue reasonable efforts to cure such breach within fifteen (15) days after written notice by the City specifically describing the breach.
- c. Such termination shall be effective upon receipt by Contractor of written notice of termination from said City Manager or designee, which notice shall be deemed to have been received by Contractor, if mailed by certified mail, within fortyeight 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.

5. CONTRACT DOCUMENTS: Upon award of the Contract, the Contractor shall execute and submit all required documents to the Purchasing Manager, 2101 G Street, Building A Fresno, CA 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. PERFORMANCE BOND: Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect a "Faithful Performance Bond" from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California, in the amount of **\$N/A**. If applicable, this bond is to be renewed annually.

PROVISIONS APPLICABLE ONLY FOR SERVICES TO BE PERFORMED ON CITY PREMISES

7. INSURANCE REQUIREMENTS.

(a) Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-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. 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, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Contractor of its responsibilities under this Agreement. The

phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

Coverage shall be at least as broad as:

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

Contractor shall procure and maintain for the duration of the contract, and for five years thereafter, insurance with limits of liability 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. \$2,000,000 per occurrence for bodily injury and property damage;
- ii. \$2,000,000 per occurrence for personal and advertising injury;
- iii. \$4,000,000 aggregate for products and completed operations; and,
- iv. \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

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 and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;

- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- i. \$1,000,000 per occurrence or claim; and,
- ii. \$2,000,000 general aggregate per annual policy period.
 - a. In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by Contractor pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

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

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- i. All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days' written notice has been given to City, except ten days for nonpayment of premium. Contractor is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.
- ii. In the event this Contract involves any lead-based environmental hazard (e.g., lead based paint), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event this Contract involves any asbestos environmental hazard (e.g., asbestos remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event this Contract involves any mold environmental hazard (e.g., mold remediation), the Contractors

Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

- iii. The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- iv. The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees, and volunteers as an additional insured. Contractor shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- v. The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONTRACTORS' insurance shall be primary to and require no contribution from the City. The Commercial General and Pollution Liability policies are required to include primary and noncontributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If Contractor maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Contractor.
- vi. Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- vii. For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- viii. The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
- ix. The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers.

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

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

- i. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work or termination of the Agreement, whichever first occurs.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, Contractor must purchase "extended reporting" period coverage for a minimum of five years after completion of the work or termination of the Agreement, whichever first occurs.
- iv. A copy of the claims reporting requirements must be submitted to City for review.
- v. These requirements shall survive expiration or termination of the Agreement.

SUBCONTRACTORS - If Contractor subcontracts any or all of the services to be performed under this Agreement, Contractor shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is required, Contractor will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

8. INDEMNIFICATION: To the furthest extent allowed by law including California Civil Code section 2782, Contractor 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) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, 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 Contract.

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

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

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

includes compliance with all of the employee documentation provisions. Furthermore, the Contractor will make any employee documentation required to comply with the Act immediately available to the City upon its request for each individual employee working on a City of Fresno project.

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

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

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

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

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

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

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

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

18. GOVERNING LAW AND VENUE: The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict

of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of the Contract and any rights and duties thereunder shall be Fresno County, California.

19. COMPLIANCE WITH LAW: In providing the services required under the Contract, Contractor shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of the Contract.

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

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

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

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

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

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

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

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

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

26. NOTICES: Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Proposal in the case of the Contractor and at the address in the Special Conditions for mailing of invoices in the case of City, or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

- 27. BINDING:** Subject to Section 15 of these General Conditions, once this Contract is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
- 28. WAIVER:** The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of this Contract may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- 29. CUMULATIVE REMEDIES:** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- 30. NO THIRD PARTY BENEFICIARIES:** The rights, interests, duties and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties.
- 31. EXTENT OF AGREEMENT:** Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be modified only by written instrument duly authorized and executed by both City and Contractor.
- 32. HEADINGS:** The section headings in this Contract are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Contract.