

**CITY OF MERCED
CONSULTING AND PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT is made and entered into this ____ day of _____, 2026, at Merced, California, by and between the City of Merced (“City”), a California Charter Municipal Corporation, and Cupples Keller Designs, a California Corporation, whose address of record is 1970 Broadway, Suite 800, California 94612 (“Consultant”) for the purpose of providing full service planning and landscape architectural design for City of Merced.

WHEREAS, City does not have sufficient personnel to perform full-service planning and landscape architecture design services and thereby necessitating this Contract for on-call professional services.

NOW, THEREFORE, the Parties covenant and agree, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, as follows:

SECTION 1. CONSULTANT SERVICES

Subject to the terms and conditions set forth in this Contract, Consultant shall provide to City the services described in Exhibit “A,” attached and incorporated herein when requested by City.

SECTION 2. COMPENSATION AND REIMBURSEMENT OF COSTS

City shall pay Consultant for services rendered pursuant to this Contract within thirty calendar days after receipt of an invoice from Consultant. City hereby agrees to pay Consultant a sum that is not to exceed the hourly rates, fee schedule and expenses described in Exhibit “B”.

SECTION 3. TERM AND TERMINATION

- A. The term of this Contract shall commence upon the day first above written and end on June 30, 2028. The City shall have the option to extend this Contract for two (1) year terms. Time is of the essence.
- B. Either Party may terminate this Contract without cause on thirty (30) calendar days’ written notice.

- C. City may terminate this Contract immediately upon written notice to Consultant if funding ceases or is materially decreased during the term of this Contract.
- D. In the event that City gives notice of termination, Consultant shall promptly provide to City any and all finished and unfinished reports, data, studies, photographs, charts, or other work product prepared by Consultant pursuant to this Contract. City shall have full ownership, including, but not limited to, intellectual property rights, and control of all such finished and unfinished reports, data, studies, photographs, charts, or other work product.
- E. In the event that City terminates the Contract, City shall pay Consultant the reasonable value of services rendered by Consultant pursuant to this Contract; provided, however, that City shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Contract. Consultant shall, not later than ten (10) calendar days after termination of this Contract by City, furnish to City such financial information as in the judgment of the City's representative is necessary to determine the reasonable value of the services rendered by Consultant.
- F. In no event shall the termination of this Contract be construed as a waiver of any right to seek remedies in law, equity, or otherwise for a Party's failure to perform each obligation required by this Contract.

SECTION 4. MISCELLANEOUS TERMS AND CONDITIONS OF CONTRACT

- A. City shall make its facilities accessible to Consultant as required for Consultant's performance of its services under this Contract, and, upon request of Consultant at times convenient to City, provide labor and safety equipment as required by Consultant for such access.
- B. Unless otherwise agreed to in the Authorization of Services Agreement, City shall obtain, arrange, and pay for all advertisements for bids, permits, and licenses required by local, state, or federal authorities.
- C. Pursuant to the City's business license ordinance, Consultant shall obtain a City business license prior to commencing work.

- D. Consultant represents and warrants to City that it has all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, and approvals that are legally required for Consultant to practice its profession.
- E. Consultant shall, during the entire term of this Contract, be construed to be an independent contractor and nothing in this Contract is intended, nor shall it be construed, to create an employer/employee relationship, association, joint venture relationship, trust, or partnership or to allow City to exercise discretion or control over the professional manner in which Consultant performs under this Contract; provided, however, that the services to be provided by Consultant shall be provided in a manner consistent with the professional standards applicable to such services. The sole interest of City is to ensure that services are rendered and performed in a competent, efficient, and satisfactory manner. Consultant shall be fully responsible for payment of all taxes due to state and federal governments, which would be withheld from compensation if Consultant were a City employee. City shall not be liable for deductions for any amount for any purpose relating to Consultant's compensation. Consultant shall not be eligible for coverage under City's workers' compensation insurance plan, benefits under the City's retirement plan, or be eligible for any other City benefit. No party shall be the agent of, or have a right or power to bind, the other Party without its express written consent.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Contract is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

- F. No provision of this Contract is intended to, or shall be for the benefit of, or construed to create rights in, or grant remedies to, any person or entity not a party hereto, including any third-party beneficiary.
- G. No portion of the work or services to be performed under this Contract shall be assigned, transferred, conveyed, or subcontracted without the prior written approval of City. Consultant may use the services of independent contractors and subcontractors to perform a portion of its obligations under this Contract with the prior written approval of City. Independent contractors and subcontractors shall be provided with a copy of this Contract and Consultant shall have an affirmative duty to assure that said independent contractors and subcontractors comply with the same and agree to be bound by its terms. Consultant shall be the responsible party with respect to all actions of its independent contractors and subcontractors and shall obtain such insurance and indemnity provisions from its contractors and subcontractors as City's Risk Manager shall determine to be necessary in his/her sole discretion.
- H. Consultant, at such times and in such form as City may require, shall furnish City with such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs or obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
- I. Consultant shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by City to assure proper accounting for all project funds. These records shall be made available for audit purposes to state and federal authorities, or any authorized representative of City. Consultant shall retain such records for three (3) years after the expiration of this Contract, unless prior permission to destroy them is granted by City or unless a longer retention period is required by a funding source for this Contract.
- J. Consultant shall perform all services required pursuant to this Contract in the manner and according to the standards observed by a competent practitioner of Consultant's profession. All products of whatsoever nature, which Consultant delivers to City pursuant to this Contract, shall be prepared in a professional manner and conform to the standards

of quality normally observed by a person practicing the profession of Consultant and its agents, employees, and subcontractors assigned to perform the services contemplated by this Contract.

- K. Unless Consultant is specifically advised in writing by City to verify data, Consultant shall be entitled to rely upon the accuracy and completeness of all data furnished by City to Consultant that is used by Consultant in providing its services under this Contract. Consultant may retain and use all data furnished to it, except such data which may be marked "confidential" and required to be returned, and may use all plans, designs, specifications, and other work product created by Consultant in providing services hereunder. Any use of such work product that includes proprietary information shall not identify City; nor shall the manner of such use have the effect of identifying City. In any reuse by Consultant for any non-City purpose of any data, drawings, plans, etc., prepared for City, Consultant shall fully release, protect, defend, indemnify, and hold harmless City, its officials, officers, employees, and agents from all claims, costs, expenses, damage, or liability arising out of or resulting from the reuse or modification of any reports, data, documents, drawings, specifications, or other work product prepared by Consultant for City for any entity or purpose other than for City's benefit.
- L. All completed reports and other data or documents, or computer media including diskettes, and other materials provided or prepared by Consultant in accordance with this Contract are the property of City, and may be used by City. City shall have all intellectual property rights including, but not limited to, copyright and patent rights, in said documents, computer media, and other materials provided by Consultant. City shall release, defend, indemnify, and hold harmless Consultant from all claims, costs, expenses, damage, or liability arising out of or resulting from the use or modification of any reports, data, documents, drawings, specifications, or other work product prepared by Consultant, except use by City on those portions of the project for which such items were prepared.
- M. Consultant, including its employees, agents, and subconsultants, shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Contract. Consultant shall comply with all requirements of the Political Reform Act (Government Code § 81000 *et*

seq.), Government Code Section 1090 *et seq.*, and other laws relating to conflicts of interest, including the following: 1) Consultant shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and 2) if required by City Clerk, Consultant shall file financial disclosure forms with the City Clerk.

- N. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

SECTION 5. INSURANCE

- A. As a separate and independent covenant from any indemnity obligation hereunder, during the term of this Contract, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

1. **Workers' Compensation Insurance.** Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.
2. **General Liability.**
 - (a) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
 - (b) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage.
 - (c) The City, its officers, employees, and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf

of the Consultant.

- (d) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.
- (e) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, and agents for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

3. Automobile Insurance.

- (a) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (b) The City, its officers, employees, and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired, or borrowed by the Consultant.
- (c) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.

4. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed

to include contractual liability.

- A. **Qualifications of Insurer.** The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all the following minimum requirements:
1. An insurance carrier admitted doing business in California and maintaining an agent for service of process within this State; and,
 2. An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).
- B. **Certificate of Insurance.** Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS

As a separate and independent covenant and irrespective of any insurance policy or policies or limitations thereof and to the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save, and hold City, its officers and employees, harmless from any and all claims or causes of action for death or injury to persons, or damage to property, or expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation), that arise out of, pertain to, or relate to, the negligence, recklessness, willful misconduct of Consultant or its employees, subcontractors, or agents in the performance of this Contract. It is understood that the

duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. This indemnification and hold harmless clause shall survive the termination of this Contract and shall apply to any damages or claims for damages whether such insurance policies shall have been determined to apply. By execution of this Contract, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

SECTION 7. CONTRACT INTERPRETATION, VENUE AND ATTORNEY FEES

- A. This Contract shall be deemed to have been entered into in Merced, California. All questions regarding the validity, interpretation, or performance of any of its terms or of any rights or obligations of the parties to this Contract shall be governed by California law, and any action brought by either party to enforce any of the terms of this Contract shall be filed in the Merced County Superior Court. If any claim, at law or otherwise, is made by either party to this Contract, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.
- B. This document, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding each may have had prior to the execution of this Contract. This Contract shall not be altered, amended, or modified except by a writing signed by City and Consultant. No verbal agreement or conversation with any official, officer, agent, or employee of City, either before, during, or after the execution of this Contract, shall affect or modify any of the terms or conditions contained in this Contract, nor shall any such verbal agreement or conversation entitle Consultant to any additional payment whatsoever under the terms of this Contract.
- C. If any portion of this Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Contract shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

- D. The headings in this Contract are inserted for convenience only and shall not constitute a part hereof. A waiver of any party of any provision or a breach of this Contract must be provided in writing and shall not be construed as a waiver of any other provision or any succeeding breach of the same or any other provisions herein.
- E. Each Party hereto declares and represents that in entering this Contract, it has relied and is relying solely upon its own judgment, belief, and knowledge of the nature, extent, effect, and consequence relating thereto. Each Party further declares and represents that this Contract is made without reliance upon any statement or representation not contained herein of any other Party or any representative, agent, or attorney of the other Party. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Contract and that the decision of whether or not to seek the advice of counsel with respect to this Contract is a decision which is the sole responsibility of each of the Parties. Accordingly, no party shall be deemed to have been the drafter hereof, and the principle of law set forth in Civil Code § 1654 that contracts are construed against the drafter shall not apply.
- F. In the event of a conflict between the term and conditions of the body of this Contract and those of any exhibit or attachment hereto, the terms and conditions set forth in the body of this Contract proper shall prevail. In the event of a conflict between the terms and conditions of any two or more exhibits or attachments hereto, those prepared by City shall prevail over those prepared by Consultant.

SECTION 8. SURVIVAL

The provisions set forth in Sections 5 and 6 of this Contract shall survive termination of the Contract.

SECTION 9. COMPLIANCE WITH LAWS - NONDISCRIMINATION

- A. Consultant shall comply with all applicable laws, ordinances, and codes of federal, state, and local governments.
- B. In the performance of this Contract, Consultant shall not discriminate against any employee or applicant for employment because of race,

color, ancestry, national origin, religious creed, sex, sexual orientation, disability, age, marital status, political affiliation, or membership or non-membership in any organization. Consultant shall take affirmative action to ensure applicants are employed and that employees are treated during their employment without regard to their race, color, ancestry, national origin, religious creed, sex, sexual orientation, disability, age, marital status, political affiliation, or membership or non-membership in any organization. Such actions shall include, 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.

SECTION 10. REPRESENTATIVES

- A. City's representative for this Contract is Samuel Rasche, Planning Manager, telephone number (209) 388-7125. All of Consultant's questions pertaining to this Contract shall be referred to the above-named person, or to the representative's designee.
- B. Consultant's representative for this Contract is Amy Cupples, Chief Executive Officer, telephone number (510) 451-9987, e-mail address amy@studiockd.com. All of City's questions pertaining to this Contract shall be referred to the above-named person.
- C. The representatives set forth herein shall have authority to give all notices required herein. City's City Manager is authorized to execute any amendment to this Contract, which does not increase the amount of compensation allowable to Consultant.

SECTION 11. NOTICES

- A. All notices, requests, demands, and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender (may be other than the representatives referred to in Section 10) and delivered by email, with a hard copy mailed first class, postage prepaid; or when sent by a courier or an express service guaranteeing overnight delivery to the receiving party, addressed to the respective parties as follows:

<p>To City: City of Merced Attn: City Manager 678 West 18th Street Merced, CA 95340</p> <p>City Clerk City of Merced 678 West 18th Street Merced, CA 95340</p>	<p>To Consultant: Cupples Keller Designs Attn: Amy Cupples 1970 Broadway Suite 800 Oakland, CA 94612</p>
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- B. Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.
- C. Notice shall be deemed effective upon: 1) personal service; 2) two days after mailing or transmission by facsimile, whichever is earlier.

SECTION 12. AUTHORITY TO CONTRACT

Each of the undersigned signatories hereby represents and warrants that they are authorized to execute this Contract on behalf of the respective parties to this Contract; that they have full right, power, and lawful authority to undertake all obligations as provided in this Contract; and that the execution, performance, and delivery of this Contract by said signatories has been fully authorized by all requisite actions on the part of the respective parties to this Contract.

SECTION 13. CONFORMANCE TO APPLICABLE LAWS

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City

for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

SECTION 14. WAIVER

In the event that either City or Consultant shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

SECTION 15. AMENDMENT

This Contract shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto by the authorized representative thereof.

SECTION 16. COUNTERPARTS

This Contract may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

SECTION 17. DATE OF CONTRACT

The date of this Contract shall be the date it is signed by City.

IN WITNESS WHEREOF, City and Consultant have executed this Contract on the days and year set forth below:

Dated: _____, 2026


CITY OF MERCED,
A California Charter-law Municipal
Corporation

D. Scott McBride
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

By: Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

 5-7-2026
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

(Signatures continue on next page)

Dated: _____, 2026

CONSULTANT
CUPPLES KELLER DESIGNS

BY: _____
(Signature)

Amy Cupples
(Typed Name)

Its: Chief Executive Officer
(Title)

Taxpayer I.D. No. 95-4150713

ADDRESS: 1970 Broadway, Suite 800
Suite 800
Oakland, CA 94607

TELEPHONE: (510) 451-9987
E-MAIL: amy@studiockd.com

Attachments:

Exhibit A (Scope of Work)
Exhibit B (Fee Schedule)

EXHIBIT A

Services include but not limited to:

- **Current Planning** - Conditional Use Permits, Variances, Site Plan Reviews, Parcel Maps, and Subdivision Maps. Analyze projects for consistency with the General Plan, Zoning Code, Subdivision Map Act, Specific Plans, and applicable design guidelines.
- **Advanced Planning Services** - providing support for long-range planning projects, including General Plan updates, zoning code amendments, and implementation of recent state and federal housing laws and regulations.
- **Environmental Services**
 - **CEQA Services** - preparing, draft and/or peer review CEQA documents, decisions, notices or agreements, Categorical Exemptions, Initial Studies, Mitigated Negative Declarations, and Environmental Impact Reports.
 - **NEPA Services** - prepare, draft and/or peer review NEPA documents, decisions, notices or agreements, including but not limited to Environmental Assessments, and Environmental Impact Statements. Coordination with regional, state and federal agencies such as but is not limited to HUD, Caltrans, EPA, San Joaquin Valley Air Pollution Control District, U.S. Fish and Wildlife Service or the U.S. Army Corps of Engineers.
 - **Technical Studies and Specialized Environmental Support** - Prepare supporting technical studies and analysis, including but not limited to:
 - Air Quality and GHG modeling
 - Noise and vibration studies
 - Traffic studies, including SB 743
 - Vehicle Miles Traveled (VMT) analysis
 - Biological, soil and wetland assessments
 - Cultural and historic resource surveys and studies
 - Phase I and II Environmental Site Assessments (ESAs)
 - Pedestrian/on-site survey, as needed
- **Tribal Consultation** Provide CEQA/NEPA support in fulfilling Tribal Consultation requirements
- **Marketing and Graphic Support for Planning Functions**
- **Transportation Planning Support and Parking and Mobility Analysis**
- **Traffic and Circulation Analysis**
- **Architectural and Landscape Design Services**
- **Architectural Design Support**
- **Landscape Architecture Support**
- **Client Directed Services**

EXHIBIT B



Landscape Architecture			
Landscape Principal	\$ 237		Copies, prints, CADD plots, photography, preparing and compiling .pdf sets, scanning, colored print mounting, long distance phone calls, postage, express mail, and travel outside the Oakland area will be billed on a reimbursable basis: at cost plus 15%.
Associate Principal	\$ 201		
Senior Associate	\$ 191		Cost of additional insurance coverage or limits, including professional liability insurance, in excess of that normally carried by the consultant, if requested by the Client.
Associate Landscape Architect	\$ 180		
Landscape Architect/Project Manager	\$ 160		Overtime - If overtime is required by staff to meet a customer's timing request, additional hourly fee charges may apply. California employment law will apply.
Job Captain	\$ 129		
Landscape Intern/Designer	\$ 118		
Administration Support	\$ 108		Fees for any Expert Witness Testimony or Deposition shall be charged in half-day increments. Research and testimony are on a time and materials basis. Forty-eight (48) hour advance notice is needed for any court testimony.
Irrigation Design			
Irrigation Principal	\$ 216		
Irrigation Technician	\$ 124		Hourly rates are reviewed annually and are subject to increase.

