

AMENDMENT TWO TO AGREEMENT FOR PROFESSIONAL SERVICES

THIS AMENDMENT TWO is made and entered into as of September ___, 2024, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340 (hereinafter referred to as “**City**”), and Eide Bailly, LLP, a limited liability partnership, whose address of record is 2151 River Plaza Drive, Suite 308, Sacramento, California 95833-4133 (“**Consultant**”) (collectively referred to herein as the “**Parties**,” or individually, each a “**Party**”).

WHEREAS, on March 1, 2021, City and Consultant entered into the Agreement for Professional Services (the “**Agreement**”).

WHEREAS, City is required to employ a qualified independent auditor to perform annual audits of the City of Merced; and

WHEREAS, City desires to hire an independent auditor in good standing to prepare the audits for fiscal years 2020/2021 through 2024/2025; and

WHEREAS, Consultant represents that it possesses the professional skills to provide the auditing services; and

NOW, THEREFORE, the Parties hereto, in consideration of the foregoing and the mutual covenants hereinafter recited, agree to amend the Agreement as follows:

1. The parties agree to add an additional service to audit the activities of the Proposition 64 Cohort 2 Grant Agreement in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the standards promulgated by the Bureau of State and Community Corrections, and render a report no later than April 30, 2025, for the cost of \$15,000.

2. The parties agree to replace Section 9.a., Indemnity for Professional Liability, with the following language:

The exclusive remedy available to City for any alleged loss or damages arising from or related to Consultant’s services or relationship with City shall be the right to pursue claims for actual damages that are directly caused by Consultant’s breach of this agreement or Consultant’s violation of applicable professional standards. In no event shall Consultant’s aggregate liability to City exceed two times fees paid under this agreement, nor shall Consultant ever be liable to City for incidental, consequential, punitive or exemplary damages, or attorneys’ fees.

3. The Parties agree to add a new section, Section 9.c., Accuracy of Information, with the following language:

Consultant shall not be responsible for any misstatements in the information provided to Consultant by City to complete the engagement that Consultant may fail to detect as a result of misrepresentations or concealment of information by any owners, directors, officers or employees of City.

4. The parties agree to add a new section, Section 9.d., Time Limitation, with the following language:

City may not bring any legal proceeding against Consultant unless it is commenced within twenty-four (24) months ("**Limitation Period**") after the date when Consultant delivered the report, return, or other deliverable under this agreement to City, regardless of whether Consultant does other services for City or that may relate to the audit, agreed-upon procedures, or tax return preparation. The Limitation Period applies and begins to run even if City has not suffered any damage or loss, or has not become aware of a possible dispute.

5. Except for the changes specifically set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

By: _____
City Manager

ATTEST:

By: _____
Authorized Representative

Date: _____

APPROVED AS TO FORM:

By: Graig Cornwell
Authorized Representative

Date: 9/20/2024

ACCOUNT DATA:

By: _____
Authorized Representative

Date: _____

CONSULTANT
EIDE BAILLY, LLP,
Limited Liability Partnership

By: _____
(Signature)

(Printed Name)

Taxpayer I.D. No. _____

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