

**CITY OF MERCED****ADMINISTRATIVE REPORT**

File #: 21-974**Meeting Date:** 12/20/2021

Report Prepared by: Maria Mendoza, Economic Development Associate

SUBJECT: Approval of a Supplemental Appropriation from the Economic Development Opportunity Fund (074) for \$43,825.00, and Approval of a First Amendment to the Professional Service Agreement with Kristin Lowell, Inc in the Amount of \$43,825.00 to Initiate the Process of Forming a Tourism Business Improvement District in the City of Merced

REPORT IN BRIEF

Considers appropriating \$43,825.00 from the Economic Development Opportunity Fund for a proposed first amendment to the professional service agreement with Kristin Lowell, Inc. to start the process of establishing a Tourism Business Improvement District.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving a supplemental appropriation in the amount of \$43,825.00 from the unreserved, unencumbered fund balance of the Economic Development Opportunity Fund (074) to account 074-2002-572-1700 (professional Services - Economic Development Opportunity Fund); and,
- B. Approving the first amendment to the professional services agreement with Kristin Lowell, Inc., in the amount of \$43,825.00; and,
- C. Authorizing the City Manager or Deputy City Manager to execute the necessary documents.

ALTERNATIVES

- 1. Approve as recommended by staff; or
- 2. Approve, subject to conditions as specified by the City Council; or
- 3. Deny the request; or
- 4. Refer back to staff for reconsideration of specific items as requested by the Council; or
- 5. Defer action until a specified date

AUTHORITY

Charter of the City of Merced, Section 200

CITY COUNCIL PRIORITIES

City of Merced 2021-2022 Adopted Budget, Section 7, Economic Development and Airport, Economic Development, Goals - "Increase visitor spending and stays in Merced by becoming a go to

community instead of a go through community.”

City Council Goals & Priorities FY 2021-2022, #2.b.v. Tourism - marketing that focuses on the benefit staying in and traveling to Yosemite through Merced (TBID or marketing funding).

DISCUSSION

The City Council identified forming a Tourism Business Improvement District (TBID) as part of their Fiscal Year 2021-2022 Goals and Priorities (Attachment 1).

As part of the Agreement for Services with Kristen Lowell, Inc. for the formation of a Property Based Improvement District (PBID), a series of stakeholder meetings were held in June of 2021. One of the meetings was with the Hotel/Motel Association to go over the formation of a TBID. The Hotel/Motel Association expressed their support and partnership in the endeavor.

The Merced Hotel/Motel Association and staff have agreed that the consultant team, Kristin Lowell Inc. should lead the effort working with the hotel property owners and stakeholders in forming a TBID for the City of Merced. The consultant, Kristin Lowell Inc. agrees to the terms contained in the First Amendment (Attachment 2) to the existing Professional Service Agreement (Attachment 3).

Background

The establishment of a Tourism Based Improvement District (TBID) in the City of Merced is an important step as there are tremendous opportunities to capture tourism dollars to assist in promoting Merced as a destination while allowing the city to remain competitive in a crowded global marketplace.

Prescribed under the Property and Business Improvement District Law of 1994; Street and Highways Code Section 36600-36671; property or business assessments are levied in exchange for services not currently provided by the City. While the services depend on the needs of the specific businesses of the area, typical TBID services include print and internet advertising, sales lead generation, destination marketing and development to bring more visitors to the City.

In California, TBIDs and similar improvement areas are governed by two State laws: the Parking and Business Improvement Area Law of 1989 (which allows assessments to be levied on businesses within a district) and the Property and Business Improvement District Law of 1994 (which allows assessments to be levied on owners of real property within a district).

These laws set the general procedures for establishment, assessment and public review of TBIDs. Proposition 218, approved by the California voters on November 6, 1996, which became part of the California Constitution (Articles XIII C and XIII D) adds additional requirements for establishing property-based assessment districts.

Scope of Work

Successful TBID's depend on the active involvement of its property owners with support from the City.

In order to establish a Tourism Business Improvement District (TBID), Kristin Lowell, Inc., proposes to guide a strategically led process that includes facilitating stakeholder education and consensus building, developing a TBID management district plan, preparing for, and managing a petition drive, and securing adoption of the TBID by City Council.

The consultant team proposes a two phase approach in order to complete the TBID formation process, which includes 1) Initial Review and Document Preparation, and 2) Management Plan and Engineer's Report. For more details about the TBID formation process and scope of services, please see Attachment 2.

TBID Frequently Asked Questions

How is a TBID funded?

TBIDs are funded through an assessment on certain lodging stays. The amount of the assessment is determined by the business owners at the formation of the district, within particular legal guidelines. Certain types of stays can be exempt from the assessment if they are not procured as a result of district activities. Funds raised through the assessment must be spent for the benefit of the businesses paying the assessment. Funds raised through a TBID cannot be diverted to government programs.

Who manages a TBID?

A new non-profit corporation can be formed to manage district funds, or an existing corporation can fill this role. The businesses forming the TBID decide how the corporation will be structured and who will manage it.

Why should I support forming a TBID?

As the economy struggles, marketing efforts are an increasingly important aspect of maintaining a popular destination. TBID's provide stable funding for the necessary marketing to keep a destination competitive in a difficult economy. As cities and countries are forced to sacrifice tourism promotion funds, TBIDs provide funding to supplement or replace those monies. Because TBID funds are not controlled by a government entity, they cannot be subjected to the budget cuts municipalities have been forced to make.

What are the advantages of a TBID?

- They provide a stable funding source for tourism promotion
- They are designed and created by those who pay the assessment
- They are governed by those who pay the assessment
- Funds cannot be diverted for government programs

(Source: Civitas Introduction to California Tourism Business Improvement Districts flyer)

IMPACT ON CITY RESOURCES

Given need to market Merced and keep it on the forefront as a destination city, combined with the support from the Hotel/Motel association for the formation of a TBID, staff recommends appropriating \$43,825.00 from Fund 074 (Economic Development Opportunity Fund) unreserved, unencumbered fund balance for consultant services relative to establishing a Tourism Business Improvement District (TBID).

ATTACHMENTS

1. Council Goals & Priorities FY 2021-2022.
2. First Amendment to Agreement for Professional Services with Kristin Lowell, Inc.
3. Professional Services Agreement with Kristen Lowell, Inc.

COUNCIL GOALS & PRIORITIES

FISCAL YEAR 2021-2022

GUIDING PRINCIPLES

- Building community is essential in supporting the health and wellness of residents within the City of Merced – an effort that the City Council is committed to across all service areas.
- In every way possible, the City of Merced strives to provide equal access to all its residents and supports services and programs that promote inclusivity.
- Serving the residents of the City of Merced is paramount, with a goal of providing excellent customer service across all functions.
- Maintaining City property enhances the quality of life for all residents, the City will elevate the standard of maintenance across all public resources.

GOALS & PRIORITIES

1. Public Safety

- a. Measure C Renewal – *hire a consultant to target a November 2022 ballot initiative*
- b. Develop a Reserve Force to provide enhanced services – *resources included in the FY 2021/22 Budget (July 2021)*
- c. Enhance Community Engagement – *Policy Advisory Committee continued efforts (ongoing)*
- d. Community Violence Prevention – *evaluate programs in partnership with Parks & Recreation (ongoing)*
- e. Facility Planning
 - i. Police Station – *Fall 2021*
 - ii. Fire Station – *Will need to hire a consultant to design – begin Fall 2021*

2. Economic Development & Downtown

- a. Downtown
 - i. Adoption of a Downtown Property Based Improvement District – *June 2022*
 - ii. City Investment – *timing dependent on funding*
 1. Bob Hart Square Extension *(one-time funding)*
 2. Entry Ways Improvement *(one-time funding)*
 3. Traffic Flow Pilot & Study *(one-time funding)*
- b. Economic Development – (ongoing)
 - i. Business Friendly Culture – *accommodating to new business development*
 - ii. Community Engagement – *inform community on process and new businesses*
 - iii. Industrial/Tech Park – *focused efforts on good-paying job creation*
 - iv. Workforce Development – *work with local partners to ensure local work force is trained and available for new jobs*
 - v. Tourism – *marketing that focuses on the benefit staying in and traveling to Yosemite through Merced (TBID or marketing funding)*

COUNCIL GOALS & PRIORITIES

(Continued)

3. Parks & Recreation

- a. Recreation (*timing dependent on COVID Restrictions*)
 - i. Youth Investment – *lead by youth input (funding)*
 - ii. Improved Community Facility Coordination (*non-city facilities*)
 - iii. RFQ for Services – *Spring 2021*
 - iv. Enhanced Community Partnerships
- b. Parks (*timing dependent on funding*)
 - i. Applegate Zoo Maintenance (*one-time funding*)
 - ii. Regional Playground Upgrades (*one-time funding*)
 - iii. Park Restroom Upgrades – *7 need funding (one-time funding)*
 - iv. Continued Enhanced Maintenance
 - v. Evaluate Pool Restoration Costs

4. Housing & Homelessness

- a. Continued Focus on Affordable Housing Projection
 - i. Establish Qualified List of Public/Non-Profit Developers
 - ii. Policy Direction on the following:
 - 1. Inclusionary Zoning – *April 2021*
 - 2. Development Fee – *Summer 2021*
 - 3. Alternative Housing Programs (*i.e. tiny & prefab homes*) – *April 2021*
 - iii. Encampment Support – *April 2021*
 - 1. Interim Services – *Behavior Health, Youth Services, Refuse, Health*
 - 2. Location Direction

5. Public Works & City Beautification

- a. Streets (Measure V, SB1, Measure C)
 - i. Repaving
 - ii. Sidewalks
 - iii. Quiet Zones
 - iv. Streetlights
- b. Sustainability
 - i. Drought-Tolerant Incentives/Policy – *April 2021*
 - ii. Citywide WiFi or Broadband – *feasibility study to begin Fall 2021*
- c. Beautification
 - i. Tree Trimming – *one-time funding for enhancement*
 - ii. Bear Creek Clearance – *timing dependent on permit approval*
 - iii. Litter Abatement – *coordination with Community Service Program*
- d. Public Art
 - i. CalTrans Murals – *dialog in progress*
 - ii. District Formation – *Summer 2021*
 - iii. Grant for Projects – *on-going*

**FIRST AMENDMENT TO AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into this ____ day of _____, 2021, by and between the City of Merced, a California Charter Municipal Corporation ("City"), and Kristin Lowell, Inc., a California Corporation, whose address of record is 1420 E. Roseville Parkway #140-342, Roseville, California 95677, ("Consultant").

WHEREAS, City is undertaking a project to conduct a Tourism Business Improvement District in the City of Merced; and,

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services ("Agreement") dated November 6, 2020; and,

WHEREAS, City and Consultant desire to amend said Agreement to provide for additional services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, agree as follows:

1. Section 22, "ADDITIONAL WORK," is hereby added to the Agreement to read as follows:

"SECTION 22. ADDITIONAL WORK. Consultant shall perform the additional work outlined in the proposal from Consultant to City dated September 9, 2021, attached hereto as Exhibit 1."

2. Section 23, "ADDITIONAL COMPENSATION," is hereby added to the Agreement to read as follows:

"SECTION 23. ADDITIONAL COMPENSATION. City shall pay to Consultant the not to exceed additional sum of Forty-Three Thousand Eight Hundred and Twenty-Five Dollars (\$43,825.00) for the additional work described in the proposal attached hereto as Exhibit 1 and in accordance with the rates set forth on Exhibit 1."

3. Except as herein amended, the Agreement dated November 6, 2020, shall remain in full force and effect.

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

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: K. Flores 10/12/21
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
KRISTIN LOWELL, INC.,
A California Corporation

BY: Kristin Lowell
(Signature)

Kristin Lowell
(Typed Name)

Its: Chief Executive Officer
(Title)

BY: Kristin Lowell
(Signature)

Kristin Lowell
(Typed Name)

Its: Secretary
(Title)

Taxpayer I.D. No. 56-2491470

ADDRESS: 1420 E. Roseville Pkwy
#140-342
Roseville, CA 95661

TELEPHONE: (916) 786-9686

FAX: (916) 786-0529

E-MAIL: kristin@klifinance.com



September 9, 2021

Maria Mendoza
City of Merced
678 W. 18th Street
Merced, CA 95340

RE: Proposal for the Merced Tourism Business Improvement District

Dear Maria:

On behalf of Kristin Lowell, Inc. (KLI), and Hormann & Associates, I am pleased to submit this consulting proposal to assist the City of Merced in forming a Tourism Business Improvement District ("TBID").

The consultant firms, Kristin Lowell, Inc. and Hormann & Associates ("Consultant Team") are the project team to assist the City of Merced staff and hospitality leaders in public outreach, education and formation of the TBID and the positive impacts it will have on the tourism industry. Kristin Lowell will be the prime consultant responsible for the TBID formation and project management. Nancy Hormann and Terry Madeksza will be responsible for public outreach and consensus building.

This is an exciting project, and we thank you for the opportunity to submit our proposal for your consideration. Please contact me at if I may provide any additional information. I look forward to hearing from you.

Sincerely,

Kristin Lowell

Kristin Lowell,
President

EXHIBIT 1



CONSULTANT TEAM

The Consultant Team has unmatched history in successfully forming BIDs throughout the state. The consultant team of industry leaders, consists of:

Kristin Lowell, Inc.

KRISTIN LOWELL has over 30 years of experience helping public agencies fund over \$800 million of capital improvement projects, maintenance and operations, and revenue monitoring. Kristin has extensive knowledge of various public financing laws, including assessment districts, business improvements districts, community facilities districts, and school facilities improvement districts. Kristin is a recognized expert in public finance formations to fund capital improvement projects and operations and maintenance activities. Kristin will oversee all aspects of the project and be the main point of contact for the City. Kristin will also serve as the assessment engineer that will work with the City and tourism industry leaders in creating an assessment formula that is tailored to the unique needs of their industry.

Hormann and Associates

NANCY HORMANN with over 30 years of experience in developing, marketing and management of downtown programs, Nancy brings a depth and breadth of successful, hands-on experience in business district formation and management; downtown revitalization; tourism and hospitality management and promotion, and marketing and event design and execution. Nancy will oversee the community outreach, TBID sales and marketing as well as determining the needs and wants of the tourism practitioners.

TERRY MADEKSZA has over 25 years of experience helping to revitalize downtowns. She currently serves as the Executive Director for the Flagstaff Downtown Business Alliance, a non-profit organization dedicated to enhancing the vibrancy and economic vitality of downtown Flagstaff. She is responsible for overseeing the day-to-day management of the downtown area, including oversight of public space enhancements, community building and promoting downtown as a destination. Terry also serves as the primary conduit to property and business owners, city staff, elected officials; and is the lead advocate and spokesperson for the downtown community. Terry will work with Nancy and will help coordinate the community outreach, TBID sales and marketing as well coordinating the outreach and being the liaison to the Hotel Motel Association.



SCOPE OF SERVICE

The consultant team proposes working with a steering committee comprised of hotel and hospitality operators and the City of Merced in creating a new TBID tailored to the unique needs of the hospitality industry.

We will guide a strategically led process that includes facilitating stakeholder education and consensus building, developing a TBID management district plan, preparing for, and managing a petition drive, and securing adoption of the TBID by the Merced City Council.

In order to complete the TBID formation process, the consultant team proposes two phases as follows:

Phase One: Initial Review and Document Preparation

Deliverable: Management District Plan Summary Report

1.1 Initial Review

In order for the Consultant team to become fully knowledgeable of the Merced tourism industry and the dynamics of connecting the hotels to the downtown community, we will interview and meet with the hotel operators.

1.2 Database Development

The Consultants will coordinate with the City and the hotel operators to establish a comprehensive database. The database will be designed for a variety of uses, including periodic mailings to the hotel operators, source data for assessment scenarios and tracking for the TBID petition campaign.

1.3 Consensus Building/Education

Reaching out to the hotel operators and civic leaders, the Consultants propose a focus group meeting as well as one-on-one meetings to identify TBID service priorities and the degree of financial support needed for the desired services.

1.4 District Priorities and Budget

The Consultants will work with the Steering Committee to identify the top TBID services and activities as identified in Step 1.3. Once the top 2-3 services have been identified Consultants will prepare a budget to fully fund the TBID's first year of operation.



1.5 Assessment Methodologies

Using the information obtained in the above steps, the Consultants will calculate up to 3 assessment methodologies that will equitably assess each hotel for the TBID services.

1.6 Draft Management District Plan Summary

Consultants will prepare the draft Management District Plan Summary Report that will outline the parameters of the TBID; including district boundary, TBID services and activities, budget, assessment rates, governance, and district duration.

1.7 Stakeholder Review (Go/No Go)

Consultants will present the draft Management District Plan Summary Report to the Steering Committee and hotel operators to obtain consensus. Upon Steering Committee direction to proceed, Consultants will move into Phase Two to prepare the final documents and legal formation.

Phase Two: Management Plan and Engineer's Report

Deliverable: Final Reports and Formation Documents

2.1 Prepare Final Management District and Legal Review

Using the Management District Plan Summary Report, Consultants will craft the final Management District Plan. The City Attorney will undertake a final review of the Management District Plan and initiate preparations for the hotel operator petition drive, including review of the draft petition and petition collection procedure. *Note: The City will be responsible for preparing the requisite map.*

2.2 Petition Preparation and Distribution

The Consultants will prepare the petition and a summary newsletter that communicates the parameters and benefits of the TBID. The newsletter will summarize the Management District Plan and will be distributed with petitions. The actual petition package for hotel operators will consist of several items, including a summary of the TBID Management District Plan, petition, and newsletter. The Consultant will work with the district to ensure that these materials are assembled and prepared properly. It is the responsibility of the client and steering committee to distribute the petition packets.

2.3 Campaign Strategy and Training

In concert with steering committee, Consultants will develop a campaign strategy and timetable to complete the petition drive. Elements of campaign strategy will include individual hotel



operator, executive and board roles in securing petitions, campaign marketing tools, geographic strategies and other considerations.

Consultants will work with steering committee to identify a Task Force to help sell the TBID. Throughout the TBID formation process, the membership of this Task Force is anticipated to grow. In preparation for the petition drive, the Task Force members will be mobilized per the campaign strategy. Sector captains may be appointed to oversee campaign activities within specific areas. To support the Task Force communication tools will be developed.

2.4 Ballots, Notice and Resolutions

Following the submission of petitions to the City Council, the Consultant will prepare the Assessment Ballots and Assessment Notice that will be mailed to all assessed hotel operators upon City Council approval of the Resolution of Intention. Consultant will prepare draft Resolutions needed for the City Council to adopt.

2.5 Public Hearing

Consultants will attend the Public Hearing in which the City Clerk will be directed to open and tabulate the assessment ballots received. Consultants will be available to answer any questions and/or make a presentation to the City Council.



Project Timeline

The Consultant shall work with the steering committee to make sure that all necessary steps and procedures are completed by Summer 2022. The following is the estimated timeline for such completion.

October 2021:	Initial review
Nov-Dec:	Assessment scenarios; Draft Management District Plan (MDP) for review; Public Outreach to build consensus
January 2022:	Final MDP upon City review Prepare petitions and petition packets to include Management District Plan Summary, TBID newsletter, official petition and petition instructions
February-April:	Petition kick-off (allow 3 months)
May:	City Council approves Resolution of Intention and calls for public hearing; Assessment ballots mailed to all assessed hotel operators
June:	City Council public hearing, tabulate ballots (45 days later)
Fall 2022:	TBID organizational structure and TBID services begin



BUDGET

Below is the estimated budget for the TBID formation.

TASK	LOWELL		HORMANN		MADEKSZA		Travel and Expenses*	TOTAL
	Hrs	Rate 175	Hrs	Rate 175	Hrs	Rate 125		
PHASE ONE: INITIAL ANALYSIS AND DOCUMENT PREPARATION								
1.1 Initial Review	8	1,400	8	1,400	6	750	650	4,200
1.2 Database Development	20	3,500	0	0	4	500		4,000
1.3 Consensus Building/Education	10	1,750	10	1,750	18	2,250	1,050	6,800
1.4 District Priorities and Budget	4	700	5	875	2	250		1,825
1.5 Assessment Methodologies	15	2,625	2	350	0	0		2,975
1.6 Draft MDP Summary	15	2,625	2	350	2	250		3,225
1.7 Stakeholder Review (Go/No-Go)	4	700	4	700	4	500	1,050	2,950
Phase One Sub-Total	76	13,300	31	5,425	36	4,500	2,750	25,975
PHASE TWO: MANAGEMENT PLAN AND FORMATION								
2.1 Management Plan and Legal Review	40	7,000	5	875	2	250		8,125
2.2 Petition Prep and Distribution	10	1,750	0	0	0	0	250	2,000
2.3 Campaign Strategy and Training	0	0	5	875	10	1,250	400	2,525
2.4 Ballots, Notice and Resolutions	10	1,750	0	0	0	0		1,750
2.5 Public Hearing	8	1,400	8	1,400	0	0	650	3,450
Phase Two Sub-Total	68	11,900	18	3,150	12	1,500	1,300	17,850
TOTAL	144	25,200	49	8,575	48	6,000	4,050	43,825

* Note: Estimate 5 trips for Lowell @ \$250/trip, and 5 trips for Hormann @ \$400, and 3 trips for Madeksza @ \$400/trip.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 16th day of November, 2020, 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 Kristin Lowell, Inc., a California Corporation, whose address of record is 1420 E. Roseville Parkway #140-342, Roseville, California 95677 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to form a Property Based Improvement District in Downtown Merced; and,

WHEREAS, Consultant represents that it possesses the professional skills to fully implement California Code Section 36600 to 36671 of the Streets and Highways Code, also cited as Property and Business Improvement District Law of 1994, and form a Property Based Improvement District in Downtown Merced.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Economic Development or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on or before March 31, 2022.

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "B". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Eighty-Two Thousand Six Hundred Fifty Dollars (\$82,650.00).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement 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.

9. **INDEMNITY.** Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. 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. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. **INSURANCE.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. **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.

b. General Liability.

- (i) 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.**
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.**
- (iii) The City, its officers, employees, volunteers 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.**
- (iv) 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.**
- (v) 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, agents and volunteers 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.**

c. Automobile Insurance.

- (i) 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.**
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.**

- (iii) 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.

d. **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.

e. **Qualifications of Insurer.** The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) 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).

f. **Certificate of Insurance.** Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, 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 Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is

based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

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 Agreement, 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.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, 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.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement 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.

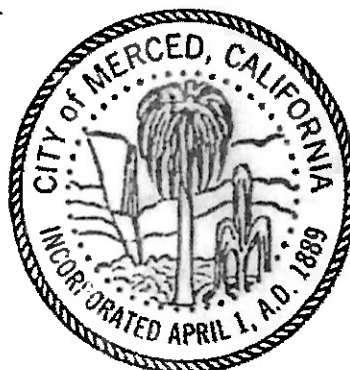
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: Stephanie Dietz
Interim City Manager

ATTEST:
STEPHANIE R. DIETZ, INTERIM CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 11/21/2020
City Attorney Date

301399
ACCOUNT DATA:

PO#140239

BY: [Signature]
Verified by Finance Officer V-18609
Funds available. w/ 11/23/20
074-2002-572-17-00 FZ 11/23/20
\$82,650.00

CONSULTANT
KRISTIN LOWELL, INC.,
A California Corporation

BY: Kristin Lowell
(Signature)

Kristen Lowell
(Typed Name)

Its: Chief Executive Officer
(Title)

BY: Kristin Lowell
(Signature)

Kristin Lowell
(Typed Name)

Its: Secretary
(Title)

Taxpayer I.D. No. 30-291470

ADDRESS: 1420 E. Roseville Pkwy
#140-342
Roseville, CA 95661

TELEPHONE: (916) 786-9686

FAX: (916) 786-0529

E-MAIL: kristen@klifinance.com