

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, 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 Boys and Girls Club of Merced, a California Corporation (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to provide a summer camp program in June and July of 2016 and June 2017; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide youth summer camp services in connection with said project.

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 and incorporated herein by this reference.

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 Assistant to the City Manager or his designee.

2. **RESERVED.**

3. **RESERVED.**

4. **COMPENSATION.** Consultant shall be compensated in the manner described in Exhibit "A."

5. **RESERVED.**

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. **RESERVED.**

10. **RESERVED.**

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: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kelly Fincher 4/21/16
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
BOYS AND GIRLS CLUB OF
MERCED, A California Corporation

BY: Michelle W. Allison
(Signature)

Michelle W. Allison
(Typed Name)

Its: Board President
(Title)

BY: Tony Slater
(Signature)

Tony Slater
(Typed Name)

Its: Ex. Director
(Title)

Taxpayer I.D. No. 770357487

ADDRESS: 615 W. 15th

TELEPHONE: (209) 722-1926

FAX: _____

E-MAIL ESlater@bgmrcd.org

EXHIBIT A

The Boys and Girls Club of Merced shall provide summer camp services during the summer of 2016 and June 2017 for residents of the City of Merced at the McCombs Youth Center. Services shall include, but are not limited to, recreation, play, lunch, reading, science and computer lab.

The Boys and Girls Club shall provide bi-weekly attendance reports to the City and at the end of camp report on activities and participants.* The City shall pay the Boys and Girls Club the sum of Twenty Thousand Dollars (\$20,000.00) to provide summer camp. For the month of July 2016, three (3) bi-weekly payments shall be disbursed as follows: Two (2) payments in the amount of Four Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$4,333.33) and one (1) payment in the amount of Four Thousand Three Hundred Thirty-Three Dollars and Thirty-Four Cents (\$4,333.34) to the Boys and Girls Club after receiving bi-weekly attendance reports for the camp. The remaining sum of Seven Thousand Dollars (\$7,000.00) will be disbursed in conjunction with the 2017 summer camp program.

The City shall provide staff training prior to the commencement of the summer camp and programming assistance and staff support throughout the duration of the summer camp.

The Boys and Girls Club is expected to have at least the equivalent of sixty (60) full-time summer camp participants from the City of Merced enrolled in the program each week.

The City and the Boys and Girls Club will review the contract and scope of services in Spring 2017.

Promotional material will include the City of Merced name and logo. All materials will be pre-approved by City staff prior to distribution.

* The Boys and Girl Club will provide the City with a list of summer camp participants, including names, addresses and ages.