

REQUEST FOR PROPOSALS

Design Build Renovation of
Merced Applegate Zoo



MERCED
APPLEGATE ZOO

Where every animal has a story!

City of Merced

Parks & Community Services

632 W 18th Street

Merced, CA 95340

REVISED DUE DATE 09/06/2024

BACKGROUND AND INTRODUCTION

The City of Merced Parks & Community Services is seeking proposals from qualified design-build teams for the comprehensive renovation of Merced Applegate Zoo, located in Merced, CA. Since 1962, Merced Applegate Zoo has been home to many wild animals in need of a safe place to live. Currently, the zoo population is comprised of approximately 60 Native California mammals, birds, and reptiles, and some non-native species. Most animals have come from wildlife rescue centers. No longer able to survive in their normal habitat, Merced Applegate Zoo offers these ambassadors from the wild care and protection. In return they provide zoo visitors with a glimpse of the wonders of nature, an opportunity to learn about the biodiversity of our region of the world, and the importance of protecting our natural resources. The purpose of this project is to enhance visitors experience, improve animal habitats, upgrade infrastructure, and bring the facility in alignment of current zoological association standards of practice.

The renovation project encompasses the redesign and construction of various areas within Merced Applegate Zoo, including but not limited to:

- **Visitor Facilities:** Entrance area including entry and exit of gift shop.
- **Animal Habitats:** Black Bear enclosure, Tortoise exhibit, Screech Owl exhibit, petting zoo station, and platform overlooking the wetland exhibits between pond areas.
- **Infrastructure:** New walking paths, security lighting, drainage, and maintenance hall utility upgrades.
- **Landscape:** Native gardens, leveraging existing tree canopy and themed environments.

The allocated budget for the design and construction of the project is \$1,800,000 with 10% of the overall budget being allocated for contingency (\$180,000).

Scope of Work: The design-build team shall provide comprehensive services including, but not limited to:

- Preliminary design concepts and renderings.
- Detailed architectural and engineering plans.
- Permitting and regulatory compliance.
- Construction services, including demolition, site preparation, and installation.
- Sustainable design considerations.
- Testing, commissioning, and turnover to zoo operations.

A comprehensive Scope of Work can be found in EXHIBIT A.

Proposal Requirements: Interested firms are required to submit proposals that include:

- Company profile, including relevant experience in zoo or wildlife facility renovations.
- Project team qualifications and resumes of key personnel to design, construct, and manage the project.
- Previous project examples demonstrating successful design-build collaboration between the proposed parties involved in the design-build partnership.
- Projects completed at zoo or wildlife facilities within the state of California.
- Approaches to sustainable design and energy efficiency.
- Proposed project schedule and milestones- Design and construction must be completed no later than June 30th, 2026.
- Budget estimate and proposed fee structure.
- Compliance with local building codes and regulations including Federal Funding Requirements.

Proposal Submission: Proposals must be submitted no later than Friday, August 23rd at 5:00pm in writing. Any exceptions to the requirements stated herein shall be clearly stated in the submittal and may be grounds for being declared non-responsive. All correspondence or communications in reference to this RFPs shall be directed to:

Christopher Jensen
Director, Parks & Community Services
City of Merced
632 W 18th Street Merced, CA 95340
(209) 385- 6855
JensenC@cityofmerced.org

All cost for preparation of the submittals shall be borne by the applicant, and submittals received shall become the property of the City, whether accepted or rejected. Incomplete submittals may be rejected as non-responsive. The City reserves the right to reject all proposals submitted in response to the RFP.

Evaluation Criteria: Proposals will be evaluated based on the following criteria:

- Experience and qualifications of the design-build team.
- Quality and creativity of proposed design concepts.
- Feasibility of proposed construction schedule.
- Cost-effectiveness and value engineering proposals.
- Commitment to sustainability and environmental stewardship.

Selection Process: Following the submission deadline, a selection committee will review and score proposals based on the evaluation criteria. Shortlisted firms may be invited for interviews or presentations.

Contract Award: The contract will be awarded to the firm that best meets the needs of Merced Applegate Zoo based on the evaluation criteria. The City of Merced reserves the right to reject any or all proposals received.

Contact Information: For inquiries or clarifications regarding this RFP, please contact Christopher Jensen, Director of Parks & Community Services at (209) 385-6855 or through email at jensenc@cityofmerced.org.

BID PROTEST AND APPEAL: Potential bidders, proposers, contractors, and subcontractors wishing to protest or appeal a procurement or contracting decision made by the purchasing division must follow the procedures provided in this section. Protests or appeals not submitted in accordance with these procedures will not be reviewed.

PROTEST SUBMISSION (1) Any interested party (actual or prospective bidder or proposer) may file a written protest with the Purchasing Supervisor (PS) no later than five (5) working days after the date of mailing a Notice of Intent to Award (NIA). (2) The written protest may be delivered to the PS in person or via certified mail. (3) The protest must be physically received by the PS by 4:00 p.m. PST, by the fifth day during the protest period. (4) The protest filed with the PS shall meet the following prerequisites:

- a. The name, address, and business telephone number of the protestor.
- b. Identify the project under protest by name, RFP/quotation/bid number, and RFP/quotation/bid date.
- c. Contain a concise statement of the grounds for protest; however, the RFP or bid procedures (including evaluation criteria) shall not constitute grounds for protest. Concerns related to those issues must be

raised and addressed before the bid or proposal opening date to allow adjustments before evaluating bids or proposals.

d. Include all supporting documentation, if any. Documentation submitted after filing the protest will not be considered during the review of the protest or an appeal.

PROTEST REVIEW AND APPEAL (1) Upon receipt of a protest, the PS shall review all the submitted materials and create and retain a written record of the review. The PS shall respond in writing, at least generally, to each material issue raised in the protest not later than ten (10) working days after receipt of the protest. (2) If the protested procurement involves federal funds, the PS shall notify the interested party that they have the right to appeal to the appropriate federal agency which shall be identified by name and address. An appeal hereunder shall be filed with the appropriate agency, within five (5) working days of the dispatch of rejection notices to the interested parties. (3) The PS' decision may be appealed in writing to the City Manager (CM) or their designee(s), with a copy to the PS, not later than ten (10) working days after the date the PS' decision is mailed to the protesting party. A bid appeal review committee comprised of the CM or designee and any other person(s) he or she selects shall review and decide the appeal based on the grounds and documentation set forth in the original protest to the PS. The appealing party may be represented by legal counsel if desired. Each party shall bear its costs and expenses involved in the protest and appeal process, including any subsequent litigation. The decision of the bid appeal review committee shall be final. (4) If the protested procurement involves federal funds, interested parties may have the right to appeal to the appropriate federal agency. When applicable, the PS shall notify the interested party that he or she has the right to such an appeal and shall identify the federal agency by name and address. When applicable, an appeal hereunder shall be filed with the appropriate agency within five (5) working days of the dispatch of rejection notices to the interested parties.

PUBLIC RECORD Responses to this RFP become the exclusive property of the City of Merced. When the Engineering Department recommends a firm to the city council, all proposals received in response to this RFP becomes a matter of public record and shall be regarded as public records, except those elements in each proposal that the Proposer defines as business or trade secrets and marked as "Confidential," "Trade Secret," or "Proprietary". The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary," or if disclosure is required under the Public Records Act. Any proposal that contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Merced may not accept or approve that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the City shall provide the Proposer who submitted the information with reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction.

WITHDRAWAL OF PROPOSALS A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

Amendments: City of Merced reserves the right to amend or modify the RFP timeline or requirements at any time. All amendments will be communicated promptly to all prospective bidders.

PURPOSE AND SUMMARY OF WORK

The purpose of the work by the Consultant is to provide all design and construction services needed for zoo improvements including a Bear Exhibit, Tortoise Exhibit, Screech Owl Exhibit, Electrical, Plumbing, Landscaping and Hardscape for the Merced Applegate Zoo located at the northeast corner of R Street and 25th Street.

The design of the improvements should be consistent with the conceptual vision and specifications provided below.

AESTHETIC CHARACTER:

The Consultant shall conduct a complete site analysis to clearly identify problems and opportunities connected with the redevelopment and remodeling of the site. Included in this analysis are all existing facilities, zoning, and other legal requirements. The functional and visual relationship among all site components, both the existing and the proposed facilities, will be studied, and design options on their total integration will be presented for approval and development as part of this project. Work should be consistent with the Applegate Park Zoo Master Plan (Exhibit A).

Theme- It is the Zoo's desire to incorporate a consistent "look" for the facilities which incorporate the City's "Gateway to Yosemite" theme. It was decided that natural materials, such as, stone and wood, would provide an appropriate aesthetic for the Zoo. For example, a "Yosemite Lodge" type of architecture, of an appropriate scale, that is expressive of the functional activities taking place within and around the facility, would be appropriate.

Design of the Bear Exhibit - Tortoise Exhibit and Screech Owl Exhibit shall include conceptual renderings for a Recreation/Zoo Department presentation and review as well as public "open house" style project review to receive comments. Careful consideration should be given to service and emergency circulation as well as security of and around the facility in the Project design. Circulation plans should also account for safely moving animals outside of enclosures. The Project should reflect the Zoo's commitment to be operationally cost effective by providing functional, flexible facilities that minimize staffing requirements, maximize energy conservation, and lend themselves to sponsorships and fundraising opportunities.

Landscape- A landscape plan shall be part of the planned facilities. Plants should be selected for ease of care, water conservation, and appropriateness for the Merced climate and Zoo landscape. Highlighting plants historically used by the native Yokut people is also encouraged. As vegetation is considered a major asset to the Zoo environment, an evaluation of all plants including trees impacted by development, regardless of protected status, shall be made. The evaluation shall consider those plants of major size and/or particular value, such as plants providing shade for users or structures; plants possessing wildlife value; and those plants possessing a unique character or particular aesthetic quality or that can be used as browse for Zoo animals. Planning efforts shall attempt to preserve in place or transplant existing viable plants and trees.

Electrical- Lighting should maximize energy conservation and comply with Dark Sky Standards. The angle of the sun should be considered in the design for the enclosures as well as to provide shade for visitors and animals. Merced Applegate Zoo hosts a variety of afterhours events that require special event lighting and tours. Electrical plans should allow for the routine use of plug-in auxiliary lighting to highlight certain areas of the zoo while also providing safety lighting in case of an emergency.

Hardscapes, exhibits, and interpretive amenities shall encourage a variety of ways to view and learn about the wildlife (plants and animals). Every effort should be made to maximize the small yet boutique experience that Merced Applegate Zoo offers visitors, allowing them to get as close as possible to the wildlife without jeopardizing safety.

SCOPE OF PROJECT:

This project is being supported, in whole or in part, by federal award number SLFRP4002 awarded to the City of Merced by the U.S. Department of the Treasury. As there are limited funds for this project, the construction budget will be pre-determined by the City, and it shall be the Consultant's responsibility to produce construction documents and construct the final product conforming to this budget. Below is a list of desired renovations in priority order. As many of the listed renovations as possible should be incorporated into the design with a total project funding budget for design and construction not to exceed \$1,800,000.

MAJOR COMPONENTS OF THE RENOVATION WILL INCLUDE:

- Replace all asphalt with concrete walking paths that meet ADA requirements.
 - Address grading and drainage to assist with dispersing storm water.
 - Accessible entrance for admission building
- Retain as much shade in Zoo as possible.
- Renovate/rebuild existing cougar enclosure to house American Black Bears
 - Must meet California Fish and Wildlife Restricted Species Laws and Regulations Manual 671 (DFW 1312d)
 - Must include:
 - 2 dens
 - Trainer corridor for zookeepers
 - Water feature with pool
 - Shade
 - Viewing panels
- Provide new electrical infrastructure throughout facility.
 - Ambient light
 - Outlet receptacles
 - Emergency lighting (flood lights)
- Update maintenance hall electrical and plumbing fixtures
- Separate wetland pond drain from main hall enclosures to limit backflow into exhibits
- Create Desert Tortoise exhibit with heated dens for reptiles (west of restrooms)
- Renovate Screech owl exhibit (deteriorating from moisture)
- Build ADA compliant platform between big pond and small pond area.
- Improve reptile exhibit window for kids accessibility.
- Add handwashing station for petting zoo (between goats & emu)
- Provide rendering of bobcat enclosure renovation with cost estimates for individual items to allow for donation opportunities.

GENERAL WORK PROGRAM:

All tasks shall be coordinated to effectively develop interrelated project elements, and tasks shall not be advanced until preliminary requirements are addressed, and clear direction established. The consultant shall have total responsibility for the accuracy and completeness of all work and services required for this project.

Quality Control shall be consistently and thoroughly applied throughout the project. Assigned QA/QC staff shall be technically well qualified to conduct the appropriate level of oversight and demonstrate a concerted commitment to provide a high-quality product.

A project schedule shall be prepared itemizing all activities and subtasks to support project milestones. The schedule shall be in the form of a bar chart and show deliverables and other relevant data needed for the control of work. A copy of the schedule and monthly updates shall be furnished to the City Project Manager.

The Consultant shall commit all necessary resources to achieve expeditious completion. The Consultant shall maintain the same project manager throughout the duration of the project.

The Scope of Services defines the general project requirements. All tasks shall be undertaken and completed within the “Not to Exceed” contract fee of \$1,800,000 minus the 10% contingency.

METHOD OF COMPENSATION

The Consultant is to identify a schedule of values for the project. Progress payments will be made monthly upon invoice, based on percent of item completed.

The Consultant must also identify any reimbursable expenses and give a “Not-to-Exceed” total for reimbursables. Any necessary services outside the scope of the work must also be identified.

SCHEDULE AND TIME OF COMPLETION

Design and construction must be completed no later than July 31st, 2026. All invoices shall be submitted no later than August 31st, 2026.

CITY'S RESPONSIBILITIES

The City shall provide the Consultant with existing relevant plans, studies, and publications concerning the activities and programs. The City shall designate a representative(s) authorized to act in its behalf with respect to the Contract(s) and furnish required information as expeditiously as necessary for the orderly progress of the work.

CONSULTANT’S PRODUCTS, OWNERSHIP, AND DISPOSITION

All Consultant products produced under the contract become the property of the City and shall bear no restrictive markings intended to prevent their free use by the City. Electronic files shall be reproducible and shall not be “write-protected” in any manner.

SPECIAL ISSUES AND REQUIREMENTS

Federal Funding Requirements

This project is being supported, in whole or in part, by federal award number SLFRP4002 awarded to the City of Merced by the U.S. Department of the Treasury. All actions must comply with the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions.

EXHIBIT A: SCOPE OF SERVICES

Deliverables

Throughout the work, all deliverables are to be supplied in the following formats unless otherwise specified:

- a. Drawings and Plans: Electronic version in AutoCAD format (2018 or later preferred); Paper copies
- b. Text documents: Microsoft Word
- c. Spreadsheets, budgets or other financial data: Microsoft Excel

Task 1. Preliminary Design

- a. Consultant shall provide a schedule of values for tasks to be completed during design to be used for progress payments.
- b. Consultant will meet with City officials and discuss the project requirements and preliminary program.
- c. The Consultant shall make a comprehensive review of the site and provide basic concept of materials and methods of construction, along with a schematic budget.
- d. Consultant shall prepare a conceptual site plan, floor plan and elevation, based upon City requirements.
- e. Approval of conceptual plans by the City.

Task 2. Preparation of Design Development Drawings

- a. Consultant shall prepare Design Development Drawings consisting of drawings and other documents to fix and describe the size and character of the project as to architectural, structural, mechanical, and electrical systems, materials and other elements as may be appropriate including utilities and site improvements. Drawings shall be on AutoCAD 2018 or later version.
- b. Consultant shall prepare a preliminary specification including all plumbing, electrical, mechanical, fixture selections and all finish materials including recommendation interior and exterior colors.
- c. Consultant shall provide colored renderings, elevation, floor plan, and site plan of the revised plan for presentation to stakeholders, and for the purpose of community presentations. Drawings prepared for presentation should include sections and perspectives as necessary to fully explain the work.
- d. Consultant shall participate in design review and public open house meetings.
- e. Approval of Design Development Drawings, and Specifications by the City.

Task 3. Preparation of Construction Documents

- a. Consultant shall prepare Final Construction Documents to include; The Drawings, Specifications, and other documents needed to obtain all necessary permits, and provide the details required to construct and develop the site. Drawings shall be on AutoCAD 2018 or later version.
- b. Consultant shall prepare a schedule of values including all fees, permits, off-site work, impacts, utility connection fees and related costs for the use of progress payments during construction.
- c. Consultant shall prepare necessary documents for the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the project.

Task 4. Construction Phase

- a. Consultant shall construct the project in accordance with the approved plans and specifications.
- b. Consultant shall provide drawings and specifications for any change orders for City approval.
- c. Project close-out including punch lists, walk-through items, and follow up and Final as-built drawings in electronic form shall be provided prior to filing of the Notice of Completion.

EXHIBIT B: SAMPLE AGREEMENT- DO NOT FILL OUT

CITY OF MERCED DESIGN BUILD AGREEMENT

This **AGREEMENT** is made as of the _____ day of _____ in the year of 20_____, by and between the following parties, for services in connection with the Project identified below.

OWNER:

City of Merced

Attn: City Manager

678 W. 18th Street

Merced, CA 95340

DESIGN-BUILDER:

(Name and address)

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Merced Applegate Zoo Request For Proposals – Design Build Project

632 W. 18th Street

Merced, CA 95340

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement;

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and approved in accordance with this Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights,

copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and

4.3.2 Owner agrees to pay Design-Builder the additional sum of _____

Dollars (\$ _____) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than _____

(_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the “Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by (_____) days after the Scheduled Substantial Completion Date (the “LD Date”), Designer-Builder shall pay Owner _____ Dollars (\$ _____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of One Million Eight Hundred Thousand Dollars (\$ 1,800,000.00)

(“Contract Price”), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (_____%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

No additional reduction to account for Design-Builder’s Fee or any other markup.

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.3.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the _____ (_____) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within twenty (20) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain _____ percent (_____%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____%) per month until paid.

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part

of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

8.2 In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

Required Not Required

Payment Bond.

Required Not Required

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

EXHIBIT C- INSURANCE

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 \$2,000,000.00 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 Two Million Dollars (\$2,000,000) 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 Two Million Dollars (\$2,000,000). 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. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.