

SECTION 1

INTRODUCTION

1.1 INTENT OF THE REQUEST FOR PROPOSAL

The purpose of this Request for Proposal (RFP) is to conduct an initial study and to establish a countywide broadband strategic plan. Enhancing broadband infrastructure is critical to economic growth, continuous technology infrastructure improvement, and to enhance the quality of life for the citizens of Merced County. Although the topography of the County is relatively flat, many rural and unincorporated communities continue to lack access to an affordable, high speed, and reliable broadband connection. The County of Merced is in need of strengthening its broadband infrastructure.

The County of Merced is seeking responses from qualified firms to conduct an assessment of broadband service gaps within the County, incorporated cities, and unincorporated communities to provide recommendations for options to address such gaps directly or through a public-private partnership.

The selected Bidder shall identify broadband coverage gaps and unreliable and/or slow services within the County, including its incorporated cities, and unincorporated communities; create an inventory of existing Broadband coverage Service Providers; review inventory of existing County broadband infrastructure including the assessment of the physical "middle mile" and "last mile" connection readiness; recommend temporary stopgap measures and permanent solutions to provide reliable broadband coverage services, including but not limited to: public-private partnerships, private investment with public facilitation (including but not limited to new franchise agreements), private execution, and public execution.

1.2 BACKGROUND INFORMATION

The County of Merced is requesting responses for qualified Bidders to prepare a broadband strategic plan for the County including its incorporated cities and unincorporated communities. The County of Merced recognizes that broadband is an essential, critical infrastructure for the economic growth of the County. The advancement of technology and infrastructure associated with broadband will play a key role in its economic future and quality of life. The development of a broadband strategic plan, which includes key policy directions for broadband expansion and development, will enhance public and private investment in technology infrastructure and strengthen its economic competitiveness. For the purposes of this proposal, the term "Broadband" applies to the capacity of networks to transmit high speed wireless and wireline data, voice, and video traffic. "High Speed" is defined of at least 25 Mbps down and 3 Mbps up (25/3).

Merced County is located in the heart of the Central Valley of California with a population of approximately 281,202 people, according to the 2020 US Census data. The County has a total area of 1,935 square miles. The County has six (6) incorporated cities, many outlying unincorporated communities, the University of California Merced, the Merced College public college campuses, and the Fresno Pacific University's Merced campus. Our proximity to the university, community college, and the emphasis on agricultural technology, has resulted in business and resident populations that call for higher levels of wireless and wireline connectivity, than are typically seen in communities of comparable population.

Several private telecom providers currently serve the County; however, service to rural communities is often unavailable, of low quality and slow speed, and unreliable. There is no overall unified strategy or development plan to serve these areas. The requested proposal is for a countywide strategic broadband plan.

REQUIREMENTS

The County of Merced will work with the selected Bidder on all key project tasks. Bidder shall research and evaluate current usage, conduct an assessment of broadband coverage service gaps within the County, including its incorporated cities, and unincorporated communities, and recommend options to address findings directly or through a public-private partnership.

The selected Bidder is encouraged to include representatives from government, private, and non-profit entities interested in promoting economic development, contributing to advances in agricultural business and technology, health care, education, public safety and social justice. The County of Merced is also a member of the San Joaquin Valley Regional Broadband Consortium (SJVRBC), which may also serve as a resource for this effort.

It is expected that the selected Bidder will utilize and build on reports and data prepared by participating local agencies and government entities, including broadband speed testing; backbone fiber cost and engineering reports for priority areas; broadband adoption analysis; and draft telecommunications goals and policies. The selected Bidder will be required to meet with staff from the County of Merced, incorporated cities' staff, and staff from unincorporated communities on a regular basis to discuss and plan the project(s), and provide progress reports on a bi-monthly basis.

1.3 MINIMUM REQUIREMENTS

- 1.3.1 Thorough understanding of the broadband/telecommunications industry, including current state and federal initiatives related to broadband.
- 1.3.2 Demonstrated experience with municipal broadband planning activities in California.

- 1.3.3 Extensive familiarity and experience with telecommunication and broadband technology and application.
- 1.3.4 Possess skills and experience in facilitating public meetings; experience working with the public and meeting attendants to create a successful conclusion to the meeting process.
- 1.3.5 Demonstrated experience working with elected officials, public staff, business community, concerned citizens, telecommunications personnel, educators, healthcare providers, public safety officials, invited speakers and other interested parties.
- 1.3.6 Demonstrated skills to provide strategic direction, articulate key strategic concepts, and the ability to focus on strategic issues.
- 1.3.7 Possess communication skills that encourage participation in meetings, encourage group process and help meetings stay on task.
- 1.3.8 Ability to analyze and synthesize data from the meetings and communicate the information to the County of Merced, including its incorporated cities, unincorporated communities, and other identified government agency staff.
- 1.3.9 Ability to remain flexible and respond to changes in schedules and timelines.

1.4 PROJECT TASKS

In consultation with and under the direction of County staff, Bidder shall complete the following tasks:

- 1.4.1 Identify broadband coverage gaps and unreliable and/or slow services within the County, utilizing the following and any other necessary information sources:
 - a. Analysis of relevant information and maps available through the Federal Communications Commission.
 - b. Request reports and surveys from AT&T, Verizon, Comcast, and potentially other providers serving the County, incorporated cities and unincorporated communities, and conduct analysis on available information.
 - c. Validate and correct as needed the California Public Utilities Commission (CPUC) Coverage Map.
 - d. Create coverage maps that compares slow or no access to broadband

services within the County to Qualified Census Tracts.

1.4.2 Assess and evaluate Broadband coverage Service Providers (ISPs) by performing the following:

- a. Review inventory of existing County, incorporated cities and unincorporated communities' broadband infrastructure.
- b. Develop criteria to inventory and catalog the ISPs, which shall include services provided, speed, cost, value, availability, reliability, and/or overall satisfaction throughout the County.
- c. Create an inventory of existing ISPs detailing plans/products provided, including costs, speeds, and service locations.
- d. Identify key issues for Broadband Expansion throughout the County.

1.4.3 Perform the following tasks to establish "middle mile" and "last mile" connection readiness:

- a. Review inventory of existing County, incorporated cities and unincorporated communities' broadband infrastructure.
- b. Review all encroachment permit application procedures/standards in place for the installation of broadband infrastructure in the ROW (Right of Way) for the County, incorporated cities, and unincorporated communities.
- c. Review all Vertical Infrastructure Master Licenses Agreements in place for the installation of broadband infrastructure in the ROW (Right of Way) for the County, incorporated cities, and unincorporated communities.
- d. Assess the physical "middle mile" and "last mile" connection readiness from the infrastructure in the street to homes and businesses.
- e. Provide business modeling for wireline "middle mile" and "last mile" network design and wireless last mile design solutions.
- f. Deploy methodologies, pricing, and identify issues related to inadequate in-home wiring and broadband equipment.

1.4.4 Outreach and community engagement activities:

- a. Conduct independent community outreach, including virtual town hall meetings, online surveys, and at least one community workshop for County and City residents and businesses.

- b. Conduct stakeholder interviews (including but not limited to AT&T; Comcast; Verizon; County, incorporated cities, and unincorporated communities; Merced Irrigation District; Pacific Gas and Electric Company [PG&E]; Merced Unified School District; Merced Union High School District; Merced County Office of Education; Merced Community College District, and the University of California, Merced).
- c. Provide residents and businesses with a portal to report slow and/or unreliable broadband services and perform broadband coverage speed tests. Portal shall identify location of customers/ISPs reporting slow speeds and broadband availability within the County.

1.4.5 Solutions and recommendations:

- a. Recommend temporary stopgap measure and costs associated with the measures to support underserved communities, such as providing free Wi-Fi coverage at County-owned facilities and establishing a Mi-Fi loaner program.
- b. Identify key short (three (3) years), mid (seven (7) years) and long-term (ten (10) years) broadband policies and initiatives that agencies countywide can develop to facilitate a unified technology policy direction.
- c. Positively impact the policies, actions and directions of the cities in the County of Merced, incorporated cities, and unincorporated communities, and other agencies and stakeholders relative to technology policy and direction.
- d. Bidder will identify a “road map” for each community’s next steps for planning, funding, grants and other resources to implement identified strategies (Action Plan and Resources). Prioritize existing resources that can be leveraged. Provide information on the availability and relevance of potential funding sources for any future projects that arise from the recommendations in the Plan. This includes governmental sources, foundations, and private resources.
- e. Develop metrics and targets for successful broadband deployment, which may include broadband coverage connection speeds, coverage areas, timelines, and customer pricing.
- f. Provide an overview of potential options to provide reliable broadband coverage services, including but not limited to public-private partnerships, private investment with public facilitation (including but not limited to new franchise agreements), private execution, and public execution.

- g. Identify pros and cons, potential legal issues, start-up and operating/maintenance costs, cost control and low-income subsidies, and potential revenue sources (including Federal, State, and local grants) for each model.
- h. Provide supporting documentation, assumptions, and calculations for each option.
- i. Provide recommendations on the model(s) to pursue, including a funding mechanism, any changes to policies and legislation, changes to existing or new franchise agreements.
- j. Develop a ten (10) year financial projection for the recommended model(s).
- k. Describe your role in supporting the implementation of the proposed solutions.
- l. Present findings and recommendations to County Board of Supervisors and City Councils.

1.5 PROJECT DELIVERABLES

- a. Draft and finalize reports of findings, recommendations, and supporting documents within timeline agreed upon by County and Bidder.
- b. Bidder shall present findings and recommendations to County Management, City Councils, and other groups or stakeholders if necessary as determined by the County.

1.6 SPECIFIC COMPLIANCE

The Bidder awarded the Agreement derived from this proposal will be required to abide by all applicable local, federal and state laws and regulations.

On August 14, 2020 Gavin Newsom, Governor of California approved and signed Executive Order N-73-20. The purpose of this Executive Order is to deploy affordable and reliable broadband networks throughout California to accelerate continuous improvements in economic and workforce development, infrastructure, public safety, education, economy, and an engaged citizenry. The COVID-19 pandemic has amplified the extent to which broadband is essential for public safety, public health, and economic resilience.

SECTION 2

RESPONSE FORMAT AND CONTENT

2.1 GENERAL INFORMATION

This section describes the required response format and content. The response should contain the requested information organized by the prescribed section and subsection numbers and titles. Any information provided beyond that of which is required in the response should be contained in a section sequentially numbered and entitled "Optional Exhibits and Attachments".

Each Bidder shall submit a complete response, providing all information requested and a complete description of the functional operation of the program/project proposed. Failure to follow the prescribed format may result in the rejection of your response.

Responses must be complete in all aspects. A response may be rejected if it is conditional or incomplete, or if it contains any alteration of form or other irregularities of any kind. A response may be rejected if any such defect or irregularity constitutes a material deviation from the proposal requirements. The response must contain all costs required by the proposal.

2.2 RESPONSE FORMAT

The response must be developed on the forms provided in this package, or must follow the proposal content requirements in the order in which they appear in the proposal. Responses that do not conform to this format may not be considered for evaluation. All responses must be submitted in the name of the legal entity or authorized agency. Responses must be signed in blue ink by the officer or officers legally authorized to bind the company, partnership or corporation.

The content and sequence of the response will be as follows:

- 2.2.1 Signature Page
- 2.2.2 Bond(s) (If any)
- 2.2.3 Table of Contents
- 2.2.4 Executive Summary
- 2.2.5 Exceptions
- 2.2.6 Approach
- 2.2.7 Bidder's Qualifications
- 2.2.8 Cost Proposal

2.2.1 Signature Page

Bidder must complete and return the enclosed Signature Page. The

Signature Page must be signed in blue ink by the officer or officers legally authorized to bind the company, partnership, or corporation.

2.2.2 Bond(s)

Bidder must enclose any bonds as required in the RFP.

2.2.3 Table of Contents

The Table of Contents must be a comprehensive listing of the contents included in your response. This section must include a clear definition of the material, exhibits and supplemental information identified by sequential page numbers and by section reference numbers.

2.2.4 Executive Summary

The Executive Summary shall condense and highlight the contents of the Bidder's response to provide the Evaluation Committee with a broad understanding of the Bidder's approach, qualification(s), experience and staffing.

2.2.5 Exceptions

This portion of the response will note any exceptions to the requirements and conditions taken by the Bidder. Exceptions should clearly explain why the Bidder is taking exception to the requirements. If exceptions are not noted, the County will assume that the Bidder's response meets those requirements as specified herein and that the Bidder accepts and intends to abide by all stated terms, conditions, and requirements. Exceptions will be considered by the County, and will form a part of any resulting Agreement, only if the County explicitly so states in writing.

Exceptions shall be noted as follows:

- Exceptions to the Requirements
- Exceptions to any other part of this RFP
- Exceptions to terms in the Sample Agreement

2.2.6 Approach

The Bidder's response shall clearly describe, in detail, how the Bidder will meet and perform the requirements of this RFP. Additionally, responses should provide any special or unique qualifications the Bidder has and believes will contribute to meeting the requirements of this RFP. Only those levels of performance the Bidder actually believes can be accomplished should be stated as measurable objectives. Each of the major tasks, or

activities to be undertaken, as a means of reaching such objectives, must be specifically identified. Display the essential points of activity in a time sequence showing the amount of time allotted to each activity.

The merit of each response received in response to this RFP will be judged largely on the basis of each Bidder's narrative description as described in the Approach of their response. It is important that your response contain all information required for an effective evaluation. The response should be written in such a manner that provides sufficient detail for the Evaluation Committee members to know what is planned at every stage, and to make a judgment as to the probable success of the proposed effort.

(A benchmark chart may be completed to display the time frame for achieving and accomplishing each major program/project task or activity. Flowcharts and other related graphics may accompany this section.)

2.2.7 Bidder's Qualifications

Bidder shall provide a concise statement demonstrating that the Bidder's company has the qualifications, experience, and capability to perform the requirements of this RFP. The following sections must be included:

a) History

Provide a brief history of your company, including the number of years in business. State whether your organization is an individual proprietorship, partnership, corporation, or private nonprofit organization, and the date your company was formed or incorporated. Provide a statement as to any judgment, litigations, licensing violations, or other violations, outstanding or resolved, against your company in the past five (5) years.

b) Background and Experience

A summary of relevant background information describing your company's experience of major accomplishments and/or activities similar to the requirements set forth under this RFP, which demonstrates your company's ability to provide the service described in your response.

c) References

Provide a list of at least three (3) customer references. Include the agency/firm's name; the name, title, and telephone number of a contact person; the dollar amount of the Agreement; and the dates that these services were completed. Bidder may provide sample material of your company's work to substantiate your previous experience.

d) Staff Assignment

A brief description of the experience and qualifications of the proposed key staff members assigned to this program/project and what percentage of their time will be devoted to the program/project. Show their function, level of education, degree and license, if appropriate, and a detailed resume for each person. Additionally, the Bidder must specify where the staff will be located and identify the program/project manager.

2.2.8 Cost Proposal

It is essential that all responding Bidders include and clearly detail all costs, payment schedules, categorization of line items, and/or other related costs associated with your response. All responses must have a narrative providing a thorough and clear explanation of your costs.

SECTION 3

BASIS OF AWARD, SELECTION PROCESS, AND EVALUATION CRITERIA

3.1 BASIS OF AWARD

Award will be made to the Bidder whose response demonstrates to be the most qualified, responsive, and advantageous to the County. **The County shall not be obligated to accept the lowest cost response, but will make an award in the best interests of the County after all factors have been evaluated (“most responsive response”).**

THE COUNTY RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO REJECT ANY OR ALL RESPONSES OR ANY PART THEREOF, OR TO WAIVE ANY INFORMALITIES IN THE RESPONSE AND MINOR IRREGULARITIES, TECHNICAL DEFECTS, OR CLERICAL ERRORS, TO MAKE AN AWARD BASED ON SUITABILITY, QUALITY OF SERVICE(S) TO BE SUPPLIED, THEIR CONFORMITY WITH THE SPECIFICATIONS AND FOR THE PURPOSES FOR WHICH THEY ARE REQUIRED, AND NOT CONFINED TO COST ALONE. THE COUNTY SHALL NOT BE LIABLE FOR ANY COSTS INCURRED BY THE BIDDER IN CONNECTION WITH THE PREPARATION AND SUBMISSION OF THIS OR ANY OTHER RESPONSE.

False, incomplete, or nonresponsive statements in connection with the response may be deemed sufficient cause for rejection. The County shall be the sole judge in making such determination. The County reserves the right to cancel or discontinue the response process and reject any or all responses in the event it determines that there is no longer a requirement for the furnishing of such items, materials, equipment, and/or services, funding is no longer available for this proposal, or it is otherwise in the County's best interest to cancel the RFP process.

3.2 EVALUATION PROCESS

The Evaluation Committee will consider only those responses which have been considered responsive to the proposal. Any response which fails to meet the requirements of the proposal will be considered non-responsive and may be rejected. Responsiveness includes attention to detail in following the proposal format. The Evaluation Committee may also contact and evaluate the Bidder's and the subcontractors' references; contact any current users of a Bidder's services; solicit information from any available source concerning any aspect of a response, and seek and review any other information deemed pertinent to the evaluation process. The Evaluation Committee shall not be obligated to accept the lowest priced response, but shall recommend such response that is the most qualified, responsive, and cost-effective response and in the best interest of the County (“most responsive response”).

The RFP will be evaluated based on the following criteria:

	CRITERIA	POINTS
1	Response demonstrates an understanding of the RFP objectives and provides a clear approach for how the Bidder will ensure objectives will be met.	35
2	Demonstrate experience and qualifications as they relate to working with multiple stakeholders in creating a strategic broadband plan.	35
3	Comprehensive cost proposal of services to be rendered.	20
4	Work sample of a similar plan.	10
	TOTAL POINTS	100

3.3 NOTICE OF INTENT

A "Notice of Intent to Negotiate" with the successful Bidder will be sent, by email, to all participating Bidders.,

A "Notice of Intent to Award" will be sent, by email, to all participating Bidders upon completion of negotiations with the successful Bidder.

3.4 NEWS RELEASES

The successful Bidder shall not make any news release about the award without the prior written approval of the County.

3.5 DEBRIEFING

A debriefing shall be held before the award of the Agreement upon an unsuccessful Bidder's timely request for information concerning the evaluation of that Bidder's response. The request must be in writing, dated, signed either by the Bidder or a legally authorized individual on behalf of the Bidder and be received by the County's Department of Administrative Services-Purchasing at 2222 "M" Street, Merced, California 95340 within three (3) working days following the County's transmission, by U.S. postal mail or , of the "Notice of Intent to Negotiate". Each requesting Bidder will be allotted a maximum of one (1) hour for any debriefing conference. The information provided by the County will be based on the Evaluation Committee determinations of your company's submitted response as it relates to the evaluation criteria stated in this RFP. The debriefing may be held, at the County's discretion, by telephone conference call. The debriefing is not the forum to challenge the proposal's specification, requirements, or selection criteria. The debriefing procedure provided in this RFP to all requesting and unsuccessful Bidders is the exclusive and sole remedy and means of receiving information regarding the respective Bidder's evaluation and preliminarily challenging the award of the Agreement.

3.6 PROTEST

Should an unsuccessful Bidder request a debriefing, and believes its response to be the most responsive to the County's proposal and that the County has incorrectly selected another Bidder for the award, the appealing Bidder may protest the County's selection as described below:

All protests must be made in writing, dated, signed by the Bidder or an individual authorized to sign Agreements on behalf of the protesting Bidder, and contain a statement of the reason(s) for protest; citing the law(s), rule(s) and regulation(s) or procedure(s) on which the protest is based. The protesting Bidder must have gone through the debriefing process described above and must provide facts and evidence to support the protest.

Protest(s) to County's Intent to Award must be sent either by U.S. mail, postage prepaid, or by personal delivery to:

County Executive Officer
County of Merced
2222 M Street
Merced, California 95340

All protests of the County's intended award decision must be received by the County Executive Officer no later than seven (7) working days following the County's transmission, by U.S. postal mail or facsimile, of the "Notice of Intent to Award" to the Bidder.

3.7 PROTEST PROCEDURES

A Bidder protesting the results must use the procedures set out in this Request for Proposal (RFP). By submitting a "Letter of Intent to Protest", the Bidder has agreed that the protest procedures in this RFP shall precede any action before a judicial or quasi-judicial tribunal regarding this proposal. Protests that do not follow these procedures shall not be considered. The protest procedures constitute the sole administrative remedy available to the Bidder under this procurement. Upon exhaustion of this remedy, no additional recourse is available with the County of Merced.

The formal protest shall be presented first to the County Executive Officer or their designee. If the protest remains unresolved after the County Executive Officer's review, the Bidder will have an opportunity to address the Board of Supervisors with their concerns. The decision of the Merced County Board of Supervisors constitutes the final step of the Bidder's administrative remedy.

The County Executive Officer, or their designee, and the County Board of

Supervisors shall dismiss a protest if it is determined that the protest was submitted: (1) as a delay tactic; (2) to position the protester advantageously for future procurement; (3) in a form that deviates from the one prescribed; (4) without adequate factual basis or merit; or (5) in an untimely manner.

If a protesting Bidder does not appear at the scheduled protest hearing, the protest will be dismissed.

SECTION 4

TERMS AND CONDITIONS

4.1 REQUEST FOR PROPOSAL (RFP) CLOSING DATE

Without law or policy to the contrary, if the Bidder took reasonable steps to submit the response in due time, and failure of the response to be on hand at the time of closing was not the result of negligence or other faults of the Bidder but was the result of negligence by the County, the County reserves the right to accept such response.

All responses shall remain firm for at least one hundred twenty (120) days following the proposal closing date. The County reserves the right to withhold an award of the proposal for one hundred twenty (120) days from the date of closing.

All responses and accompanying documentation submitted by the Bidders will become the property of the County. Responses shall be based on the material contained in the proposal. Bidders are instructed to disregard any prospective oral representations they may have received before the solicitation of the proposal.

The cost for developing and preparing the response is solely the responsibility of the Bidder whether or not any award results from this solicitation. Furthermore, the cost of developing and preparing responses to the proposal will not be allowed as direct or indirect charges under any resulting Agreement.

No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications will be effective without the prior written consent of the County.

THE COUNTY RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO REJECT ANY OR ALL RESPONSES OR ANY PART THEREOF, OR TO WAIVE ANY INFORMALITIES IN THE PROPOSAL AND MINOR IRREGULARITIES, TECHNICAL DEFECTS, OR CLERICAL ERRORS, TO MAKE AN AWARD BASED ON SUITABILITY, QUALITY OF SERVICE(S) TO BE SUPPLIED, THEIR CONFORMITY WITH THE SPECIFICATIONS AND FOR THE PURPOSES FOR WHICH THEY ARE REQUIRED, AND NOT CONFINED TO PRICE ALONE. THE COUNTY SHALL NOT BE LIABLE FOR ANY COSTS INCURRED BY THE BIDDER IN CONNECTION WITH THE PREPARATION AND SUBMISSION OF THIS OR ANY OTHER PROPOSAL.

4.2 ANNOUNCEMENT OF RESPONSES

All responses received by the published date and time for submission will be publicly displayed at the Department of Administrative Services-Purchasing at 2222 "M" Street, Merced, California 95340, and our Supplier Portal Site. All

information contained in the responses shall be confidential to avoid disclosure of contents prejudicial to competing Bidders during the evaluation process. No award decision, pricing, or exchange of views will be discussed at the time of opening.

4.3 INTERPRETATION, CORRECTIONS, AND AMENDMENTS

The Bidder must carefully examine the specifications, terms, and conditions provided in the RFP and become fully informed as to the requirements set forth therein. If anyone planning to submit a response discovers any ambiguity, conflict, discrepancy, omission, or error in the proposal, has any questions concerning the "REQUIREMENTS", or any other related matters, Bidder shall immediately submit their request for clarification or modification of the RFP no later than the Question and Answer deadline. No further requests for clarification or objections to the proposal will be accepted or considered after this date. Any change in the proposal will be made only by written amendment, issued by the Department of Administrative Services-Purchasing to each vendor on the Bidders list as well as posted on the County website, and shall be incorporated in the proposal. **Any oral communication by the County's designated contact person or any other County staff member concerning this proposal is not binding on the County and shall in no way modify this proposal or the obligations of the County or any Bidders.**

4.4 DISCUSSION WITH RESPONSIBLE BIDDERS AND CLARIFICATIONS TO PROPOSAL

All Bidders submitting a response for consideration agree that their company will be willing to enter into a final Agreement if awarded this proposal. The County may, in its sole discretion, negotiate certain terms and conditions of such final Agreement after identification of the apparent successful Bidder. However, Bidders should not assume that any terms of this RFP or other applicable terms and conditions are subject to later negotiation, and should instead assume that all such terms and conditions are mandatory conditions of participation in this RFP process. Negotiated changes, if any, will not change the "Requirements".

4.5 FALSE OR MISLEADING STATEMENTS

Responses that contain false or misleading statements, or which provide references that do not support an attribute or condition claimed by the Bidder, may be rejected. If in the opinion of the County, such information was intended to mislead the County in its evaluation of the response, and the attribute, condition, or capability is a requirement of this proposal, it will be the basis for rejection of the response.

4.6 INDEPENDENT CONTRACTOR

It is expressly understood that in the performance of any services resulting from this proposal, Bidder is an Independent Contractor and is not an agent or employee of the County and warrants that all persons assigned to the program/project are employees, or subcontractors, of the Bidder. In the event the awarded Bidder shall employ others to complete or perform the services provided, Bidder shall be solely responsible and hold the County harmless from all matters relating to the payment of such person(s).

It is mutually understood and agreed that no employee-employer relationship will be created between County and Bidder or County and Bidder's employees and that the awarded Bidder shall hold County harmless and be solely responsible for withholding, reporting, and payment of any federal, state, or local taxes, contributions or premium imposed or required by workers' compensation, unemployment insurance, social security, income tax or other statutes or codes applying to Bidder, or its subcontractor(s) and employees if any. It is mutually agreed and understood that the Bidder, its subcontractor(s), and employees, if any, shall have no claim under any Agreement that may result from this proposal or otherwise against County for vacation pay, sick leave, retirement, or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

4.7 EXPLANATION OF USE OF SUBCONTRACTORS

Any Bidder using a subcontractor(s) must clearly explain the use of the subcontractor(s) and list the name(s) of the subcontractor(s) providing work under this proposal. The selected Bidder will be fully responsible for all work performed under this proposal and will be considered as the Prime Contractor. Any subcontracting or other legal arrangements made by the Bidder are the sole responsibility of the Bidder. Any Agreement that is entered into between the selected Bidder and the subcontractor(s) shall contain provisions for federal and state access to the books, documents, records, and inspection of work. Bidder awarded any Agreement as a result of this proposal shall obtain County written approval of subcontractors identified in Bidder submittal prior to execution of Agreement.

4.8 JOINT VENTURES

In the event a response is submitted jointly by more than one organization, one legal entity must be designated as the Prime Contractor. All other participants shall be designated as subcontractors.

4.9 CONFIDENTIALITY

The contents of all responses, correspondence, agenda, memoranda, or any other medium which discloses any aspect of a Bidder's response shall be held in the strictest confidence until after negotiations for the Agreement are complete. If you contend that any submission contains trade secrets or proprietary data, please be advised that the County cannot and does not give any assurances or guarantees that such information will not be released under the California Public Records Act. The Bidder should clearly mark any of the information within their response that is proprietary, however, the County will be guided by the California Public Records Act and the definition of Trade Secrets under California Civil Code Section 3426.1, but in no case will the following be considered proprietary: a) the final cost of the bid or response; b) information that is not clearly marked as proprietary in nature; c) information that, though marked as proprietary, is not actually proprietary d) information that is otherwise generally available as information or technology within the subject trade, industry or profession.

BIDDER SHALL NOT DESIGNATE THE ENTIRE RESPONSE AS PROPRIETARY. SUCH ATTEMPTED DESIGNATION WILL NOT BE HONORED.

Submission of a response by a Bidder shall constitute an agreement to the provision for public announcement. The County shall not be obligated to release information contained in any Bidder's RFP submittal that has been marked as proprietary, without the written consent of the Bidder. Any agency requesting such information so marked as proprietary must obtain such written authorization directly from Bidder and forward it to County.

County shall not be required to contact any Bidder for information on behalf of any requesting agency. Merced County shall have the sole discretion and exclusive authority to determine if any other party has properly obtained the right to have access to proprietary information.

4.10 PUBLIC AGENCY PARTICIPATION

Any public agency, i.e., city, district, public authority, public agency, municipality, and other political subdivision or a public corporation (hereinafter referred to as Public Agency) shall have the option of participating in any award made as a result of this proposal at the same prices, and terms and conditions. The County is not an agent, partner, or representative of the Public Agency, and is not obligated or liable for any financial responsibility in connection with purchase orders issued by any Public Agency. The Public Agency shall accept sole responsibility for placing orders or payments to the successful Bidder.

4.11 PRICING CONDITIONS

All responses shall remain firm for at least one hundred twenty (120) calendar days after RFP Submittal Deadline unless otherwise specified. Within one hundred twenty (120) calendar days after the RFP Submittal Deadline, a purchase order and/or an Agreement may be awarded by the County, as it may deem proper, in its absolute discretion. The time for awarding a purchase order and/or an Agreement may be extended at the sole discretion of the County, if required to evaluate responses or for such other purposes as the County may determine.

4.12 DETERMINATION OF BIDDER'S RESPONSIBILITY

4.12.1 Responsible Bidder

A responsible Bidder is a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, financial strength, and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible Bidders.

4.12.2 Non-responsible Bidder

The County may declare a Bidder to be non-responsible for purposes of this proposal for a variety of reasons, some of which are listed below. This is not an exclusive list, reasons may include, but are not limited to the following:

- Committed any act or omission which negatively reflects on the Bidder's quality, fitness, financial strength, or capacity to perform any Agreement that may be derived from this proposal with the County or an Agreement with any other public entity, or engaged in a pattern or practice which negatively reflects on same; or
- Committed an act or omission which indicates a lack of business integrity or business honesty; or
- Made or submitted a false claim against the County or any other public entity; or
- Submitted false, incomplete, or unresponsive statements or omitted requested documentation in connection with this proposal.

4.13 PUBLIC DISCLOSURE

All public records of the County are available for disclosure except the contents of the responses received in response to an RFP, which are not open for public review until the contract between the awarded Bidder and the County is agendized with the Board of Supervisors. If an unsuccessful Bidder files an official request to view the awarded Bidder's response, the County must comply with appropriate public disclosure procedures. However, if information specifically designated in

the response as proprietary is requested County may attempt to notify Bidder should Bidder wish to pursue protections against disclosure, at its own cost, so that the information will not be made available.

Pursuant to the California Public Records Act, Government Code Sections 6250 *et seq.*, any contract that eventually arises from this Request for Proposal is a public record, in its entirety. Also, all information submitted in response to this Request for Proposals is itself a public record **without exception**, and will be disclosed upon request, but only after negotiations are complete. Submission of any materials in response to this Request for Proposals constitutes your consent to release materials and a waiver of any claim that the information is protected from disclosure. Furthermore, by submitting materials, you agree to indemnify and hold harmless Merced County for the release of such information.

4.14 QUALIFICATIONS OF BIDDER

The County may make such investigation as it deems necessary to determine the ability of the Bidder to provide the services requested herein, and the Bidder shall furnish to the County all information and data for this purpose as the County may request. The County reserves the right to reject any response should the evidence submitted by, or investigation of, the Bidder fails to satisfy the County that such Bidder is properly qualified to carry out the obligations of the proposal and to complete the requirements contemplated therein.

4.15 DISQUALIFICATION OF BIDDER

A Bidder may be disqualified and the response rejected, in addition to any other cause for rejection as set forth elsewhere in this proposal, for any of, but not limited to, one of the following reasons:

- Proof of collusion among Bidders, in which case all responses involved in the collusive action will be rejected and any participant to such collusion will be barred from future bidding until reinstated as a qualified Bidder.
- Lack of responsibility or cooperation as shown by past work or services provided to the County or others.
- Being in arrears on existing Agreements with the County or having defaulted on previous Agreements.
- Incomplete information or missing documents as required in the proposal.

4.16 INTEGRITY OF EXPENDITURE

The Bidder assures that every reasonable course of action will be taken to maintain the integrity of expenditure of public funds and to avoid any favoritism, questionable, or improper conduct.

4.17 GRATUITIES

Neither the Bidder nor any person, firm, or corporation employed by the Bidder shall give, directly or indirectly, to any employee or agent of the County, any gift, money, or anything of value, or any promise, obligation, or Agreement for future reward or compensation, neither during the proposal process nor during the performance of any Agreement period resulting from this RFP.

4.18 CONFLICT OF INTEREST

The Bidder covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this proposal. Bidder shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractor(s), and the County. Bidder shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables them to influence any award of this proposal or any competing offer, shall have any direct or indirect financial interest resulting from any Agreement that may be derived from this proposal or shall have any relationship to the Bidder or officer or employee of the Bidder, nor that any such person will be employed by Bidder in the performance of any Agreement that may be derived from this proposal without immediate divulgence of such fact to the County.

4.19 FEDERAL, STATE, AND LOCAL TAXES

The awarded Bidder shall pay all taxes lawfully imposed upon it with respect to this RFP or any product delivered with respect to the Agreement. The County makes no representation whatsoever as to the exemption from liability to any tax imposed by any government entity on the awarded Bidder.

4.20 OSHA REQUIREMENTS

All material, equipment, or labor submitted under this proposal by Bidder shall meet the required standards of OSHA 1970 and CA-OSHA 1973. Bidder warrants that the described material, equipment, or labor meets all appropriate OSHA safety and health requirements. Further, Bidder warrants that the said material or equipment will not produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the health or safety of anyone who may use the material or equipment or come into contact with the material or equipment.

4.21 ENVIRONMENTAL PROTECTION

The Bidder awarded the Agreement resulting from this proposal shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (41 USC 1857(h)), Section 508 of the Clean Water Act (33 USC,

1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibits the use under nonexempt federal Agreements, grants, and loans of facilities included on the EPA List of Violating Facilities. The Contractor shall report violations to the applicable federal agency and the US EPA Assistant Administrator for enforcement.

4.22 DRUG-FREE WORKPLACE

The awarded Bidder must certify that it will provide a drug-free workplace as set forth by the Federal Drug-Free Workplace Act of 1988.

4.23 PREVAILING WAGE RATES

Should the RFP call for the Bidder to be responsible for any site preparation activities, the Bidder will be required to certify adherence to the requirements of all state and federal laws relating to the payment of prevailing wage rates for work performed under public works project laws, specifically, as covered by the federal Davis-Bacon Act and California Labor Code 1720 et seq. A copy of this wage scale may also be obtained from the office of the Director of Industrial relations, State of California, or <http://www.dir.ca.gov/DLSR/PWD/mer.xls/>.

It shall be mandatory upon the Bidder to whom the Agreement is awarded, and upon all subcontractors under them, to ascertain and pay not less than the latest general prevailing hourly rates for Saturday, Sunday, holidays, and overtime work for each workman or mechanic employed in the execution of the work of this project as per determination made by the Director of Industrial Relations, California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773, and 1773.1.

4.24 COMPLIANCE WITH APPLICABLE LAWS

The successful Bidder shall otherwise perform all obligations under the resulting Agreement in compliance with all applicable federal, state, and local laws, rules, regulations, and policies.

No Bidder or subcontractor(s) may be listed on a bid response for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No Bidder or subcontractor(s) may be awarded an Agreement for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

4.25 LEGAL CONSIDERATIONS

Any Bidder, by submission of a response to this RFP, and any subsequent Agreement that may be derived from this RFP, shall be deemed and have agreed to be bound by the laws of the State of California in all respects as to the interpretation, construction, operation, effect, and performance.

Notwithstanding any other provisions of this proposal, any dispute concerning any question of fact or law arising under this proposal, or arbitration arising out of any Agreement that may be awarded as a result of this proposal, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

4.26 OUT-OF-STATE BIDDER

Where the Bidder is an Out-Of-State Bidder, not doing business in the State of California, the package bid or purchase price, to determine the lowest price bid, shall be increased by the applicable retail rate of general sales tax and use tax when and where applicable.

4.27 LOCAL BUSINESS PURCHASING PREFERENCE

Notwithstanding any other provision contained herein to the contrary, a ten percent (10%) preference shall be granted to local businesses whenever the purchasing agent of Merced County purchases services, supplies, materials, and/or equipment for County use through the competitive bid process, which shall be defined herein to include quotes, bids, and proposals. The purchasing agent in evaluating competitive bids shall determine the lowest responsible Bidder, and if the lowest responsible Bidder is a non-local Bidder then a ten percent (10%) preference shall be granted to local Bidders. Local preference only applies to the procurement of services, supplies, materials, and/or equipment, and will not apply to bids conducted with other public agencies nor when prohibited by state or federal statutes or regulations to be awarded to the "lowest responsible Bidder" or otherwise exempted from local preference.

A local Bidder is defined as:

- a. A principal place of business located within the County of Merced with a valid and verifiable business license, if applicable, issued by a city within the County or a business located in the unincorporated areas of the County. Post Office Boxes do not qualify as verifiable local business addresses; and
- b. Employs at least one (1) full-time employee within the County, or if the business has no employees, shall be at least fifty percent (50%) owned by one or more persons whose primary residence(s) is located within the County; and

- c. Has had a fixed office or place of business having a street address within the County for at least six (6) months immediately prior to the issuance of the request for competitive bids by the County.

The ten percent (10%) local preference shall be deducted from the total dollar amount bid by local Bidders on competitive quotes and bids, and assess on the total evaluated aggregate score obtained by local Bidders on proposals (County of Merced County Policy, Chapter 5.12.025, "Local Business Purchasing Preference" Policy).

4.28 BUSINESS LICENSE

Prior to the issuance of any purchase order and/or the performance of any Agreement derived from this bid, the successful Bidder and its subcontractors shall be required to maintain a Merced County Business License in accordance with the County of Merced Ordinance No. 1705, "An Ordinance Establishing a requirement for a Business License and Temporary Business License and/or persons operating in the unincorporated areas of Merced County" (<http://www.qcode.us/codes/mercedcounty/>).

It is the intent of the Board of Supervisors of the County of Merced to authorize that no person shall maintain, conduct, or carry on a business, whether or not for profit, located in whole or in part at a fixed place of business within the County and outside the limits of any incorporated city, without first obtaining a license to operate as provided under the County of Merced Ordinance No. 1705.

**AGREEMENT FOR SPECIAL SERVICES
(CONTRACTOR)**

**MERCED COUNTY
CONTRACT NO. _____**

THIS AGREEMENT, is made and entered into by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and (name of contracting company or individual; specify the type of organization such as - government agency, individual, corporation, partnership, i.e. "California Skilled Nursing and Care Company", a California Corporation), located at (Street Address, Suite No., City, State) (hereinafter referred to as "Contractor").

WHEREAS, County desires to contract with Contractor for special services which consist of (list the type of services you desire to contract for, Example, - the rendering of a skilled nursing care and special treatment program); and

WHEREAS, Contractor is specially trained, experienced, and competent to perform such services in connection with (list type of services to be rendered, Example, - a certified skilled nursing care and special treatment program through the utilization of Contractors facility and staff) pursuant to (include any government code sections that may be applicable to this agreement, Example, California Health and Safety Code XXXX); and

WHEREAS, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide (list type of services to be rendered, Example, - a certified skilled nursing care and special treatment program through the utilization of Contractors facility and staff) services in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. Contractor's services include, but are not limited to, the following:

- A. (describe in detail the service to be performed by Contractor)
- B. (" " ")

(There may be occasions where exhibits or attachments may be incorporated into the Agreement. In such cases, the following language should be included:)

The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this Agreement or modified

herein:

- Exhibit A - (i.e., County's Request for Proposal, Statement of Work, etc.)
- Exhibit B - (i.e., Contractors Responding Proposal, Proposed Budget, etc.)
- Exhibit C - (i.e., Related Documentation)

2. TERM

The term of this Agreement shall commence on the _____ day of _____, 20____, and continue until the _____ day of _____, 20____, unless sooner terminated in accordance with the sections entitled "TERMINATION FOR CONVENIENCE", "TERMINATION FOR CAUSE", or "CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING", as set forth elsewhere in this Agreement.

3. COMPENSATION

County agrees to pay Contractor a Total Contract Price of (type out contract price, i.e., Five Thousand Dollars and No/100 Cents) Dollars and No/100 Cents (\$) (type numerical amount, i.e., \$5000.00) for all of Contractor's services to be provided herein, as are more specifically set forth under Section 1, "SCOPE OF SERVICES". The Total Contract Price shall include all of County's compensation to Contractor, including reimbursement for all expenses incurred by Contractor in the performance of this Agreement. No other fees or expenses of any kind shall be paid to Contractor in addition to the Total Contract Price. In no event shall the total services to be provided hereunder exceed the Total Contract Price. This fee may be subject to withholding for State of California income tax.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of the Contractor and be mailed or delivered to Contractor at:

Name:
Address:
City/State/Zip:

Contractor may request that County mail the check to Contractor, to such other address as Contractor may from time to time designate to County. Such request must be made in writing in accordance with the procedures as outlined under Section 7, "NOTICES".

4. PRICING CONDITIONS

County agrees to pay Contractor for all services required herein as prescribed, fixed at the submitted pricing, which shall include reimbursement for all expenses incurred. No other expenses shall be paid to Contractor without formal approval of

the County's Board of Supervisors or its authorized agent. In no event shall the total services to be performed hereunder exceed \$_____.

County shall not be responsible for any charges or expenses incurred by Contractor, his/her agents, employees or independent Contractors, other than those listed herein, in connection with the performance of services hereunder unless authorized in advance in writing by County.

5. TERMS OF PAYMENT

Payment shall be only for full, complete satisfactory performance of the services required to be provided herein and as set forth under Section 1, "SCOPE OF SERVICES." Payment shall be made in the following manner:

Upon completion of the required services as set forth under Section "SCOPE OF SERVICES," Contractor shall submit an invoice **within thirty (30) calendar days of each invoice period**, detailing the services it has provided and the amount owed under this Agreement. In addition to the invoice submitted by the Contractor for payment, Contractor must complete and submit to the County, Form W-9, "A Request for Taxpayer Identification Number and Certification", located at www.irs.gov/pub/irs-pdf/fw9.pdf. Both the invoice and W-9 form shall be forwarded to the County at the County address shown under Section 7, "NOTICES" of this Agreement, **not later than thirty (30) calendar days after completion and acceptance by the County of all tasks identified on the invoice**. Upon approval by County, the fee due hereunder shall be paid to Contractor within thirty (30) days following receipt of a proper invoice.

In no event shall County be liable for the payment of any invoice not submitted within thirty (30) calendar days following termination of the Agreement.

6. NO PAYMENT FOR SERVICE PROVIDED FOLLOWING EXPIRATION / TERMINATION OF AGREEMENT

Contractor shall have no claim against County for payment of any kind whatsoever for any services provided by Contractor which were provided after the expiration or termination of this Agreement.

7. NOTICES

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient

known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

- C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

County of Merced c/o

Contractor

Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

8. **CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING**

The compensation paid to Contractor pursuant to this Agreement is based on County's continued appropriation of funding for the purpose of this Agreement, as well as the receipt of local, county, state and/or federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are therefore contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of the County arising from this Agreement shall be immediately discharged. County agrees to inform Contractor no later than ten (10) calendar days after the County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by Contractor arising out of performance of this Agreement must be submitted to County prior to the final date for which funding is available. In the alternative, County and Contractor may agree, in such circumstance, to a suspension or modification of either party's rights and obligations under this Agreement. Such a modification, if the parties agree thereto, may permit a restoration of previous

contract terms in the event funding is reinstated. Also in the alternative, if funding is provided to the County in the form of promises to pay at a later date, whether referred to as "government warrants", "IOU's", or by any other name, the County may, in its sole discretion, provide similar promises to pay to the Contractor, which the Contractor hereby agrees to accept as sufficient payment until cash funding becomes available.

9. TERMINATION FOR CONVENIENCE

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by County at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

Upon effective date of termination, County shall have no further liability to Contractor except for payment for actual services incurred during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by County. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Contractor prior to, and in connection with, discontinuing the work hereunder.

10. TERMINATION FOR CAUSE

The County may terminate this Agreement and be relieved of making any payments to Contractor and all duties to Contractor should the Contractor fail to perform any material duty or obligation of the Agreement. Notice shall be given as otherwise provided herein. In the event of such termination the County may proceed with the work in any manner deemed proper by the County. All costs to the County shall be deducted from any sum otherwise due the Contractor and the balance, if any, shall be paid to the Contractor upon demand. Such remedy is in addition to such other remedies as may be available to the County provided by law.

11. MODIFICATION OF THE AGREEMENT

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto

12. INSURANCE

A. Prior to the commencement of work, and as a precondition to this contract, Contractor shall purchase and maintain the following types of insurance for

the stated minimum limits indicated during the term of this Agreement. Contractor shall provide a certificate of insurance and endorsements on each policy as required in this Section. Each certificate of insurance shall specify if Contractor has an SIR, and if so, Contractor shall be required to provide the entire policy of insurance with which it has an SIR and/or deductible. All deductibles and self-insured retentions shall be fully disclosed in the Certificates of Insurance and are subject to the express written permission of the County Risk Manager.

1. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering products and completed operations, bodily injury, personal injury and property damage. The County and its officers, employees and agents shall be endorsed to above policy as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or alternatively split limits of \$500,000 per person and \$1,000,000 per accident for bodily injury with \$250,000 per accident for property damage.

(Note to preparer of this agreement: For consideration of lower limits, please consult with Risk Management. Contractor may be required to provide additional insured status to County.)

3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.
4. Professional Liability (Errors and Omissions): \$1,000,000 limit per occurrence and \$5,000,000 annual aggregate limit covering Contractor's wrongful acts, errors and omissions. Any aggregate limit for professional liability must be separate and in addition to any CGL aggregate limit. Claims – made coverage requires Contractor to maintain a minimum of three (3) years extended reporting period or tail coverage. *****When Applicable**

(Note to preparer of this agreement: Professional Liability, to be required but not limited to contracts that involve the use of professional knowledge, such as clinical, medical, health, accounting, legal, insurance, advertising, architectural/engineering, or computer programming services. Please consult with Risk Management.)

B. INSURANCE CONDITIONS

1. Insurance is to be primary and non-contributory with any insurance of the County and placed with admitted insurers rated by A.M. Best Co. as A: VII or higher. Lower rated, or approved but not admitted insurers, or any other requirement changes (such as limits) are subject to the prior approval of the County Risk Manager.
2. Each of the above required policies shall be endorsed to provide the County with thirty (30) days prior written notice of cancellation. The County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of Contractor to furnish insurance during the term of this Agreement.
3. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.
4. If the Contractor uses subcontractors or others to perform work under this contract, such subcontractors or other persons shall be Named Insured or Additionally Insured to the Contractor's required insurance coverage, or required by the Contractor to comply with equivalent insurance and conditions of this Section.

13. INDEMNIFICATION

Contractor has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of Contractor.

Contractor's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Contractor, its agents, subcontractor and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by

a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim or allegation of liability against County. Contractor will on request and at its expense defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

14. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor is an independent Contractor in the performance of the work duties and obligations devolving upon Contractor under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which Contractor shall perform the assigned work and functions. The contractual interest of County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is agreed that no employer-employee relationship is created and Contractor shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes; any contributions or premiums imposed or required by workers' compensation; any unemployment insurance; any social security income tax; and any other obligations from statutes or codes applying to Contractor, or its subcontractors and employees, if any.

It is mutually agreed and understood that Contractor, its subcontractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

Contractor shall insure that all its personnel and employees, subcontractors and their employees, and any other individuals used to perform the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage or payment for their efforts.

15. RECORDS, INFORMATION AND REPORTS

(Note to preparer of this agreement - the retention of records may be longer than the four (4) years as indicated below depending on the length of liability – Example: Juvenile probation and dependency may wish to request two years after age 18 of any minor receiving services)

Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, County shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents,

proceedings, and activities pertaining to this Agreement.

To the extent permitted by law, Contractor shall furnish County such periodic reports as County may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by the Contractor.

16. OWNERSHIP OF DOCUMENTS

To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by Contractor hereunder are the exclusive property of County and upon request of County shall be delivered to County upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of County, and to the extent permitted by law, shall become the property of the County. Contractor may retain copies thereof for its files and internal use.

Any publication of information directly derived from work performed or data obtained in connection with services rendered under this Agreement must be first approved by County.

17. QUALITY OF SERVICE

Contractor shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and/or other items and services furnished under this Agreement.

Contractor shall, without additional compensation, correct or revise any errors or deficiencies immediately upon discovery in its reports, drawings, specifications, designs, and/or other related items or services.

18. PERSONAL SATISFACTION AS A CONDITION PRECEDENT

The obligations of County as provided in this Agreement are expressly conditioned upon Contractor's compliance with the provisions of this Agreement to the personal satisfaction of the County. County shall determine compliance in good faith as a reasonable person would under the circumstances.

19. ENTIRE AGREEMENT

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions

agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

20. COUNTY NOT OBLIGATED TO THIRD PARTIES

County shall not be obligated or liable hereunder to any party other than Contractor.

21. LAWS, LICENSES, PERMITS AND REGULATIONS

Contractor and County agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to Contractor and County, their sub-grantees, Contractors, or subcontractor, and their work.

Contractor shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County.

22. LIMITED AFFECT OF WAIVER OR PAYMENT

In no event shall the making, by County, of any payment to Contractor constitute, or be construed as, a waiver by County of any breach of covenant, or any default which may then exist, on the part of Contractor. The making of any such payment by County while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving Contractor from its full responsibility under this Agreement.

No waiver by either party of any default, breach or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach or condition precedent shall be binding on any of the parties hereto. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

23. PERSONNEL

Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

24. APPLICABLE LAW; VENUE

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon County unless agreed in writing by County and counsel for County.

Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

25. BREACH OF CONTRACT

Upon breach of this Agreement by Contractor, County shall have all remedies available to it both in equity and/or at law.

26. REMEDY FOR BREACH AND RIGHT TO CURE

Notwithstanding anything else in this Agreement to the contrary, if Contractor fails to perform any obligation of this Agreement, the County may itself perform, or cause the performance of, such agreement or obligation. In that event, Contractor will, on demand, fully reimburse County for all such expenditures. Alternatively, County, at its option, may deduct from any funds owed to Contractor the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to the County by law or as otherwise stated in this Agreement.

27. SUCCESSORS IN INTEREST

All the terms, covenants, and conditions of this Agreement shall be binding and in full force and effect upon any successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

28. CONFLICT OF INTEREST

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Contractor shall ensure that no conflict of interest exists between its officers, employees, or subcontractors, and the County. Contractor shall ensure that no County officer or employee in a position that enables them to influence this Agreement will have any direct or indirect financial interest resulting from this Agreement. Contractor shall ensure that no County

employee shall have any relationship to the Contractor or officer or employee of the Contractor, nor that any such person will be employed by Contractor in the performance of this Agreement without immediate divulgence of such fact to the County.

29. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

Contractor and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, deny family care leave, harass, or allow harassment against any employee, applicant for employment, employee or agent of County, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of County employees and agents, and recipients of services are free from such discrimination and harassment.

Contractor represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and ensure a workplace free of sexual harassment pursuant to Government Code 12950 and regulations and guidelines issued pursuant thereto.

Contractor agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

Contractor shall include this nondiscrimination provision in all subcontracts related to this Agreement and when applicable give notice of these obligations to labor organizations with which they have Agreements.

30. CAPTIONS

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

31. SUBCONTRACTS - ASSIGNMENT

Contractor shall not subcontract or assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent by County. Contractor remains legally responsible for the performance of all contract terms including work performed by

third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. Contractor shall be held responsible by County for the performance of any subcontractor whether approved by County or not.

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

32. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Compensation due to Contractor from the County may, however, be adjusted in proportion to the benefit received despite the removal of the effected provision.

33. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

34. DEATH AND DISABILITY

(Note to preparer of this agreement: This section is used when the contract is with an individual or with a company that is a sole proprietorship)

It is understood and agreed that this Agreement is entered into for the unique personal services of Contractor, in the event of his/her death, this Agreement is forthwith terminated. In the event Contractor is disabled permanently or for an extended period, County may, at its option, terminate this Agreement forthwith. Permanent or extended disability means that Contractor is unable to perform the services of this Agreement for such a period of time that it would cause a detriment to the County as determined by the reasonable judgment of the County.

35. COVID-19 REQUIREMENTS

Contractor, at Contractor's sole expense, shall follow all State and local laws, rules, regulations, guidelines, and orders related to the COVID-19 pandemic in the performance of its work under this Agreement. This shall include, but not be limited to, creating a COVID-19 worksite-specific prevention plan prior to conducting Contractor's business/activity. Contractor is encouraged to frequently reference

www.covid19.ca.gov for information on State requirements for operation of specified businesses/activities.

Signature page to follow

County of Merced

Name of Individual/Company

By _____
Name

By _____
Name

Title of Individual

Title of Individual

Dated

Dated

APPROVED AS TO LEGAL FORM
MERCED COUNTY COUNSEL

By _____

Dated

DEFINITIONS

Agreement - Comprises the Request for Proposal (RFP), any amendment thereto, and the RFP response, if appropriate. The Agreement constitutes the entire agreement between the County of Merced and the awarded Bidder.

Bidder - A person, partnership, firm, corporation, or joint venture submitting an RFP response for the purpose of obtaining a County Agreement.

County - The County of Merced, a political subdivision of the State of California.

Evaluation Committee - A committee established to review and evaluate responses to determine the Agreement award.

Fidelity Bond - Also referred to as a Dishonesty Bond. A fidelity bond is a form of protection that covers the County for losses as a result of fraudulent acts by the Contractor.

Payment Bond - This bond is to protect subcontractors and suppliers. It ensures that the surety backing the bond will pay the subcontractors and suppliers if the awarded Bidder does not.

Performance Bond - A bond to ensure completion of the project as requested under the "Scope of Work". The Performance Bond is backed by a surety who guarantees the project will be completed in accordance with the specifications of the proposal.

Prime Contractor - The Bidder who is awarded the Agreement and designated as the legal entity. The Prime Contractor will hereafter also be known as the Contractor. Any subcontracting, Joint Ventures, or other legal arrangements made by the Contractor during this project are the sole responsibility of the Contractor.

Proposal Security Bond - Also referred to as Bid Security. A bond that is submitted with Bidder's response to compensate the County for damages it might suffer if successful bidder refuses to execute the Agreement that may be derived from their response. Generally, it is 10% of the amount of Bidder's response as bid security.

Proprietary - The information provided that is considered exempt from public disclosure defined as Trade Secrets under Civil Code Section 3426.1, pursuant to Public Records Act.

Scope of Work - The mutually agreed to terms which describe tasks, dependencies, the sequence and timing of events, deliverables, and responsible parties associated with the various phases of the RFP.

Subcontractors - Any person, entity or organization, to which Contractor or County has delegated any of its obligations hereunder.