

REQUEST FOR PROPOSALS (RFP)  
FOR  
DESIGN AND ENGINEERING SERVICES  
FOR THE NEW WATER WELL NO. 9



CITY OF FOWLER  
128 S. Fifth Street  
Fowler, CA 93625

July 11, 2022

## NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that proposals will be received from qualified firms for Design and Engineering Services for New Water Well No. 9.

Responses to this Request for Proposal (RFP) will be accepted until August 12, 2022 at 11:30 a.m. Proposals received after this date/time will not be considered and will be returned unopened. It is the responsibility of the proposer to ensure that any proposals submitted have sufficient time to be received by the City of Fowler prior to this proposal due date and time.

Proposals shall be enclosed in a sealed envelope and marked clearly with following information, formatted as follows:

"SEALED PROPOSAL FOR

**DESIGN AND ENGINEERING SERVICES FOR  
NEW WATER WELL NO. 9**

DO NOT OPEN WITH REGULAR MAIL."

City of Fowler  
128 S. Fifth Street  
Fowler, CA 93625  
Attn: Dario Dominguez

Proposals shall be mailed, hand delivered, or sent by courier service. **Proposals shall NOT be sent via telegraphic, electronic or facsimile.**

All notifications, updates and addenda will be posted on the City's web page at: <https://fowlercivty.org>. Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive proposal.

City of Fowler City Hall is open to the public from 8 a.m. to 12 p.m., Monday – Friday.

## CITY OF FOWLER

### REQUEST FOR PROPOSAL DESIGN AND ENGINEERING SERVICES FOR CONSTRUCTION OF NEW WATER WELL No. 9

#### **NOTICE TO PROPOSERS / PROPOSAL SUBMITTAL INSTRUCTIONS**

1. **DUE DATE AND TIME:** Proposals for design and hydrogeologic/engineering services for construction of New Water Well Nos. 9, as described herein, will be received by the City of Fowler until date and time shown on “Notice of Inviting Proposals”. Any changes to this RFP are invalid unless specifically modified by City of Fowler and issued as a separate addendum document. Should there be any question as to changes to the content of this document; the City of Fowler’s copy shall prevail. It is the Proposer’s sole responsibility to ensure that their proposal, inclusive of any or all addenda, is received by the City of Fowler at the stated time and place. Any proposal received after the scheduled closing time for receipt of proposals will not be considered and will remain unopened.
2. Proposals must be submitted to the City of Fowler as set forth in this Request for Proposal document. Unless otherwise specified, proposals submitted by any other method than that set forth herein will be disqualified.

#### **SECTION I – PROJECT INTRODUCTION AND OVERVIEW**

##### **A. General Overview:**

The City of Fowler (City) is a general law city, incorporated June 15, 1908, that has a permanent population of approximately 7,000. Fowler is located in Fresno County, California.

The City has owned and operated the water system for city residents since about 1908. The City’s community water system is located in central Fresno County and is regulated by the State Water Resources Control Board Division of Drinking Water (DDW). The City serves a residential and commercial users through 1,800 service connections. The water system is supplied by 6 active groundwater wells.

Through this system and related administrative and financial processes, the City intends to provide reliable and affordable water service today and into the future.

##### **B. Purpose Of Request For Proposal:**

The City of Fowler is currently seeking proposals from qualified engineering and/or geological consulting firms for design and environmental services required for this project. The services would include the work described hereafter and detailed in Section III: Preliminary Scope of Work.

The City has recently been awarded a Small Community Drought Relief Program Grant through the Department of Water Resources for construction of a new municipal well located on the west side of the City. City desires that the new well yield produce flow rates ranging between 1,100 to 1,800 gallons per minute (GPM) based upon similar City production well yields in the area, The City also desires that the water quality constituent concentrations be within the limits of acceptable California Drinking Water Standards.

The proposed location of the new well is shown in Figure 1.

The City intends to select a qualified firm to perform the required design and engineering services for Well No. 9 based upon their qualified expertise and project understanding in accordance with the requirements set forth within this Request for Proposal.

It is the intent of the City to receive responses to the RFP and, if appropriate, conduct individual interviews in order to select a firm which, in the opinion of the City, is best suited to perform the required services.

**C. Project Specific Dates:**

Table 1 identifies the project specific estimated dates/time frame for receipt, evaluation, and award of the work specified in this RFP. Please note the following key dates when preparing your response to this RFP.

**Table 1 – Project Specific Dates**

Description	Date
Release of RFP to Firms	7/11/2022
Deadline for Submitting Written Questions Regarding RFP	7/20/2022
Response to Written Questions Regarding RFP	7/22/2022
<b>Proposal Due Date</b>	<b>8/12/2022</b>
Proposal Review (and Possible Short List)	To Be Determined
Firm Interviews (if Applicable)	To Be Determined
Firm Recommendations	8/30/2022
Contract Approval and Approximate Start Date	9/6/2022

**D. Selection Criteria:**

The criteria for firm selection will be based on, but not limited to, the following:

1. Firm’s Qualifications and Experience with design of municipal production wells of the size and configuration specified herein.
2. Experience and qualifications of personnel assigned to perform the work.
3. Technical approach and understanding, preparation of project specific plans and specifications for construction of municipal production wells in accordance to State of California Requirements as well as City of Fowler Standard Specifications.
4. Track record and ability to deliver services within the proposed project schedule.

**E. Evaluation And Selection Process:**

1. A committee will review and evaluate each submittal to determine if it meets the RFP requirements. Failure to meet the requirements set forth in the RFP will be cause for eliminating the proposer from further consideration.
2. The technical proposals will be evaluated and ranked by a selection committee. The selection committee will establish the ranking order using the following criteria:

Scoring Criteria	Weight of Score
Past performance and qualifications of the team members on similar projects	25%
Familiarity with capacity to handle all aspects of the work	20%
Ability to complete the project within the proposed time frame	15%
The proposed project approach, scope, manner, and thoroughness in which it is presented in the proposal	20%
Firm’s experience, staff availability, stability, financial responsibility, and past performance on similar projects	20%

4. The City of Fowler reserves the right to, at their sole discretion, qualify and select the most qualified firm during the proposal evaluation process or alternatively through the short list process by conducting interviews to determine the most suitable candidate.
5. The City of Fowler will negotiate with the top ranked firm, if deemed necessary by the selection committee. If agreement cannot be reached with the number one ranked firm, then the negotiations will be terminated, and the firm will be informed in writing. The number two ranked firm will then be invited to enter into the negotiations process.

## SECTION II – PROPOSAL REQUIREMENTS

The emphasis of the proposal should be on responding to the requirements set forth herein. In addition, proposers need to demonstrate their capabilities, background, expertise, etc. in order for the City of Fowler to effectively evaluate the proposals, and award to the company that provides the best value to the City of Fowler based on the selection criteria in Section I. The Proposal should include, at a minimum, the following information:

### A. General Requirements:

The proposal should include the following:

1. An understanding of the project and approach to accomplish the work in a timely and acceptable manner.
2. A detailed description of the services to be provided based on the consultant's understanding of the project scope.
3. A detailed work schedule for all work and time frame for items of work.
4. The individual who will have overall responsibility for the project shall be a Registered Hydrogeologist or Civil Engineer in the State of California.
5. A resume of the key people who will be working on this project, including specifics of experience on similar projects.
6. The proposal shall have a page limit of 20 pages including appendices, tabs, and cover.
7. A not-to-exceed fee based on the services outlined in the Scope of Work MUST be submitted as a hard copy and an electronic copy (smart pdf and excel formats on CD) in a SEPARATE SEALED ENVELOPE.
8. Six (6) hardcopies and one (1) electronic copy (pdf on CD or thumb drive) of the proposal shall be submitted to the City of Fowler.

**B. Cover Letter:** Each proposal shall include a cover letter signed by a firm principal.

**C. Firm Description:** Include a summary of the firm's origin, background, and size of the company, an organizational chart, the overall capabilities of the organization, appropriate licenses and certifications, and proximity of company's resources to the City of Fowler's offices and facilities.

### D. Qualifications & Project Approach:

1. Qualifications and Experience (Firm and Personnel) – a description of the company's expertise related to services requested and a full discussion of the company's recent experience directly related to providing design and engineering services for municipal wells. For the size and scope herein, provide resumes of key people to address experience and qualifications, educational background, and skills.

2. Subconsultants – a description of any subconsultant arrangements that would be utilized for the project. Include a full description of the subconsultant’s experience and personnel.
3. Knowledge and experience of hydrogeologic conditions within the Tulare Basin and nearby groundwater basins.
4. Project Approach – describe your firm’s approach to the project, challenges to overcome, innovative design strategies proposed, and proposed scope of work.
5. Proposed project schedule.
6. Availability – Briefly describe your firm’s and personnel’s ability to meet the City of Fowler’s needs in a consistent and timely manner.
7. References – list three (3) former municipal (preferred) or private clients for whom comparable services have been performed within the last five years. Include the name, mailing address, telephone number, and email address of each client’s principal representative.
8. Exceptions City of Fowler’s contractual terms and/or RFP requirements. The Proposer shall note any additions, deletions and/or exceptions to the contractual terms and/or RFP requirements. If there are no exceptions taken, please note this.

**E. Project Fee Proposal (Included in a separate sealed envelope clearly labeled “Project Fee Proposal”):** said fee schedule shall include hourly rates; rates for all subconsultants, and percentage markup of reimbursable expenses, if any shall be included. The rates shall be valid for the term of the contract. In the Project Fee Proposal, include the following information:

1. A detailed person-hour estimate by personnel classification for the major portions of the work broken down through each of the task, milestone reports and/or plans.
2. Fees for any subconsultants.
3. A total not-to-exceed fee estimate based on services outlined in Scope of Work.
4. The method of compensation shall be based on a time and expense basis subject to a not-to-exceed amount for the effort to complete the project.

The City reserves the right to withhold award of contract for a period of ninety (90) days following RFP opening. All proposals received are considered firm for that 90-day period.

A contract incorporating the terms and conditions contained herein will be sent to the successful Proposer. Any additional terms and conditions requested or comments by Proposer must be submitted with the proposal and will be considered as part of the selection/negotiation process.

Any questions regarding this Request for Proposal shall be submitted in writing and shall be directed to Dario Dominguez, Public Works Director at (559) 834-3113 ext 121, [ddominguez@ci.fowler.ca.us](mailto:ddominguez@ci.fowler.ca.us). All interpretations and any supplemental instructions will be sent to

all prospective Proposers not later than that date set forth on Section I.C. "Project Specific Dates". All addenda so issued shall become part of the contract documents. Under no circumstances may the Proposer contact any other department or individual for clarification or interpretation of any requirements herein.

The City of Fowler reserves the right to reject any or all proposals, either separately or as a whole and to waive any informality in a proposal or to accept any proposal presented which it deems best suited to the interest of the City or to reject all proposals.

The cost for developing the proposal is the sole responsibility of the Proposer. All proposals submitted become the property of the City of Fowler. If any pages are deemed as classified or proprietary those pages should be individually marked confidential or proprietary.

At the time of the opening of proposals each Proposer shall be presumed to have read and be thoroughly familiar with the RFP and proposal requirements (including all Addenda).

Be advised that all information contained in proposals submitted in response to this solicitation may be subject to the California Public Records Act (Government Code Section 6250 et seq.), and information's use and disclosure are governed by this Act.

### **SECTION III – PRELIMINARY SCOPE OF WORK**

Consultant should use the following as a basis for developing a project scope of work proposing modifications as appropriate to achieve the project goals, objectives and outcomes described herein.

#### **Task 100: Project Coordination:**

Consultant will perform the following coordination activities:

- a. Project kick-off meeting with City of Fowler (City).
- b. Monthly coordination meetings with City.
- c. Weekly project updates via email and/or telephone to discuss budget, schedule and project issues.
- d. Coordination meeting with other project stake holders and agencies.
- e. Monthly report summarizing project budget and schedule. Provide one (1) hard copy and one (1) electronic copy (smart pdf).
- f. Presentations to City of Fowler staff at the 30%, 60% and 90% design phases to discuss the project, construction schedule, costs and constraints.

#### **Task 200: Well Site Evaluation:**

Consultant shall review suitability of proposed well site for intended use including access for drilling, laydown, and testing. The Consultant shall identify the need for sound attenuation,



which will be added to project as additional services if necessary.

**Task 300: Topographic Survey**

A topographic survey shall be performed and will include obtaining survey information of the general project area and the production of any necessary maps, drawings, and figures necessary to complete the design documents. A topographical survey shall be completed by a team under the direction of a licensed land surveyor.

**Task 400: Geotechnical Investigation and Report**

A geotechnical investigation shall be performed. Recommendations shall be presented in a report for import and compaction of fill material to allow for construction of the well site within the abandoned drainage basin.

**Task 200: Schematic Design**

The schematic design of the project includes the production of design plans up to 30% completion. These documents are schematic in nature and will undergo review between the funding agency, the client, and the consulting firm as they lay the groundwork for final design documents.

**Task 300: Test Well Design and Construction**

This task shall include all tasks and items related to the design, preparation of construction documents, bidding, construction observation, and full construction of a test well in advance of the bidding and construction of the production well and other improvements.

**Task 400: Final Design**

The final design of the project includes the production of design plans of 60%, 90% and 100% completion. The 100% documents are considered final and are intended for construction. The 90% phase will serve as the final review period between the funding agency, the City, and the permitting agencies as the design of the project is solidified for construction.

**Task 500: Contract Documents and Engineer's Estimate**

The Consultant shall prepare Contract Bid Documents consisting of specifications and associated information necessary for the construction of City of Fowler Well Nos. 9 as follows:

- a. Contract documents shall be prepared in accordance with City of Fowler and regulatory agency requirements. The Proposer shall utilize the City of Fowler's existing "front-end" bidding documents and supplement the City of Fowler's existing technical specifications as required. Specifications shall include the City of Fowler's current technical provisions.
- b. The Consultant shall submit contract documents to the State Water Resources Control Board and Fresno County Department of Environmental Health for review at the 90% design level. Comments from all jurisdictional agencies shall be addressed and/or

incorporated into the 100% design submittal.

- c. The Consultant shall submit three (3) sets of the specifications and two (2) sets of the construction cost estimate and calculations at the 60%, 90% and 100% design levels and additional sets to other agencies as required. Also, one (1) electronic copy of all documents shall be submitted along with the required hard copies at each design level. Comments from the 100% design submittal shall be incorporated into the final design submittal consisting of one set of specifications and associated figures and/or plans signed by a licensed hydrogeologist and/or civil engineer. One (1) set of the final cost estimate, calculations and design and specification files shall also be provided electronically (AutoCAD, pdf, word, excel, and original formats on CD) to the City of Fowler.

### **Task 600: Permitting**

This task shall include obtaining the permitting required for the construction phase of the project. Anticipated permitting agencies include State Water Resources Control Board (SWRCB) and Fresno County Department of Environmental Health. Construction permits will be secured by the contractor, including preparation and approval of a Stormwater Pollution Prevention Plan and a Dust Control Plan. Permit applications and procurement should begin upon confirmation of the schematic design.

### **Task 700: Environmental Documents**

This task shall include any necessary environmental documents required for the project to comply with the California Environmental Quality Act (CEQA) and any other associated policies. It is anticipated an Initial Study and Mitigated Negative Declaration will be the appropriate level of CEQA documentation necessary for this process and that the Evaluation Form for Environmental Review and Federal Coordination will also be required and appropriate federal-level studies. Coordination with the SWRCB is included in this task.

### **Task 800: Project Bidding**

This task shall include any necessary components of bidding the project, including but not limited to advertising of the bid, addendum preparation, conducting bid meetings, preparing a bid canvass, and selecting and rewarding a final bid. Project bidding should take place immediately following the completion of the design documents.

### **Task 900: Construction Phase Services**

This task shall include supporting services such as review of contractor generated RFI's, preparation of field change directives and periodic field inspections during the construction phase of the project.

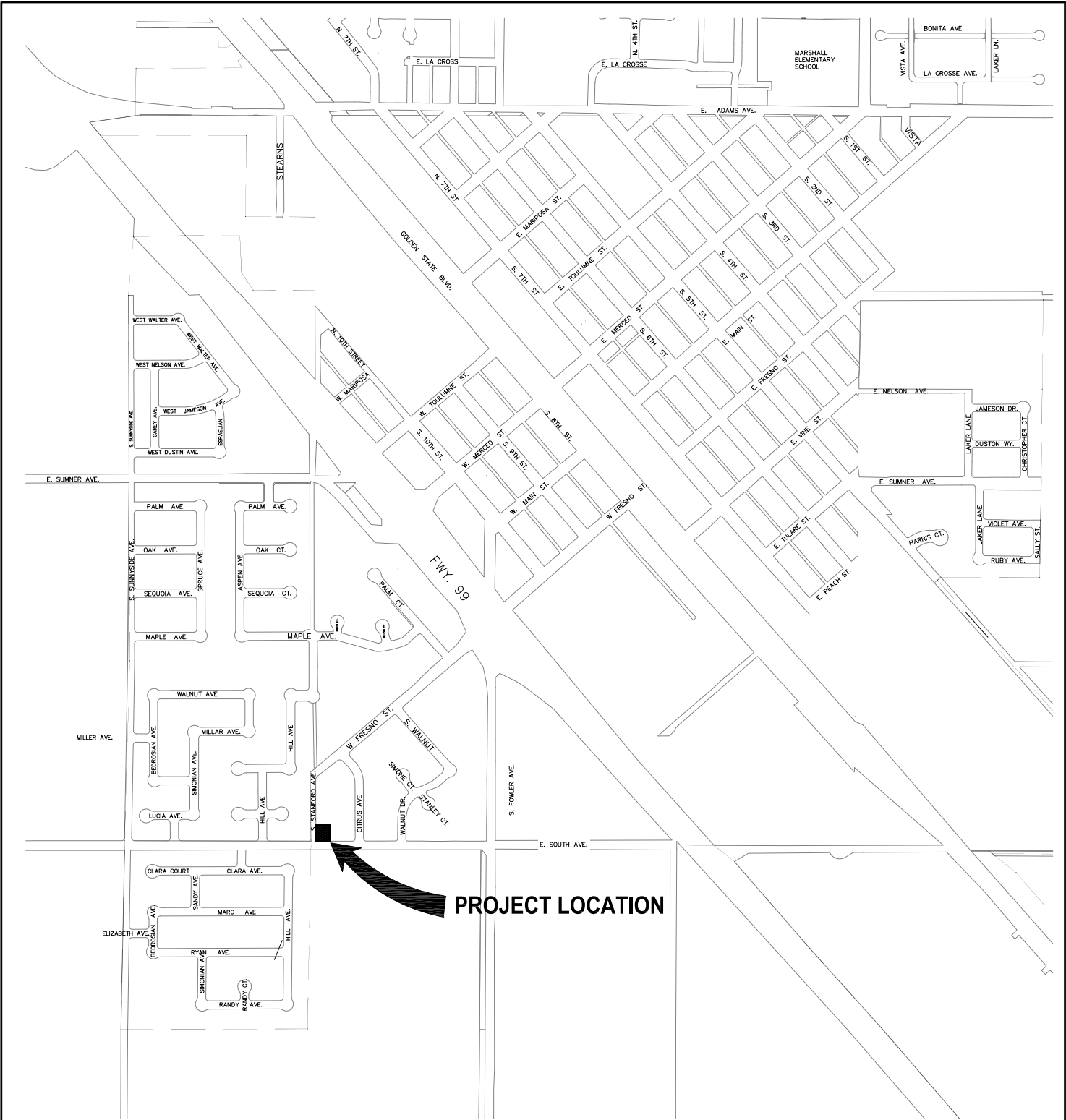
Additionally, the Consultant shall provide the following hydrogeological field technician support for well drilling activities including;

1. Formation sampling and logging.

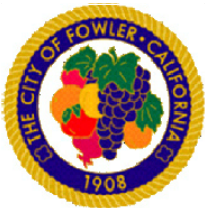
2. Well bore hole and ream hole electronic logs and caliper and deviation logs observation.
3. Well casing installation and gravel packing.
4. Well disinfection activities.
5. Well mechanical development observation.
6. Well video observation and comments.
7. Well development and test pumping.

**RFP ATTACHMENTS:**

1. Figure 1 – Well Site Location
2. Standard Consultant Contract



**PROJECT LOCATION**



# CITY OF FOWLER PROPOSED WELL 9 LOCATION



NOT TO SCALE

FIGURE 1

**CITY OF FOWLER**  
**CONTRACT SERVICES AGREEMENT FOR PROFESSIONAL SERVICES**

This Contract Services Agreement for Professional Services ("Agreement") is entered into between the City of Fowler, a California general law city ("City") and NAME ("Vendor"), a LEGAL ENTITY TYPE, with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on the last date indicated below ("Effective Date").

**RECITALS**

- A. City desires to engage the services of a qualified vendor for design and engineering services for a new Water Well No. 9 ("Services") more fully described in **Exhibit A**, which is attached hereto and incorporated by reference.
- B. Vendor is engaged in the business of providing these Services and hereby warrants and represents that Vendor is qualified, experienced, and capable of providing these Services, and possesses any required licenses, certifications, security/bonding, and/or training necessary thereto.
- C. City desires to contract with Vendor to provide these Services on the terms and conditions as set forth in this Agreement.

**Now, therefore, in consideration of the promises and mutual agreements herein, City and Vendor agree as follows:**

**AGREEMENT**

1. Scope of Work. Vendor agrees to perform the services as more fully described in **Exhibit A** attached hereto and incorporated herein by reference ("Services"). Changes in the scope of Services, including work incidental to the Services, shall be made in writing and particularly describe the changes in Services, payment/costs, and schedule/term, as applicable.
2. Schedule. City and Vendor shall mutually agree on a schedule for performing the Services. The schedule shall be subject to modification based on the City's operational needs. City will notify Vendor in advance of any modification to the schedule.
3. Term of Agreement; Commencement of Services. The term of this Agreement shall begin on the Effective Date and shall terminate on DATE, unless extended by mutual written agreement of the Parties. Notwithstanding the preceding sentence, this Agreement may be terminated during the term in accordance with Section 17 herein.
4. Payment for Services. City shall pay Vendor for the Services performed pursuant to this Agreement as follows: time and materials, per **Exhibit A**. The total amount paid by City to Vendor pursuant to this Agreement shall not exceed SPELLED OUT Dollars (\$xx,xxx).

The foregoing is inclusive of all labor, equipment, materials, costs and expenses, taxes, and overhead. City shall pay Vendor for Services satisfactorily performed pursuant to this Agreement. Vendor shall submit an invoice to City containing detailed billing information regarding the Services provided and City shall tender payment to Vendor within thirty (30) days after receipt of invoice.

5. Independent Contractor Status. Vendor and its subcontractors, if any, shall perform the Services as independent contractors and not as officers, employees, agents or volunteers of City. Vendor is engaged in an independently established trade, occupation, or business to perform the Services required by this Agreement

and is hereby retained to perform work that is outside the usual course of City's business. Vendor is free from the control and direction of City in connection with the manner of performance of the work. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Vendor's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Vendor's employees or subcontractors, any claim or right of action against City.

6. Vendor Representations; Standard of Care; Compliance with Law. Vendor represents that Vendor and any subcontractors utilized by Vendor are and will be qualified in the field for which Services are being provided under this Agreement, and Vendor and any subcontractors are now, and will be throughout their performance of the Services under this Agreement, properly licensed, certified, secured/bonded, trained, and/or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement, as may be required by law. Vendor and its subcontractors shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with all applicable laws, regulations, and industry standards, including anti-discrimination and anti-harassment laws. Vendor shall comply with all Labor Code requirements for public works projects if applicable to Vendor's work under this Agreement.

7. [Reserved]

8. Subcontractor Provisions. Vendor shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Vendor owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions and other work product prepared and performed by subcontractors for Vendor; and (c) entitle City to impose upon subcontractors the assignment rights found elsewhere in this Agreement.

9. Power to Act on Behalf of City. Vendor is not acting as an agent of City and shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

10. Record Keeping; Reports. Vendor shall keep complete records showing the type of Services performed. Vendor shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Vendor and its subcontractors for inspection and audit purposes. Vendor shall provide City with a working draft of all reports upon reasonable request by City and of all final reports prepared by Vendor under this Agreement.

11. [Reserved]

12. [Reserved]

13. City Name and Logo. Vendor shall not use City's name or insignia, photographs relating to the City projects or work for which Vendor's services are rendered, or any publicity pertaining to the Vendor's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production, internet website, social media, or other similar medium without the prior written consent of City.

14. Conflicts of Interest. Vendor warrants that neither Vendor nor any of its employees have an improper interest, present or contemplated, in the Services which would affect Vendor's or its employees' performance of the Services. Vendor further warrants that neither Vendor nor any of its employees have real property, business interests or income that will be affected by the Services. Vendor covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Vendor shall not employ or retain the services of any person who is employed

by the City or a member of any City Board or Commission.

15. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Vendor, or any successors in interest, in the event of a default or breach by City for any amount which may become due Vendor or its successor, or for any breach of any obligation under the terms of this Agreement.

16. City Right to Employ Other Vendors. Unless **Exhibit A** specifically provides that the Services City seeks pursuant to this Agreement are exclusive to Vendor, this Agreement and the performance of the Services are non-exclusive and City reserves the right to employ other vendors or contractors in connection with the Services while this Agreement is in effect.

17. Termination of Agreement. This Agreement shall terminate as provided in Section 3, unless terminated earlier pursuant to the following:

a. Termination by City: For Convenience. City may at its discretion terminate this Agreement for convenience and without cause upon fourteen (14) days prior written notice to Vendor. Upon receipt of a termination notice pursuant to this subsection, Vendor shall promptly discontinue all Services affected, unless the notice directs otherwise.

b. Termination by City or Vendor: For Cause. Either party may terminate this Agreement upon ten (10) days prior written notice to the other party of a material breach, and a failure within that time period to cure or commence reasonable steps to cure the breach.

c. Compensation to Vendor Upon Termination. Vendor shall be paid compensation for Services satisfactorily performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Vendor's compensation has not become due, Vendor shall be paid the reasonable value of its Services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified Section 4. In the event of termination due to Vendor's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

d. Effect of Termination. Upon termination of this Agreement, Vendor shall promptly discontinue all Services affected, unless the notice of termination directs otherwise.

18. Insurance. Vendor shall satisfy the insurance requirements set forth in **Exhibit B**.

19. Indemnity and Defense. Vendor hereby agrees to indemnify, defend and hold the City, its officials, officers, employees, agents, and volunteers harmless from and against all claims, demands, causes of action, actions, damages, losses, expenses, and other liabilities, (including without limitation reasonable attorney fees and costs of litigation) of every nature arising out of or in connection with the alleged or actual acts, errors, omissions or negligence of Vendor or its subcontractors relating to the performance of Services described herein to the fullest extent permitted by law, unless the injuries or damages are the result of City's sole negligence or willful misconduct, subject to any limitations imposed by law. Vendor and City agree that said indemnity and defense obligations shall survive the expiration or termination of this Agreement for any items specified herein that arose or occurred during the term of this Agreement.

20. Taxes. Vendor agrees to pay all taxes, licenses, and fees levied or assessed by any governmental agency on Vendor as a result of the sale of the Equipment and/or performance of Services under this Agreement, and unemployment and workers' compensation insurance, social security, or any other taxes upon the wages of Vendor, its employees, agents, and representatives. Vendor agrees to obtain and maintain a

business license from City and pay the applicable business license fee to City during the term of this Agreement.

21. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Vendor without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Vendor shall not assign the payment of any monies due Vendor from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Vendor directly to Vendor.

22. Form and Service of Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be delivered to, served upon, or given to either party to this Agreement by the other party shall be in writing and shall be deemed properly delivered, served or given by one of the following methods:

- a. Personally delivered to the party to whom it is directed. Service shall be deemed the date of delivery.
- b. Delivered by e-mail to a known address of the party to whom it is directed provided the e-mail is accompanied by an acknowledgment of receipt by the other party. Service shall be deemed the date of acknowledgement.
- c. Delivery by a reliable overnight delivery service, ex., Federal Express, receipted, addressed to the addressees set forth below the signatories to this Agreement. Service shall be deemed the date of delivery.
- d. Delivery by deposit in the United States mail, first class, postage prepaid. Service shall be deemed delivered ninety-six (96) hours after deposit.

23. Entire Agreement. This Agreement, including any referenced Exhibits, represents the entire agreement between City and Vendor and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter herein.

24. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

25. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

26. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

27. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by City and Vendor in the County of Fresno, California. Vendor shall perform the Services required under this Agreement in the County of Fresno, California. Thus, in the event of litigation, venue shall only lie with the appropriate state or federal court in Fresno County.



28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

29. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

30. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

31. Alternative Dispute Resolution. If a dispute arises out of or relating to this Agreement, or the alleged breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

Demand for mediation shall be in writing and delivered to the other party to this Agreement. A demand for mediation shall be made within reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

32. Non-Discrimination. Contractor shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Contractor employees or applicants for employment. Contractor shall ensure that any subcontractors are bound to this provision. A protected class, includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

**Now, therefore, the City and Vendor have executed this Agreement on the date(s) set forth below.**

**VENDOR LEGAL NAME**

**CITY OF FOWLER**

\_\_\_\_\_  
SIGNATORY  
TITLE

\_\_\_\_\_  
Wilma Tucker  
City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ADDRESS  
CSZ  
PHONE

128 South 5th Street  
Fowler, CA 93625  
(559) 834-3113

**EXHIBIT A**  
**SCOPE OF SERVICES**

# **EXHIBIT B**

## **INSURANCE REQUIREMENTS**

Prior to commencement of the Services, Vendor shall take out and maintain at its own expense the insurance coverage required by this **Exhibit C**. Vendor shall cause any subcontractor with whom Vendor contracts for the performance of Services pursuant to this Agreement to take out and maintain equivalent insurance coverage. Said insurance shall be maintained at all times during Vendor's performance of Services under this Agreement, and for any additional period specified herein. All insurance shall be placed with insurance companies that are licensed and admitted to conduct business in the State of California and are rated at a minimum with an "A:VII" by A.M. Best Company, unless otherwise acceptable to the City.

a. Minimum Limits of Insurance. Vendor shall maintain the following types of insurance with limits no less than specified:

(i) General Liability Insurance (including operations, products and completed operations coverages) in an amount not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(ii) Worker's Compensation Insurance as required by the State of California.

(iii) Automobile Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

(iv) Umbrella or Excess Liability. In the event Vendor purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

If Vendor maintains higher limits than the minimums shown above, the City shall be entitled to coverage at the higher limits maintained.

b. Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(i) The City, its officers, officials, employees, agents, and volunteers are to be covered as insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Vendor; and with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Vendor's insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33 or CG 20 38; and CG 20 37 forms if later revisions used).

(ii) For any claims related to the Services performed pursuant to this Agreement, the Vendor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

(iii) Each insurance policy required by this section shall be endorsed to state that the City shall receive written notice at least thirty (30) days prior to the cancellation, non-renewal, or material modification of the coverages required herein.

(iv) Vendor grants to the City a waiver of any right to subrogation which any insurer of said Vendor may acquire against the City by virtue of the payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(v) Any deductibles or self-insured retentions must be declared to and approved by the City of Fowler Risk Services. The City may require the Vendor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

c. Evidence of Coverage. Vendor shall deliver to City written evidence of the above insurance coverages, including the required endorsements prior to commencing Services under this Agreement; and the production of such written evidence shall be an express condition precedent, notwithstanding anything to the contrary in this Agreement, to Vendor's right to be paid any compensation under this Agreement. City's failure, at any time, to object to Vendor's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance), shall not be deemed a waiver of City's right to insist upon such insurance later.

d. Maintenance of Insurance. If Vendor fails to furnish and maintain the insurance required by this section, City may (but is not required to) purchase such insurance on behalf of Vendor, and the Vendor shall pay the cost thereof to City upon demand, and City shall furnish Vendor with any information needed to obtain such insurance. Moreover, at its discretion, City may pay for such insurance with funds otherwise due Vendor under this Agreement.

e. Subcontractors. If the Vendor should subcontract all or any portion of the work to be performed in this Agreement, the Vendor shall cover the subcontractor, and/or require each subcontractor to adhere to all the requirements contained herein. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.

f. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

g. Indemnity and Defense. Except as otherwise expressly provided, the insurance requirements in this section shall not in any way limit, in either scope or amount, the indemnity and defense obligations separately owed by Vendor to City under this Agreement.

**EXHIBIT C**  
**CERTIFICATE OF INSURANCE**