REQUEST FOR PROPOSALS

FOR

RFP #2019-08
FINANCIAL ADVISORY SERVICES

Questions Due by:  November 8, 2019, 2:00 p.m.
Proposal Due Date: December 2, 2019, 2:00 p.m.

Merced Community College District
Purchasing Department
Attn: Chuck Hergenraeder
Email: charles.hergenraeder@mccd.edu
Phone: 209-384-6300
PURPOSE OF THE REQUEST
The Merced Community College District ("District") is issuing a Request for Proposal (RFP) from qualified financial advisory firms who are experienced in providing California Community College districts and K-12 educational entities with financial advisory services related to pre-bond and bond elections, the issuance of general obligation bonds, certificates of participation, tax and revenue anticipation notes, refunding of long-term district debt, managing district indebtedness, and other issues related to financial advisory services. Firms must be experienced in the general and technical aspects of community college district financing. Responses to the RFP must be submitted in accordance with the terms and conditions contained in the RFP document. It is the desire of the District to select a firm that can meet or exceed the requirements set forth by the District and can provide the highest quality, comprehensive financial services at a competitive fee.

OVERVIEW OF THE DISTRICT
The Merced Community College District was established on July 1, 1963. Its territories encompass portions of Merced, Madera, and Fresno counties. The District consists of one community college campus in the City of Merced and a center in the City of Los Banos. The District’s total Full Time Equivalent Students (FTES) for 2018/19 was 10,024.

In November 2002, the voters in the Merced area approved Measure H, a $53.5 million general obligation bond measure to fund facilities improvements at the District’s Merced Campus. The District has issued $44 million in general obligation bonds from this measure.

In October 2019, the District’s Board of Trustees approved a $247 million general obligation bond measure to be added to the March 2020 ballot to be voted on by the residents of the greater Merced County.

Vision
Merced College will provide transformative and empowering educational experiences to meet student and community needs.

Mission
Growing our community through education and workforce training:

- lifelong learning
- basic skills
- career technical education
- transfer
- degree/certificate programs

Ensuring student success through equitable access, continuous quality improvement, institutional effectiveness, and student achievement.
The mission of the Merced Community College District is student success. We accomplish this by providing access to a dynamic learning environment that fosters excellence, opportunity and innovation in meeting the diverse educational and career goals of our students and communities.

**GENERAL INSTRUCTIONS**

Submitted proposals should be reviewed for accuracy before submission to the District since proposals may not be adjusted after submission to the District. The District will not be responsible for errors or omissions in any proposals. The District reserves the right to reject any and all proposals, or to waive any irregularities, or informalities in a proposal.

**Agreement for Services:**
The sample Agreement for Services included in this RFP is for information only. The successful firm will be required to sign the Agreement for Services.

**Statement of Non-Collusion:**
A completed Statement of Non Collusion must be submitted with each proposal.

**Certification of Nondiscrimination by Suppliers:**
A completed Certification of Nondiscrimination by Suppliers must be submitted with each proposal.

**Proposal Exceptions:**
It is assumed that the firm will accept all conditions and requirements identified in this RFP. If they are no exceptions noted in the Firm’s response, it is assumed the Firm will accept all conditions and requirements of this RFP. Items not excepted will not be open to later negotiations.

**Signatures**
Each proposal must include the CERTIFICATION OF REQUEST FOR PROPOSALS signature page. This page must be signed by an authorized officer of the financial advisory firm and submitted with the proposal. The name and title of the person shall be included following the signature and submitted with each firm’s proposal.

**Contacts**
In order to control information disseminated regarding this request for RFP, financial advisory firms interested in submitting a proposal are directed not to make personal contact with members of the Board of Trustees and District Administration. All questions and or information regarding this RFP shall be directed to:

**Purchasing Department**
Attn: Chuck Hergenraeder
Email: Charles.hergenraeder@mccd.edu
Phone: 209-384-6300

**Questions**
Should you have any question regarding this RFP, they must be put in writing and received no later than noon, November 8, 2019. The questions shall be e-mailed to Chuck Hergenraeder at charles.hergenraeder@mccd.edu. Responses from the District will be communicated in writing to all recipients of this RFP. Inquiries received after the date and time stated will not be accepted and will be returned to senders without response. All addenda shall become a part of this RFP. RFP responses are
deemed inclusive of all District amendment(s). The District shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the District or its representatives. Responses to questions will be posted at http://www.mccd.edu/offices/purchasing/bids.html It is the responsibility of each individual firm to access responses to all questions concerning this RFP.

**Joint Proposals**
Joint proposals may not be submitted.

**Interviews**
This District will conduct interviews of selected firms. Interviews will be scheduled during the week of December 9, 2019.

**California Public Records**
All material submitted in response to this solicitation will become the property of Merced Community College District and will not be returned. In addition, all materials submitted are considered a public record by the District and subject to disclosure pursuant to the California Public Records Act (Government Code 6250 et sq.). Should the District receive a request for any proposals submitted in response to this RFP, the bidder submitting the requested proposal will be contacted prior to disclosure of the proposal to determine what portions, if any, of the proposal may be confidential. The District reserves the right, consistent with the California Public Records Act, to make the final determination whether a proposal, or any portion of it, is confidential and not subject to disclosure.
SCOPE OF SERVICES

Firms wishing to be considered for selection by the Governing Board must agree to meet the District’s requirements and provide the services outlined below, including but not limited to, the following:

1. Provide the District with expert independent financial advice and assistance on financing techniques and options on matters pertaining to the issuance and sale of securities including general obligation bonds, certificates of participation, and other municipal financing options available to California educational entities for a period not to exceed five years. The selected firm shall enter into a one-year contract with the District, however, the District reserves the right to contract with the firm for up to 4 additional one-year periods.

2. Provide the District with available financing options by conducting studies and analyses to determine the most appropriate and cost-effective financing methods, terms, security provisions and repayment structures.

3. Provide bond financing schedules and sizing analyses to the District.

4. Work cooperatively with and coordinate the work of bond counsel and/or underwriter to be selected by the District, in connection with the issuance of bonds.

5. Assist disclosure counsel with the preparation of preliminary and final official statements to provide the market with timely and accurate information about the District and its bond issues.

6. Provide the District with expert advice concerning the appropriate interest rates for its financing.

7. Assist District officials in preparing materials for presentation to national credit rating services regarding the District’s financial condition and debt structures.

8. Have representatives present at Governing Board and other Districts meetings, when requested or notified, on matters concerning financing techniques and bond issues.

9. Prepare other analyses that may be utilized by the District for its financings.

10. Perform such other functions normally contemplated to be within the scope of a fully qualified financial advisor.
SUBMISSION OF REQUEST FOR PROPOSAL

Proposals must be submitted to Purchasing Services no later than 2:00 PM on December 2, 2019. Once submitted, responses become the property of the District. No corrected or resubmitted proposals will be accepted after the deadline. Late proposals will not be accepted and will be returned unopened. Submit one (1) unbound original and three (3) bound copies of your firm’s proposal by regular/express delivery, and one CD. The set of a Respondent’s RFP Response designated as “original” must include the original signatures, submittals, etc. In the event of missing or contradictory information in any of the copies, the set of RFP Response marked “original” will be considered as the “master” against which all others will be compared.

No faxed or emailed RFP Responses will be accepted or considered. Any RFP Response submitted by fax or email will be deemed non-responsive and will be rejected.

Responses to the RFP must be submitted in sealed envelopes, with the name, address, telephone number and fax number of the Respondent along with the notation of “RESPONSE TO RFP FOR FINANCIAL ADVISORY SERVICES, RFP #2019-08” Responses must be submitted to:

Merced Community College District
Purchasing Department
Attn: Chuck Hergenraeder
Email: Charles.hergenraeder@mccd.edu
Phone: 209-384-6300
Minimum Qualifications

1. The firm has provided proof of registration with the Municipal Securities Rulemaking Board and Securities Exchange Commission as required by SEC rules and the Dodd-Frank Wall Street Reform and Consumer Protection Act and is full compliance with the Municipal Advisory rule (MA-1s).

2. The firm or its advisors working on this engagement must have a minimum of three years of municipal finance experience, which can include financial advisory experience, investment advisory experience, or investment banking experience.

3. The firm must be an independent financial advisory firm.

4. The firm must maintain insurance coverage as detailed in Exhibit I, in the enclosed Sample Agreement for Services included in this RFP. The firm’s professional liability insurance coverage must include either a securities transaction rider or coverage without exclusion for securities transactions. Provide as an appendix evidence of professional liability coverage for the firm and its advisors including coverage amounts. The evidence of coverage should indicate whether securities transactions are covered. In addition, provide proof of insurance in the amounts indicated on the enclosed Agreement for Services, Exhibit I.

CONTENTS FOR PROPOSALS

Responders will read each item carefully and answer each of the following items accurately to ensure compliance with District requirements. Failure to provide all requested information or deviation from the required format may result in disqualification. Restate each item prior to addressing said item:

A. Qualifications
   Briefly summarize the qualifications and experience of your firm’s professionals regarding municipal finance in general and California education finance in particular. Please provide a list of community college districts and contact information in which your firm acted as financial advisor during the past five years. For each transaction, please include par amount of issuance.

   Provide a brief description of your firm’s experience on a general obligation bond or a certificate of participation debt issue in which you recommended a creative idea and tell us the results of the action.

B. Organizational Structure
   Describe your firm’s organizational structure. Supply the name or names of the individuals who will be responsible for this relationship with the District and their experience with California community colleges. Please provide brief resumes for these individuals and their roles in working with the District.

C. California Presence
   Describe your firm’s presence in California including office locations, employees, and commitment to California municipal finance.

D. Capabilities of the Firm
   List your firm’s computer resources, programs, personnel capabilities, and the location of these services.
E. Fees
Please provide your firm’s proposed fees for the issuance of general obligation bonds, certificates of participation, tax and revenue anticipation notes, refunding’s, and bond anticipation notes. Further, identify consultant fees, if any, for services the District might require for municipal financings not directly related to the issuance of a financing. If there are to be charges for reimbursable expenses, please list all charges to be considered reimbursable and provide a not-to-exceed amount for said expenses.

The fee proposal should include a total for:
- A $9.5 million issuance from the 2002 Election, School Facilities Improvement District No 1.
- Proposed $247 million to voters for the 2020 March Election.

F. Distinguishing Characteristics
Please describe what distinguishes your firm from other financial advisory firms and how said services will benefit the District financially.

G. Recent Community College District transactions
Please select two (2) to four (4) recent short term and long term, fixed rate and/or adjustable rate competitive sale or negotiated transactions since January 1, 2012 for which your firm’s professionals were involved. List the following information regarding each transaction: sale date, issue size, maturity amounts, scale and optional call features, underwriting spread, credit rating, credit enhancement (if any), and any other relevant information.

H. Agreement
The financial advisory firm approved by the Governing Board to serve as the District’s financial advisor will be required to execute a finalized version of the attached Agreement for Services form with terms and conditions identified. Please confirm in your proposal your firm’s willingness to execute the Agreement for Services.

I. References
Please provide the names and contact information for at least five (5) K-14 entities that your firm has worked with as a financial advisor during the past three (3) years.

J. Legal Issues
Please respond to each of the following questions:

i. Is there now pending any legal action alleging violations of the law in connection with an offering of municipal securities in a California transaction against the firm or any employee of the firm? Please describe each such pending action.

ii. Have there been any settlements or judgments involving such actions within the last five (5) years? Please describe each such settlement or judgment, including the nature of the action and the amount of recovery.

iii. Are there pending legal or disciplinary matters involving such actions against the firm by any State or Federal regulatory agency? If ‘yes’, describe. Include information about any criminal indictments or convictions against the firm or its attorneys where the charges involved municipal securities in the United States. Also include information about any material pending legal action, settlement, or judgment involving a claim of fraud, whether civil or criminal.
EVALUATION OF REQUEST FOR PROPOSALS:

Each RFP response will be evaluated based on the following criteria (not listed in the order of importance):

A. Demonstrated understanding and responsiveness of the request for proposals.

B. Qualifications, independence, and experience of firm and personnel named in the proposal.

C. Competence and experience of assigned staff in structuring and completing California education financings.

D. Past experience in assisting community colleges with financial information necessary for the passage of bond measures and the successful issuance of bonds, certificates of participation, tax and revenue anticipation notes, refunding’s, etc.

E. Proposed fee

F. The District reserves the right to:
   
   i. Request an interview with and/or additional information from any firm prior to its selection.

   ii. Select the firm that, in the District’s judgment, will best meet the District’s needs. Fees are an important factor, but will not be the sole factor in making the selection.

   iii. The District reserves the right to negotiate any price or provision whenever, in the sole opinion of the District, such action shall serve its best interests and those of the taxpaying public. The firms are encouraged to submit their best prices in their proposal, and the District intends to negotiate only with the firm(s) whose proposal most closely meets the District’s requirements at the lowest estimated cost. The Contract, if any is awarded, will go to the firm whose proposal best meets the District’s requirements.

   iv. Reject any and all proposal or to waive any non-statutory informality. The Governing Board further reserves the right to make the contract award deemed by the administration to be in the best interest of the District. The Governing Board’s decision to accept or reject the contract shall be final.

COMPLETION OF REQUEST FOR PROPOSALS

Proposals shall be completed in all respects as required by the instructions herein. Proposals may be rejected if it is conditional or incomplete, or if it contains alterations of form or other irregularities of any kind. Proposals will be rejected if, in the opinion of the District, the information contained therein was intended to erroneously and fallaciously mislead the District in the evaluation of the proposal.

CONTRACT TERM

The selected firm shall enter into a one year contract with the District, however, the District reserves the right to contract with the firm for up to 4 additional one-year periods in accordance with the agreed upon prices, terms, and conditions. The District may terminate this contract at any time for any reason by providing 30 days’ notice to Contractor. The termination shall be effective on the
date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.

WITHDRAWAL OF REQUEST FOR PROPOSALS

Responses to the RFP may be withdrawn by the firm submitting proposals at any time prior to the closing date and time for receipt of proposals. A request to withdraw a proposal must be in writing and received by the District prior to the scheduled opening of proposals. Proposals not withdrawn must remain open for a period of sixty (60) days following the last day to submit proposals.

No amendment, addendum or modification will be accepted after a proposal has been submitted to the District. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted to the District prior to the time scheduled for opening of proposals.

INDEPENDENT CONTRACTOR STATUS

It is expressly understood that the firm named in any contract entered into by the District is acting as an ‘independent contractor’ and not as an agent or employee of the District.

COST OF PREPARATION OF REQUEST FOR PROPOSALS

The sole responsibility for compliance with the requirements of this RFP lies with each firm submitting a response. Each firm is solely responsible for costs in preparing a response to this RFP and other activities associated with this RFP.
CERTIFICATION OF REQUEST FOR PROPOSALS

I certify that I have read the attached Request for Proposals. I further certify that I have submitted one (1) unbound original, three (3) bound copies of the firm’s response to the Request for Proposals (RFP) and a USB flash drive and that I am authorized to bind the firm to the proposal submitted.

_________________________________________  __________________________
Signature                                                                 Date

_________________________________________  __________________________
Typed or Printed Name                                                                 Telephone

_________________________________________  __________________________
Title                                                                 Email Address

_________________________________________  __________________________
Company                                                                 Federal Tax I.D. Number

_________________________________________
Address

If the firm is a corporation, please provide the corporate seal here.
NON-COLLUSION DECLARATION

NONCOLLUSION DECLARATION TO BE EXECUTED BY FIRM AND SUBMITTED WITH RFP

The undersigned declares:

I am the ___________________________ of ____________________________, the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose. Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _______________________________,

(Date)

At _______________________________________   ____________________________________________

(City)                                                 (State)

___________________________________   ___________________________________________

(Signature)                   (Address)

_______________________________________    ____________________________________________

(Name Printed or Typed)    (City, State)

(_____) ___________________________

(Area Code)     (Telephone Number)
CERTIFICATION OF NONDISCRIMINATION BY SUPPLIERS

As suppliers of goods or services to the agencies listed in this bid proposal, the Vendor listed below certifies that it does not discriminate in its employment with regards to any person in the provision of any program or services based on race, color, national or ethnic origin, age, gender, religion, sexual orientation, marital status, or physical or mental disability; that it is in compliance with all Federal, State, and local directives and executive orders regarding nondiscrimination in employment; and that it agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

We agree specifically:

1. To establish or observe employment policies which affirmatively promote opportunities for minority persons at all job levels.

2. To communicate this policy to all persons concerned, including company employees, outside recruiting services, especially those serving minority communities, and to the minority communities at large.

3. To take affirmative steps to hire minority employees within the company.

VENDOR: _______________________________________________
BY: ____________________________________________________
TITLE: _________________________________________________
SIGNATURE: ____________________________________________
ADDRESS: ______________________________________________
PHONE: _________________________________________________
DATE: __________________________________________________
SAMPLE AGREEMENT FOR SERVICES

This Agreement entered this day of , 2 , by and between the Merced Community College District, a community college district of the State of California, hereinafter called “District” and hereinafter called “Contractor.”

WHEREAS, pursuant to Merced Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage independent contractors to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be performed by Contractor. In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit “A” attached hereto and by this reference made a part hereof. Contractor shall perform all the services described in Exhibit A for the sum not to exceed $ .

2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit “A”, District shall make payment to contractor in the manner specified in Exhibit “A”.

3. Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor.

4. Non-Assignability. Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.

5. Contract Term. This Agreement shall be in effect from through as specified in Exhibit “A”. The District may terminate this contract at any time for any reason by providing 30 day notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.

6. Hold Harmless and Indemnification: To the fullest extent permitted by law, the contractor shall indemnify and save harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this contract as made necessary by Section 530 of the Revenue Act of 1978, including but not limited to the concurrent active or passive negligence of the District, its officers, agents, employees or servants, resulting from the performance of any work required of contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code.

Contractor’s duty to defend shall be triggered by notice to contractor that District has been served with a summons or complaint which alleges facts falling within the scope of contractor’s indemnity obligations.
7. **Insurance.** If applicable, insurance requirements are attached as Exhibit “I.”

8. **Non-Discrimination.**

   **A. General.** No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.

   **B. Employment.** Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor’s personnel policies shall be made available to District upon request.

9. **Substitutions:** If particular people are identified in Exhibit “A” as working on this contract the Contractor will not assign others to work in their place without written permission from the District Purchasing Agent. Any substitution shall be with a person of commensurate experience and knowledge.

10. **Sole Property of the District:** Any system or documents developed, produced or provided under this contract shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by contractor in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.

11. **Contract Renewal.** This Agreement may be renewed for additional time periods as long as the original contract term plus the renewal periods does not exceed five years and provided that both parties sign the renewal, insurance coverage pursuant to paragraph 7 is the same as then customary in similar District Agreements, and the cost of the terms combined will not exceed (a) $14,999.00 for public project services such as construction, reconstruction, erection, alteration, renovation, improvement, demolition, or repair work, including painting, repainting, or data cabling or (b) $86,000.00 for routine maintenance, or other services not described in (a) unless the Agreement has been approved by the Board of Trustees.

12. **Expenditure of Public Funds.** Contractor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any contract involving expenditure of public funds in excess of $10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.

13. **Confidentiality.** In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

14. **Merger Clause.** This Agreement, including Exhibit “A” attached hereto and incorporated herein by reference, constitutes the sole agreement of parties hereto and correctly states the rights, duties and obligations of each party as of the document’s date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District Purchasing Agent. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit “A” attached hereto, the terms, conditions or specifications set forth herein shall prevail.
AUTHORIZED CONTRACTOR SIGNATURE

Print name________________________________________

Contractor’s Company Name

Contractor’s Tax I.D. Number

MERCED COMMUNITY COLLEGE DISTRICT

By: _________________________________________________________

Authorized Contractor Signature Date

_______________________________________________________

Title

Date Approved By Board of Trustees

(Approval is required prior to commencement of services if total cost exceeds $20,000.00 for professional services or the applicable bid threshold stated in Public Contract Code 20651 for other services.)
EXHIBIT “A”

Contract between Merced Community College District ________________________________
_____________________________________________________, hereinafter called “Contractor”.

I. Detailed description of services to be performed and work product to be delivered to District by Contractor: (reference and attach additional pages, if necessary)

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

II. Amount and Method of Payment: (indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

In any event, the total payment for services of contractor shall not exceed $__________ and District shall have the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable.

III. Term of the contract: The term of this contract shall commence on the date specified in the first paragraph of this contract, and shall continue until _____________________, 2_________.

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Contractor shall not commence work under this Agreement until required insurance has been approved in writing by District. Certificates of insurance, in form and with insurers acceptable to District (A M Best rating of A-VII or better or otherwise approved by District Risk Manager) shall be submitted to District Risk Management Department. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation.

Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. Workers’ Compensation (statutory limits) and Employers’ Liability insurance with limits not less than $1,000,000 each accident, $1,000,000 employee and $1,000,000 each disease, provided that contractor has employees as defined by the California Labor Code;

2. Commercial General Liability insurance, with limits not less than $2,000,000 each occurrence and $4,000,000 aggregate, for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;

3. Professional Liability insurance, with limits not less than $3,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed $25,000 each claim.

If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement. General Liability policy shall include as Additional Insured, the District, its officers, agents, employees and servants and such insurance, shall be primary to any other insurance or self-insurance and shall apply separately to each, Additional Insured.

Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District’s option, result in a declaration of material breach and suspension of Contractor’s further work under this Agreement.

MERCED COMMUNITY COLLEGE DISTRICT

Standard Instructions and Conditions for Invitations to Bid (ITB’S)

Requests for Proposals (RFP’S), Requests for Quotations (RFQ’S),

Purchase Orders (PO’S), and Contracts

When a standard instruction or condition conflicts with instructions, conditions, or terms specified in other areas of this RFP or Agreement for Services, the language in the other areas prevails.
SECTION I  Applicable to bids only.

Note: The reference to “bids” in the following paragraphs applies to ITB’s, RFP’s, and RFQ’s. The reference to “contracts” includes purchase orders.

1. PREPARATION OF BIDS:

   (a) All prices and notations must be printed in ink or typewritten. No erasures are permitted. Error’s may be crossed out and corrections printed in ink or typewritten nearby and must be initialed in ink by person signing bid.

   (b) Brand names and numbers are for reference only unless otherwise stated in the specification. Bids on equal items will be considered provided the bid clearly describes the article offered, and the District judges it to be equal in quality and performance. When items offered do not comply with the bid specifications, a detailed description of variance, feature by feature, must be furnished with the bid. Submission of descriptive literature alone does not meet this requirement.

   (c) State brand or make on each item. If offering other than the make, model, or brand specified, the manufacturer’s name and catalog number must be given, and descriptive literature must be attached to the bid.

   (d) Quote on each item separately. Prices should be stated in the units specified. Sales tax, if any, should be stated separately.

   (e) The District will not consider prompt payment discount terms that require payment in less than ten (10) days.

   (f) Quotes must be f.o.b. destination, freight prepaid and allowed. All applicable charges for freight, shipping, or handling must be included in the quoted prices.

   (g) Payment terms shall be net 30 days unless the bid form requires otherwise.

   (h) Time of delivery is a part of the bid and must be adhered to. Bidder shall state promised delivery in the column provided opposite an individual item. Time, if stated as a number of days, shall mean “calendar” days.

   (i) All bids must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

   (j) Cost of bid preparation and participation in the bidding process shall be borne by the bidder.

2. SUBMISSION OF BIDS:

   (a) Each bid must be signed in ink and submitted on originals of the District forms in a sealed envelope with bid number, closing date and time noted on the outside of the envelope unless the bid instructions explicitly allow submission by another means such as fax or e-mail.

   (b) Bid modifications or corrections thereof received after the closing time specified will not be considered. Late bids shall be rejected.

3. FAILURE TO BID: If you do not quote, return bid sheet and state reason, otherwise your name may be removed from our mailing list.

4. SAMPLES: Samples of items, when required, must be furnished free of expense to the District.

   If samples are not destroyed by tests they may be returned to the bidder at the bidder’s expense if so
requested by bidder at the time it furnishes the samples.

5. **TIE BIDS:** All other factors being equal, the contract shall be awarded to the vendor that has a Merced County business address or, if neither or both have such a business address, the contract may be awarded by the flip of a coin in the presence of witnesses, or the entire bid may be rejected and re-bid.

6. **INTERPRETATION:** Should any discrepancies or omissions be found in the bid documents, or doubt as to their meaning, the bidder shall notify the responsible District Buyer in writing at once. The Buyer will respond by sending written instruction or addenda to all bidders. The District shall not be held responsible for oral interpretations. Questions must be received at least six (6) District working days before bid opening. All addenda issued shall be incorporated into the bid.

7. **AWARD:**
   
   (a) Unless the bidder specifies otherwise in his bid response or the District’s bid document gives notice of an all-or-none award, the District may accept any item or group of items from any bid.

   (b) Bids are subject to acceptance at any time within ninety (90) calendar days after opening unless otherwise stipulated in bid.

   (c) The District reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.

8. **DISCLOSURE OF BID INFORMATION:** After award, all bids shall be open to public inspection. The District assumes no responsibility for the confidentiality of information in a bid response.

9. **BID PROTEST:** Any Bidder submitting a Bid Proposal to the District may file a protest of the District’s intent to award the Contract provided that each and all of the following are complied with:
   
   (a) The bid protest is in writing;

   (b) The bid protest is filed and received by the District’s Director of Purchasing Services not more than five (5) calendar days following the date of issuance of the District's Notice of Intent to Award the Contract; and

   (c) The written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.

   Any bid protest not conforming with the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District’s Director of Purchasing Services or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the District’s Director of Purchasing Services or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Board of Trustees will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid protest as reflected in the written statement of the Director of Purchasing Services or his/her designee. Action by the District's Board of Trustees relative to a bid protest shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Board of Trustees. The rendition of a written statement by the Director of Purchasing Services (or his/her designee) and action by the District's Board of Trustees to adopt, modify or reject the disposition of the bid protest reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District’s intent to award the Contract, the District’s disposition of any bid protest, or the District’s decision to reject all Bid Proposals. In the event that any such legal or equitable proceedings are instituted and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys’ fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom.
SECTION II  Applicable to bids and PO’s

Note: The reference to bids includes ITB’s, RFP’s and RFQ’s; the reference to Purchase Orders or PO’s includes Purchase Orders and Contracts. The term “Vendor” shall include “Firm” or “Contractor”.

1. ACCEPTANCE OF BID:  A written Purchase Order mailed or otherwise furnished to the successful bidder within the time for Acceptance results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.

2. DELIVERY:

   (a) For any exception to the delivery date as specified on this Purchase Order, Vendor shall give prior notification and obtain written approval from the responsible District Buyer. With respect to delivery under this order, time is of the essence and the order is subject to termination for failure to deliver on time.

   (b) If Vendor has failed to specify a promised delivery time, it shall be 30 calendar days after receipt of Purchase Order unless the Purchase Order otherwise provides.

   (c) The acceptance by District of late performance, with or without objection or reservation, shall not waive the right to claim damage for such breach, and shall not constitute a waiver of the requirements for the timely performance of any other Vendor obligation.

3. SHIPPING INSTRUCTIONS: Unless otherwise specified by the District, all goods are to be shipped FOB Destination, freight prepaid and allowed, and unloaded to the dock. Where shipping addresses indicate room numbers, it will be the Vendor’s responsibility to make delivery to that location at no additional charge. If the District grants authorization to ship goods FOB shipping point, Vendor agrees to prepay all shipping charges, to route cheapest common carrier (unless other routing instructions are included on PO), to bill freight as a separate item on the invoice, and to attach a copy of the freight bill to the invoice if actual freight cost exceeds $100.00 or the estimated amount shown in the bid and on the PO, whichever is greater. It is also agreed that the District reserves the right to refuse COD shipments.

4. RISK OF LOSS:  Regardless of FOB point, Vendor agrees to bear all risks of loss, injury, or destruction to goods and materials ordered herein which occur prior to actual delivery to the District. Such loss, injury or destruction shall not release Vendor from any obligation hereunder.

5. TAXES, CHARGES AND EXTRAS:

   (a) Unless otherwise specified on the District’s bid forms, the quoted prices must specify applicable sales tax.

   (b) No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, except taxes legally payable by the District, will be paid by the District unless expressly included and itemized in the bid.

   (c) The District does not pay Federal Excise Taxes (F.E.T.). Do not include these taxes in your bid price, but show the amount of any such tax as a separate information item. The District will furnish an exemption certificate in lieu of paying F.E.T. The District’s federal registration for such transactions is: District #94 1597718

   (d) The Vendor shall be responsible for payment of property tax on rented equipment.
6. **IDENTIFICATION:** All invoices, packing lists, packages, shipping notices, and other written documents affecting this order shall contain the applicable PO number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order. Invoices will not be processed for payment until all items invoiced are received.

7. **PAYMENT TERMS:** Invoice payment terms will be computed either from the date of delivery and acceptance of the goods/services ordered, or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the purchase order, whichever date is later. Payment is deemed to have been made on the date the District mails the warrant. Invoices shall not be payable until all items listed on the invoice have been received and accepted by the District.

8. **LATE PAYMENT CHARGES:** The District shall not be responsible for late payment charges unless they are an express part of the contract or purchase order. A payment is late only if invoice payment time exceeds the time allowed by the payment terms. Computation of payment time shall be based on Section II, Paragraph 7 (seven), of the Standard Terms and Conditions.

9. **NON-WAIVER BY ACCEPTANCE OF VARIATION:** Neither acceptance of nor payment for any item furnished or work performed by the Vendor shall operate as a waiver of any of the provisions of this PO nor shall a waiver of any breach hereof be deemed to be a waiver of any other or subsequent breach.

10. **ALTERATION OR VARIATION OF TERMS:** It is mutually understood and agreed that no alteration or variation of the terms of this bid or PO shall be valid unless made in writing and signed by the parties hereto.

11. **COMPLIANCE WITH STATUTE:** Vendor hereby warrants that all applicable Federal, State, and local statutes, regulations, and local ordinances will be complied with in connection with the sale and delivery of the items furnished.

12. **WARRANTY:**
   (a) Vendor warrants to District and/or District’s customer that the goods and/or services covered by this order will conform to the drawings, specifications, samples, description and time provisions furnished by District and will be of first class material and workmanship and free from defects, and District reserves the right to cancel the unfilled portion of an order without liability to Vendor if the warranty is breached. Goods will be received subject to inspection and acceptance at destination by District, and risk of loss before actual delivery and acceptance shall belong to the Vendor. Defective goods rejected by District may, without prejudice to any other legal remedy, be held at Vendor’s risk and returned to Vendor at Vendor’s expense. Defects are not waived by acceptance of goods nor by failure to notify Vendor thereof.
   (b) Unless otherwise agreed in writing by the parties, all implied and expressed warranties pursuant to the California Commercial Code, Sections 2312-2317, shall apply to the goods covered by this bid or PO. Furthermore, warranties shall run for a minimum of twelve (12) months after installation and acceptance and claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.

13. **PATENT INDEMNITY:** The Vendor shall hold the District and its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or PO.

14. **LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims or encumbrances of any kind.

15. **HOLD HARMLESS:** The Vendor agrees to indemnify and save harmless the District, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Vendor in performance of this contract. The Vendor shall provide necessary workers compensation insurance at Vendor’s own cost and expense.
16. INDEPENDENT CONTRACTORS: The parties hereto agree that they are independent contractors toward each other and that the Vendor, and any agents and employees of Vendor, in the performance of this Purchase Order, are independent contractors and are not officers, employees, or agents of the District.

17. RIGHTS AND REMEDIES OF DISTRICT FOR DEFAULT:
   (a) The district may terminate the PO or contract and be relieved of the payment of any consideration to Vendor should Vendor fail to perform the covenants therein contained at the time and in the manner herein provided. In the event of such termination the District may proceed with the work in any manner deemed proper by the District. The cost to the District shall be deducted from any sum due the Vendor under the PO or contract, and the balance, if any, shall be paid by Vendor upon demand.
   (b) In the event any item furnished by the Vendor in the performance of the PO or contract should fail to conform to the specifications therein, or to the sample submitted by the Vendor with his bid, the District may reject the same, and it shall thereupon become the duty of the Vendor to reclaim and remove the same forthwith without expense to the District and to immediately replace all such rejected items with others conforming to such specifications or samples; provided that should the Vendor fail, neglect, or refuse to do so the District shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such item and to deduct from any moneys due or that may thereafter become due to the Vendor the difference between the prices named in the contract or purchase order and the actual cost thereof to the District. In the event the Vendor shall fail to make prompt delivery as specified of any item, the same conditions as to the rights of the District to purchase in the open market and to reimbursement set forth above shall apply except when delivery is delayed by fire, strike, freight embargo, Acts of God, or Acts of the government.
   (c) Cost of inspection of deliveries or offers for delivery which do not meet specifications will be for the account of the Vendor.
   (d) The rights and remedies of the District provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or in the purchase order or contract.

18. SAFETY AND HEALTH STANDARDS: Vendor agrees to comply with the applicable provisions of the California Occupational Safety and Health Act of 1973 (Labor Code Section 6300 et. seq.) and the standards and regulations issued thereunder. Vendor agrees to indemnify and hold harmless the District for any loss, damage, fine, penalty, or any expense whatsoever as a result of Vendor failure to comply with the act and any standards or regulations is issued thereunder.

19. NONDISCRIMINATION:
   (a) Contractor shall comply with all applicable Federal, State, and local laws and regulations including District policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et seq.); California Labor Code, Sections 1101, 1102, and 1102.1. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training or apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
   (b) Violation of this provision shall be deemed a material breach by Vendor giving District a right to terminate the PO.

20. EQUIPMENT RENTAL TERMINATION: In the event that funds are not appropriated in any fiscal year for the payment of rental or lease/purchase charges and are not appropriated for the cost of other equipment performing substantially the same function which would replace the equipment leased hereunder, then lessee may terminate the contract without penalty on or before September 30th of such fiscal year by giving thirty (30) days written notice. Lessee agrees to make every reasonable effort including, but not limited to, requesting budget funds to be appropriated in order to avoid termination of
the rental or lease/purchase. Upon termination, lessor shall have the right to recover any and all amounts then due or which may have accrued up to the date lessor received possession of the unit.

21. PAYMENT OF PREVAILING WAGES: Except for projects of $1000 or less, vendors who perform carpet laying or building construction, alteration, demolition or repair must pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7. A copy of the prevailing wage rate determination available at www.dir.ca.gov/dlsr/statistics_research.html. The determination is issued by the California Department of Industrial Relations.

22. ASSIGNMENT: The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of the PO or contract or the vendor’s obligations, right, title, or interest in or to the same, or any part thereof without written consent of the District. Any attempt to do any of the foregoing without written consent shall be void. The PO or contract shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties thereto.

23. ACCESSIBILITY: Vendor hereby warrants that the products or services to be provided under this agreement comply with California Government Code § 11135 and the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention. Vendor further agrees to indemnify and hold harmless the Merced Community College District, the Chancellor’s Office of the California Community Colleges, and any California community college using the vendor’s products or services from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement.

24. EXPENDITURE OF PUBLIC FUNDS: Vendor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any contract involving expenditure of public funds in excess of $10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.

25. CONFIDENTIALITY: In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.