

AGENDA
MCFARLAND CITY COUNCIL
MCFARLAND SUCCESSOR AGENCY
MCFARLAND PUBLIC FINANCE AUTHORITY
MCFARLAND IMPROVEMENT AUTHORITY
MCFARLAND PARKING AUTHORITY

SPECIAL MEETING
CITY COUNCIL CHAMBERS
103 W. SHERWOOD AVE, MCFARLAND, CA

June 28, 2021
5:00 P.M.

In Person Meeting

PUBLIC COMMENT

The meetings of the City Council and all municipal entities, commissions, and boards (“the City”) are open to the public. At regularly scheduled meetings, members of the public may address the city on any item listed on the agenda, or on any non-listed matter over which the city has jurisdiction. At special or emergency meetings, members of the public may only address the city on items listed on the agenda.

There is a time limitation of two minutes per person. For any item that is not on the agenda and within the jurisdiction or interest of the city, please come to the podium at this time. The Brown Act does not permit any action or discussion on items not listed on the agenda. If you wish to speak regarding a scheduled agenda item, please come to the podium when the item number and subject matter are announced, and the mayor opens Public Comment on the item. When recognized, please begin by providing your name and address for the record (optional). Anyone wishing to submit written information at the meeting needs to furnish ten (10) copies to the City Clerk in advance to allow for distribution to City Council, staff, and the media. Willful disruption of the meeting shall not be permitted. If the Mayor finds that there is in fact willful disruption of any City Council Meeting, he/she may order the disrupting parties out of the room and subsequently conduct the City’s business without them present.

Americans with Disabilities Act:

In compliance with the ADA, if you need special assistance to participate in a city meeting or other services offered by the City, please contact the City Clerk’s office, at (661) 792-3091 ext. 2135. Notification of at least 48 hours prior to the meeting, or time when services are needed, will assist the city staff in assuring those reasonable arrangements can be made to provide accessibility to the meeting or services.

CALL TO ORDER

ROLL CALL:

Mayor/Chairman, Sally Gonzalez
Mayor Pro Tem, Maria T. Pérez
Council Member/Board Member, Saul Ayon
Council Member/Board Member, Ricardo Cano

INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT: The public may address the Council/Board Member on items that appear on the agenda. Council/Board Members may respond briefly to statements made or questions posed. They may ask a question for clarification; may refer the item to staff for further study or for placement on a future agenda. **Speakers are limited to two minutes for each person. Please state your name and address for the record prior to making a presentation. Fifteen minutes total will be allowed for any one subject.**

ADMINISTRATIVE AGENDA

1. Report and Discuss Ad Hoc Committee General Findings and Recommendations (Councilmember Ayon and Councilmember Cano)
2. Report and Possible Adoption of a Resolution RE: A Resolution of the City Council of the City of McFarland Adoption to Continue Fiscal Year 2020-2021 Budget Appropriations to Fiscal Year 2021-2022
3. Report, Discussion and Possible Approval; Authorizing the City Manager to hire a qualified accounting firm to assist finance department with the Audits for Fiscal Year 2019-2020 and Fiscal Year 2020-2021.

ADJOURNMENT

This is to certify this agenda was posted at McFarland City Hall on June 25, 2021.

Francisca Alvarado

Francisca Alvarado, City Clerk

Next Meeting: Regular City Council Meeting July 8, 2021.

The City of McFarland does not discriminate on the basis of disability and complies with the provisions of the Americans with Disabilities Act (ADA). If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (661) 792-3091 at least one business day prior to the meeting to make reasonable arrangements to ensure accessibility to this meeting.

CITY OF MCFARLAND

MEMORANDUM

TO: Honorable Mayor and Council Members

FROM: Maria Lara, City Manager
Nathan M. Hodges, City Attorney

DATE: June 25, 2021

SUBJECT: Report and Discuss Ad Hoc Committee General Findings and Recommendations
(Councilmember Ayon and Councilmember Cano)

Recommendation:

Staff recommends that City Council provide direction to the City Manager and or City Attorney on the findings and recommendation.

Summary:

In May 2021, the City council adopted Resolution No. 2021-0020: a resolution establishing a city council committee to review city employee job descriptions, city organizational structure and the current needs of city department. The Mayor appointed two councilmembers to serve on this committee (Councilmember Ayon and Councilmember Cano). This committee has met with city employees to determine and understand the needs of each department and job descriptions.

Fiscal Impact:

None

Attachment:

- Resolution No. 2021-0020

RESOLUTION NO. 2021-0020

**A RESOLUTION OF THE CITY OF MCFARLAND,
CALIFORNIA, ESTABLISHING A CITY COUNCIL
COMMITTEE TO REVIEW CITY EMPLOYEE JOB
DESCRIPTIONS, CITY ORGANIZATIONAL STRUCTURE,
AND THE CURRENT NEEDS OF CITY DEPARTMENTS**

WHEREAS, the City Council approved Resolution No. 2021-0019, establishing a City Council Committee Policy Governing Council Committees;

WHEREAS, the City Council wishes to establish an Ad hoc committee to assist the Council with a review of City Job Descriptions, the City's Organizational Structure, and the Needs of City Departments;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCFARLAND as follows:

1. SECTION 1. Committee Established.
 - a. The following Ad Hoc Committee is hereby established:
 - i. Organizational Structure Committee.

2. SECTION 2. General Powers and Duties.
 - a. The Committee shall have the general power and duty to render advice and make recommendations to the City Council regarding:
 - i. The Current needs of City Departments
 - ii. City Job Descriptions
 - iii. City and Department Organizational Structure

 - b. Other than requesting information be provided to assist the Committee in determining and understanding (1) the current needs of City Departments, (2) the City's Job Descriptions, and (3) the City's Organizational Structure, the Committee shall not have the power to direct City staff toward action.

 - c. The Committee shall make regular oral reports to the Council, in addition to any specific reports and recommendations requested by the City Council

3. SECTION 3. Meetings. The Committee shall meet at least monthly, at times and places to be determined by the Committee and shall hold additional meetings as it deems necessary to perform its functions.

4. SECTION 4. The Mayor of the City of McFarland Shall appoint two City Council Members to serve on the Committee. Each appointee shall serve at the pleasure of the Mayor.

5. SECTION 5. The Committee shall not remain in existence for more than one calendar year after its formation unless specifically extended by resolution of the City Council.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of McFarland on the 13th day of May, 2021 by the following vote:

	AYE	NO	ABSENT	ABSTAIN
Sally Gonzalez	√			
Maria T. Perez	√			
Eric Rodriguez			√	
Saul Ayon	√			
Ricardo Cano	√			

Sally Gonzalez, Mayor

ATTEST:

Francisca Alvarado,
City Clerk



CITY OF MCFARLAND

MEMORANDUM

TO: Honorable Mayor and Council Members

FROM: Maria Lara, City Manager
Fernando Lara, Finance Director

DATE: June 25, 2021

SUBJECT: Report and Possible Adoption of a Resolution RE: A Resolution of the City Council of the City of McFarland Adoption to Continue Fiscal Year 2020-2021 Budget Appropriations to Fiscal Year 2021-2022

Recommendation:

Recommend that the City Council approve adoption of a resolution of the City Council of the City of McFarland to Continue Fiscal Year 2020-21 Budget Appropriations to Fiscal Year 2021-2022.

Summary:

Annually, the City Council approves an Annual Operating Budget for the following fiscal year by June 30th. In order to provide the Council the opportunity to thoroughly review the proposed 2021-2022 Annual Budget, ensure all projected revenue is captured for the 2021-2022 fiscal year, and ensure that the City is compliance with the intent of American Rescue Plan Act (ARPA) final guidance and requirements, because the Council has not approved an Annual Operating Budget for 2021-2022, Council must take action to continue funding the City until the Fiscal Year 2021-2022 Budget is adopted.

Staff is requesting the City Council adopt A Resolution of the City Council of the City of McFarland to Continue Fiscal Year 2020-2021 Budget Appropriations through August 2021.

Additionally, Staff recommends that City Council adopt a 2021-2022 Annual Budget no later than August 26, 2021.

Fiscal Impact:

Minimal impact and allows for business to continue. Staff will continue to be conservative in spending plans until City Council adopts the Operating Budget in August 2021.

Attachment:

Resolution No. 2021-0041

RESOLUTION NO. 2021-0041

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCFARLAND AUTHORIZING FISCAL YEAR 2021-22 OPERATING BUDGET APPROPRIATIONS, AND CERTAIN CAPITAL IMPROVEMENTS APPROPRIATIONS, TO CONTINUE AT FISCAL YEAR 2020-2021 LEVELS AND AMOUNTS UNTIL AUGUST 31, 2021

WHEREAS, the City of McFarland’s fiscal year begins on July 1 of each year and terminates on June 30 of the next year; and

WHEREAS, the City wishes to authorize the fiscal year 2021-2022 operating budget appropriations, and certain capital improvements appropriations at fiscal year 2020-2021 levels until August 31, 2021;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of McFarland, California as follows:

SECTION 1. The City shall continue the adopted Fiscal Year 2020-21 operational spending until August 31, 2021.

SECTION 2. The City shall continue capital project and capital acquisitions spending into Fiscal Year 2021-2022 for projects and acquisitions commenced before June 30, 2021. No new capital project or capital acquisitions spending is permitted until after the City Council adopts the Fiscal Year 2021-2022 capital improvements budget.

SECTION 3. This Resolution shall be included and elaborated upon in the City’s published Fiscal Year 2021-2022 budget document.

SECTION 4. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this th day of June 2021.

AYES:

NOES:

ABSENT:

ABSTAIN:

SALLY GONZALEZ, Mayor
of the City of McFarland

ATTEST:

Francisca Alvarado, City Clerk
of the City of McFarland

CITY OF MCFARLAND

MEMORANDUM

TO: Honorable Mayor and Council Members

FROM: Maria Lara, City Manager
Fernando Lara, Finance Director

DATE: June 25, 2021

SUBJECT: Report, Discussion and Possible Approval; Authorizing the City Manager to hire a qualified accounting firm to assist finance department with the Audits for Fiscal Year 2019-2020 and Fiscal Year 2020-2021.

Recommendation:

Staff recommends that City Council approve an agreement authorizing the City Manager to execute a contract with a qualified Certified Public Accountant Firm base on time and material for Internal Annual Financial Audit Services for an amount not-to-exceed \$_____.

Summary:

The city is currently working with Clifton Larsen Allen LLP on completing the FY 2018-2019 Audit by the end of July 2021. Hiring a qualified certified public accountant firm will assist in the timely completion of the audits for FY 19/20 and FY 20/21.

The completion of and the issuance of an opinion by CLA has been challenging for FY 2018 and 2019 due to current staff needing to research files for source documents prepared by individuals in the previous administration. Due to turnover in key accounting positions, individuals who would previously prepared financial schedules and reports are no longer available to assist with the audits; therefore, hiring a CPA will assist the finance department on ensuring all financial accounting data is properly recorded, reported, and reconciled per Generally Accepted Accounting Principles (GAAP).

Fiscal Impact:

Funds for the Annual Financial Audit Services will be incorporated into the Budget FY 2021/2022.

Attachment:

- City of McFarland Standard Agreement

AGREEMENT FOR _____ CONSULTANT SERVICES
BETWEEN
CITY OF MCFARLAND, CALIFORNIA,
AND

THIS AGREEMENT (“Agreement”) is made and entered into as of the date of execution by the CITY OF MCFARLAND (the "City") and _____ (“Consultant”).

RECITALS

The City requires outside assistance to provide the following services:

Preparation of Necessary Documentation, Schedules, and Reconciliations Supporting the City’s Financial Statements to enable the City to Complete its _____, _____ and _____ Financial Audits

WHEREAS, Consultant represents itself as possessing the necessary skills and qualifications to provide the services required by the City and as being duly qualified to perform those services in accordance with the standard of quality ordinarily expected of competent professionals in Consultant’s field of expertise;

WHEREAS, Consultant will render such professional services, as hereinafter defined, on the following terms and conditions;

NOW THEREFORE, in consideration of these recitals, and the mutual covenants contained herein, the City and Consultant agree as follows:

AGREEMENT

1. TERM OF AGREEMENT

1.1. This Agreement shall be effective on and from the day, month and year of the execution of this document by the City.

1.2. Consultant shall commence the performance of the services in accordance with the Scope of Work section provided in Attachment “A” to this Agreement and shall continue such services until all tasks to be performed are completed, or this Agreement is otherwise terminated. Consultant shall complete the services and provide final data and reports no later than _____, unless an extension of time is mutually agreed to by both parties in writing.

2. CONSULTANT'S OBLIGATIONS- SCOPE OF WORK (ATTACHMENT A)

2.1. Consultant shall provide the City with the following services: The specific manner in which the services are to be performed is described in Attachment “A” which is attached

hereto, and incorporated herein as though fully set forth at length, collectively hereinafter referred to as “Described Services.”

- 2.2. Consultant shall perform all work required to accomplish the Described Services in conformity with applicable requirements of Federal, State and Local law.
- 2.3. Consultant is hired to render the Described Services and any payments made to Consultant are compensation fully for such services.
- 2.4. Consultant shall maintain professional certifications as required in order to properly comply with all City, State, and Federal law.
- 2.5. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in good faith, at any time during the term of this Agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.
- 2.6. If a license or certification of any kind is required of Consultant, its employees, agents, or subcontractors by federal, state or law and regulation, Consultant warrants that such license has been obtained, is valid and in good standing, and shall keep in effect at all times during the term of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.
- 2.7. Consultant shall provide the City with timely written reports of all significant developments or delays arising during performance of its services.

3. PAYMENT FOR SERVICES (ATTACHMENT B)

- 3.1. Payment to Consultant to perform its Scope of Work is set forth in **Attachment B**, attached hereto and incorporated herein. The payments provided in this Section are full compensation for the Scope of Work as described in Attachment A.
- 3.2. Consultant shall submit monthly bills to the City, describing its services and costs provided during the previous month, based upon percentage of task completed. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant's monthly bills shall include the following information to which such services or costs pertain:
 - a description of services performed;
 - the date the services were performed;
 - the number of hours spent and by whom;
 - a description of all costs incurred, and the Consultant's signature.

Consultant agrees to use every appropriate method to contain fees and costs under this Agreement. Once invoice is submitted and approved by the City, City payment will be made within 30 days of approval.

- 3.3. The amount set forth in Attachment B may be modified or amended only by a written document executed by both Consultant and authorized City representative prior to the performance of the additional work. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

4. SUBCONTRACTING

- 4.1. Consultant will not subcontract any portion of its Scope of Work without prior written approval of City. If Consultant subcontracts for any of the work to be performed under this Agreement, Consultant shall be as fully responsible to the City for the acts and omissions of Consultant's subcontractors/subconsultants and for the persons either directly or indirectly employed by the subcontractors/subconsultants, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor/subconsultant of Consultant and the City. Consultant will be responsible for payment of subcontractors/subconsultants. Consultant shall bind every subcontractor/subconsultant to the terms of the Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the City. Consultant agrees that the City is an intended third-party beneficiary of any services agreement entered into between Consultant and any subcontractor or subconsultant.

5. PROJECT SCHEDULE AND COMPLETION DATE (ATTACHMENT C)

- 5.1. **Attachment C** is the project schedule that Consultant shall strictly meet, including benchmark dates and completion date, which is attached hereto and incorporated herein. Consultant agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with the schedule specified herein. In the performance of this Agreement, time is of the essence.

- 5.2. Consultant shall promptly notify the City of any anticipated or unforeseen delays to the project schedule. Extensions to the project schedule and to this Agreement shall not be made without the prior written approval of the City. All requests for extensions to the project schedule shall be by written request only and submitted to the City prior to the commencement of such work.

6. **CHANGES IN WORK AND EXTRA WORK.** Consultant shall not change the scope or duration of work or perform work in excess of the Scope of Work without the prior, written approval of the City by an executed Change Order, describing in detail the revision to Scope of Work, revisions in payment and/or time, fully executed by both parties. Failure to obtain a Change Order prior to the commencement of any revision waives Contractor's right to payment for such additional services.

7. **VERBAL AGREEMENT OR CONVERSATION.** No verbal agreement or conversation with any officer, agent or employee of the City, either before, during or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle Consultant to any additional payment whatsoever.

8. **TERMINATION OF AGREEMENT**

8.1. In the event of Consultant's failure to prosecute, deliver, or perform the described services, the City may terminate this Agreement by notifying Consultant by certified mail of said termination. Thereupon, Consultant shall cease work and within five (5) working days: (1) assemble all materials and records prepared or obtained in the performance of this Agreement and deliver said documents to the City and (2) place all work in progress in a safe and protected condition. The General Manager of the City shall make a determination of the percentage of work which Consultant has performed which is usable and of worth to the City. Based upon that finding, the City shall determine any final payment due to Consultant.

8.2. This Agreement may be terminated by either party, without cause, upon the giving of ten (10) days written notice to the other party. Prior to the 10th day following the giving of the notice, the Consultant shall: (1) assemble all materials and records prepared or obtained in the performance of this Agreement and deliver said documents to the City and (2) place all work in progress in a safe and protected condition. The General Manager of the City shall make a determination of the percentage of work which Consultant has performed which is usable and of worth to the City. Based upon that finding, the City shall determine any final payment due to Consultant.

9. **COVENANTS AGAINST CONTINGENT FEES.** Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability or, at the City's discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10. **OWNERSHIP OF DOCUMENTS**

10.1. All computer data, computer drawing files, plans, studies, sketches, drawings, reports, specifications and all work product produced by Consultant under this Agreement are the property of the City, whether or not the City completes the Scope of Work or proceeds with the project for which such documents are prepared.

10.2. This Agreement creates a nonexclusive and perpetual right or license for City to copy, use, modify, reuse, and sublicense any and all copyrights, designs, and other intellectual property embodied in the writings prepared by Consultant, and Consultant subcontractors, under this Agreement. In the event the City should ever desire to undertake a project or review other proposed projects based upon the documents, the Consultant agrees that the City shall have the right to reuse all or any portion of the documents at no additional compensation to the Consultant.

11. INDEPENDENT CONTRACTOR

11.1. The Consultant shall perform the services provided for herein in a manner of Consultant's own choice, as an independent Contract and in pursuit of Consultant's independent calling, and not as an employee of the City. Consultant shall be under control of the City only as to the result to be accomplished and the personnel assigned to the Project.

11.2. If the Consultant subcontracts any of the work to be performed under this Agreement pursuant to the terms of this Agreement, Consultant shall be as fully responsible to the City or the acts and omissions of the Consultant's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor of Consultant and the City. The Consultant shall bind every subcontract by the terms of the Agreement applicable to Consultant's work, including indemnity and insurance requirements.

12. HOLD HARMLESS AND INDEMNIFICATION

12.1. Indemnification - It is understood and agreed that Consultant has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this Agreement and that City relies upon the professional skills of Consultant to do and perform Consultant's work in a skillful and professional manner, and Consultant thus agrees to so perform the work.

12.2. Acceptance by City of the work performed under this Agreement does not operate as a release of said Consultant from such professional responsibility for the work performed. It is further understood and agreed that Consultant is apprised of the scope of the work to be performed under this Agreement and Consultant agrees that said work can and shall be performed in a fully competent manner.

12.3. Consistent with California Civil Code section 2782.8, when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, protect, immediately defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against all claims, demands, damages, costs, or liability (including liability for claims, suits, actions,

arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, interest, defense costs, and expert witness fees) arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, subcontractors, subconsultants or agents during the performance this Agreement, or from any violation of any federal, state, or municipal law or ordinance to the extent caused, in whole or in part, by the negligence, reckless, or willful misconduct of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, excepting only liability arising from the sole negligence, sole active negligence, or intentional misconduct of City, its officers, employees, agents, and volunteers.

12.4. Other than in the performance of professional services by a design professional, which law shall be solely as addressed in subparagraph 12.3 above, and to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against any claims, demands, damages, costs, or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, interest, defense costs, and expert witness fees) arising out of the performance of this Agreement by Consultant, its officers, employees, agents, subcontractors and subconsultants, excepting only that resulting from the sole negligence, sole active negligence, or intentional misconduct of City, its officers, employees, agents, and volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code.

12.5. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

13. ASSIGNMENT OF AGREEMENT. Consultant is without right to and shall not assign this Agreement or any part thereof or any monies due hereunder without the prior written consent of the City.

14. INSURANCE

14.1. Insurance. On or before beginning any of the services or work called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement (including all extensions provided), and provide proof thereof that is acceptable to the City the insurance specified in subsections (A) through (F) below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor. The Certificate of Insurance shall clearly identify the project name and number in the space labeled "Description of Operations/Locations/Special Items" on the form.

A. *Commercial General and Automobile Liability.* Consultant, at Consultant's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an additional insured endorsement to the policy: City, its officers, employees, agents, and volunteers are to be covered as insured's as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. In the event that Consultant purchases automobiles during the term of this Agreement, said automobiles shall be likewise covered. The coverage shall contain no special

An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.

Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A:VII.

B. *Professional Liability.* Consultant shall obtain, and during the term of this Agreement shall maintain, a policy of professional liability insurance that shall:

- i. Be from an insurance company authorized to be in business in the State of California;
- ii. Be in an insurable amount of not less than \$1,000,000 for each occurrence; and

iii. Provide that the policy shall remain in full force during the full term of this Agreement and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice to the City from the insurance company.

C. **Workers' Compensation.** Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Consultant shall be provided with limits not less than one million dollars. In the alternative, Consultant may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this Agreement.

D. **Deductibles and Self-Insured Retentions.** During the period covered by this Agreement, upon express written authorization of City Risk Manager, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

E. **Notice of Reduction in Coverage.** In the event that any coverage required under subsections (A), (B), or (C) of this section of the Agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five day after Consultant is notified of the change in coverage.

F. **Other Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

i. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

ii. Order Consultant to stop work under this Agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;

iii. Terminate this Agreement.

iv. Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for

Consultant's failure to maintain insurance or secure appropriate endorsements.

15. DISPUTES

15.1. If a dispute should arise regarding the performance of this Agreement, the following initial dispute resolution procedures shall be used:

- A.** Within twenty (20) City working days after a dispute regarding the performance of this Agreement arises, it shall be reduced to writing at staff level by the complaining party setting forth the nature of the dispute in detail, along with all pertinent back up documentation in support. The writing shall be delivered to the receiving party by first class mail or personal delivery directly to the party's project manager, along with recommended methods of resolution.
- B.** The party receiving the letter shall reply to the letter with a detailed response, along with a recommended method of resolution, if any, within ten (10) City working days of receipt of the letter.

15.2. If the dispute is not resolved at staff level in accordance with Section 15.1, within five (5) City working days of the receiving party response (or longer if agreed between the parties) , the aggrieved party, through its respective project manager shall deliver to the General Manager's office a letter outlining the dispute for the General Manager's review. The receiving party may submit further response, if required, to the General Manager within five (5) City working days thereafter. The General Manager, at his/her sole discretion may respond as he/she deems appropriate, including recommendations for resolution, discussions or rejection of the dispute within fifteen (15) working days of receipt of the complaint.

15.3. If the dispute remains unresolved and the parties have exhausted the procedures outlined in this section, the parties may then seek remedies available to them under this Agreement and at law, including, but not limited to, under the termination procedures. This provision does not relieve Consultant of its obligation and Consultant is required to timely comply with all applicable provisions of the Government Claims Act before initiating any legal proceeding against City.

16. CONFLICT OF INTEREST. Contractor warrants and covenants that it presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law, including, but not limited to, Government Code section 1090. If any principal provider of services is a "consultant" for the purposes of the Fair Political Practices Act (Gov. Code § 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in accordance with state or City local Conflict of Interest Code. In addition, if any other conflict of interest should nevertheless hereinafter arise, Consultant shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this Agreement.

17. CONSULTANT’S BOOKS AND RECORDS.

17.1. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant.

17.2. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

17.3. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City General Counsel, City Auditor, General Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

17.4. City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in the General Manager's office. Access to such records and documents shall be granted to any party authorized by Consultant’s representatives, or Consultant’s successor in interest.

18. WRITTEN NOTIFICATION. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the lime of mailing if mailed as provided in this section.

If to City: Maria Lara,
City Manager,
401 West Kem Avenue,
McFarland, California 93250,
Fax: 661-792-3093
Email: mlara@mcfarlandcity.org

If to Consultant: _____

Fax: _____

Email: _____

Any party may change any of the foregoing as it relates to the party by giving written notice to the other party of the change in the manner set forth herein.

19. GENERAL PROVISIONS

- 19.1.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
- 19.2.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
- 19.3.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Kern.
- 19.4.** Time is of the essence with regard to each covenant, condition and provision of this Agreement.
- 19.5.** This Agreement constitutes the entire agreement between the parties with regard to the subject matter herein and supersedes any prior oral and written agreements and understandings between the parties with respect thereto.
- 19.6.** This Agreement may not be altered, amended, or modified except by a writing executed by duly authorized representatives of all parties.
- 19.7.** In the event any action or proceeding is instituted arising out of or relating to this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and actual costs.
- 19.8.** This Agreement may be executed in counterparts. A facsimile or electronic copy of this Agreement shall be as effective as the original for all purposes.
- 19.9.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors, and assigns. Notwithstanding the foregoing, Consultant shall not assign this Agreement or any part thereof to any other entity or individual.
- 19.10.** City and Consultant each acknowledge that each party and their respective legal counsel have reviewed this Agreement and agree that this Agreement is the product of negotiations between the parties. This Agreement shall be interpreted without reference to the rule of interpretation of documents that uncertainties or ambiguities therein shall be determined against the party so drafting the Agreement.

20. CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT.

Consultant certifies that Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

21. CONSULTANT'S AWARENESS AND COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT.

Consultant certifies that Consultant is aware of the requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101) and has complied with and will comply with these requirements, included but not limited to verifying compliance of their contractors, consultants, agents, and employees.

Date: _____

CITY OF MCFARLAND

By: _____

Sally Gonzalez
Mayor

CONSULTANT:

Date: _____

By : _____

Name: _____

Its: _____

ATTACHMENT "A"
Scope of Work

**ATTACHMENT “B”
Payment for Services**

Once an invoice is submitted and approved by the City, City payment will be made within 30 days of approval. The payment provided is full compensation for the DESCRIBED SERVICES

(Attach Progress Payment Schedule)

ATTACHMENT "C"
Project Schedule and Completion Date