



# CITY OF MERCED

## REQUEST FOR PROPOSALS

### McNamara Park Playground Equipment Replacement

The City of Merced (City), Engineering Department, is seeking proposals from playground equipment companies to supply and install new jungle theme playground equipment and wood fiber playground surfacing at the existing McNamara Park, located at the southwest corner of W. 11<sup>th</sup> and “K” Streets, in Merced, California.

The bidder is required to abide by all applicable provisions of the Labor Code, including payment of the minimum prevailing wage rate as determined by the State Department of Industrial Relations (DIR). No contractor or subcontractor may be listed on a proposal or be awarded a contract for public work unless registered with the DIR pursuant to the Labor Code. This project is subject to compliance monitoring and enforcement by the DIR.

You are hereby invited to submit a proposal based upon the requirements and conditions set forth in this RFP.

### **PROPOSAL SUBMISSION**

Five (5) copies of the completed proposal must be submitted no later than 2:00 p.m. on **Friday, March 5, 2021**. Proposals may be submitted by U.S. Mail, or delivered in person to the City of Merced Engineering Department at the address noted below; post-marks will not be accepted.

Hard copy samples outlined in this RFP shall be sent under separate cover to Michael Beltran, PE, to be received no later than **Friday, March 5, 2021**. The physical samples shall be delivered to the following location:

City of Merced  
Engineering Department  
Attn: Michael Beltran, PE  
678 W. 18<sup>th</sup> Street  
Merced, California 95340

### **FEE PROPOSAL**

One (1) copy of a separate Fee Proposal shall be submitted in a separate sealed envelope marked “**Fee Proposal for McNamara Park Playground Replacement**”. The fee proposal must include the costs of the play systems equipment, playground surfacing, delivery charges, any discounts, and cost of supervised installation.

### **INQUIRIES**

Questions pertaining to the RFP should be directed in writing, no later than 72 hours prior to proposal submission to:

Michael Beltran, PE, City Engineer, Phone Number (209) 385-6898, [beltranm@cityofmerced.org](mailto:beltranm@cityofmerced.org)

## TABLE OF CONTENTS

Objective .....	3
Public Record .....	4
Withdrawal of Proposals .....	4
Protest Process .....	4
Proposal Selection.....	5
Evaluation Process.....	5
Special Issues and Requirements .....	6
Proposal Content.....	7
Proposal Form.....	8
Technical Specifications .....	12
Section 101, Playground System.....	12
Section 201, Engineered Wood Fiber.....	14

### ATTACHMENTS:

- A. Statement of Services Form
- B. Terms and Conditions for Services and Public Works Contracts
- C. Terms and Conditions of Purchase

### EXHIBITS:

- A. Playground Layout

## **OBJECTIVE**

The purpose of this request is to receive comprehensive proposals from playground equipment companies to supply and install new jungle theme playground equipment and wood fiber playground surfacing at the existing McNamara Park, located at the southwest corner of W. 11<sup>th</sup> and “K” Streets, in Merced, California. Included in the awarded contract will be the complete demolition of the current playground structure including haul off and installation of the new proposed play equipment product and the new playground surfacing, additionally all project closeout, cleanup, and corrective work. The City of Merced will select one supplier to provide equipment and materials for the playground as outlined in this request.

All play equipment shall be manufactured by PlayCraft, Superior, Percussion Play or approved equal.

The approximate playground area is 4,860 square feet. Respondents are responsible for verifying final quantities. The selected Playground Company will be required to adequately protect the areas outside the playground area such that no damage occurs to areas not included in these project improvements.

The project will generally include the following work:

This project consists of the design, procurement and supervised demolition and haul off of the existing playground structure and installation of a playground system including playground surfacing.

The City of Merced requires suppliers to design a playground system that meets or exceeds all current federal standards and shall meet the following certifications, guidelines, rules and regulations:

- a. ADA (Americans with Disabilities Act).
- b. CPSC (U.S. Consumer Product Safety Commission).
- c. ASTM – F1487 (American Society for Testing and Materials standard for Public Use Playground Equipment). The most recent edition.
- d. IPEMA Certification (Internal Play Equipment Manufacturers Association).

Playground structure(s) shall be designed for age groups 2-5 years and 5-12 years.

Also required are detailed technical installation instructions and maintenance and operations manuals from the manufacturer.

Designs submitted for review shall include a full color elevation from all sides and a playground layout visible from overhead.

Color options must be provided.

Catalog/cut sheet information must be included.

Full warranty information including fade resistance must be included.

The available footprint for new playground must meet existing footprint at the park as indicated in Exhibit A.

The project area shall not extend beyond the existing playground fall zones as indicated in Exhibit A.

The Playground Company shall be responsible for walking the project site if deemed necessary prior to submitting a proposal to ensure they have an accurate understanding of the existing conditions and the scope of the project.

## **PUBLIC RECORD**

Responses to this RFP become the exclusive property of the City of Merced. At such time as the Engineering Department recommends a firm to the City Council, all proposals received in response to this RFP becomes a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Proprietary”. The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as “Confidential,” “Trade Secret,” or “Proprietary” or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Merced may not accept or approve that the information that a Proposer submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City shall provide the Proposer who submitted the information with reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction.

## **WITHDRAWAL OF PROPOSALS**

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

## **PROTEST PROCESS**

A Consultant that submits a proposal that is disqualified may challenge the disqualification by filing a protest within seven (7) calendar days of the date of the City’s notice of disqualification. Staff recommendations to award the agreement(s) to a particular Consultant or Consultants shall be posted on the City’s website. An unsuccessful Consultant may file a protest no later than seven (7) calendar days after the recommendation is posted on the website, except for protests regarding disqualification, which must be protested within seven (7) days of the disqualification notice. All protests shall be in writing, filed with the **City Engineer, Michael Beltran, PE**, and include the following:

- RFP Name;
- The name, address and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

The City Engineer will render a written decision within 30 days after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is completed.

## **PROPOSAL SELECTION**

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City reserves the right, without qualification, to:

- Select any proposal when such action is considered to be in the best interest of the City;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening for its own convenience;
- Approve or disapprove the use of particular subcontractors;
- Accept other than the lowest offer;
- Exercise discretion and apply its judgment with respect to selection of any proposals submitted;
- Waive informalities and irregularities in the Proposals;
- Negotiate with any, all or none of the Proposers;
- Select proposals, based on initial proposals received, without discussion or after detailed discussions or contract negotiations;
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the Proposer.

This RFP is not a request for bids or an offer by the City to contract with any party responding to this RFP. In addition, no reimbursement for expenses incurred or time spent will be made. All submittals and information contained therein provided in the proposal package shall become the property of the City.

Please provide detailed information for each item in the Playground Selection Criteria table which is included in the Proposal Form. The City may base its selection on those criteria, as well as the following relevant criteria:

- 1) Price
- 2) Corporate Financials
- 3) Materials Proposed
- 4) Experience
  - a) With proposed product
  - b) Crew Installation
  - c) Local Installations
- 5) Warranty
- 6) Customer Service
- 7) Other criteria deemed pertinent by the City

## **EVALUATION PROCESS**

Proposals will be evaluated by a selection committee based on the following criteria and corresponding Criteria Points:

1. ADA, ASTM, IPEMA & CPSC compliance Yes/No
2. Proposal addresses design guidelines and specifications 0-25
3. Quality of design, play value, and target demographic 0-20
4. Quality and durability of equipment 0-20
5. Uniqueness of equipment and “Green” materials/construction 0-10
6. Reputation, reliability, and customer service of manufacturer 0-15
7. Overall quality of proposal 0-10

Maximum Point Value: 100

The selection committee will make a recommendation to the City Council for award. The acceptance of the proposal will be evidenced by written Notice of Award from the City’s designated project champion to the successful Proposer.

### **SPECIAL ISSUES AND REQUIREMENTS**

Form and Execution of Contract. The form of contract is Attachment A. It shall be executed and returned with the Consultant’s proposal. If the Consultant is unable to execute the Contract, then the Consultant’s proposal will be deemed incomplete and not considered.

Labor Code. The Consultant shall comply with Sections 3700 et seq. of Labor Code of the State of California, requiring every employer to be insured against liability for worker’s compensation.

The bidder is required to abide by all applicable provisions of the Labor Code, including payment of the minimum prevailing wage rate as determined by the State Department of Industrial Relations (DIR).

Insurance. The Consultant shall also meet the insurance requirements listed in Attachment B, including liability insurance in the amount of \$1,000,000, naming the Agency as additional insured.

Conflict of Interest. The Consultant must be aware of and comply with conflict of interest rules included in the California Political Reform Act, and Section 1090 et. Seq. of the Government Code. The Political Reform Act requires City/Agency officers and committee members to file statements of interest and abide by a Conflict of Interest Code. Section 1090 limits or prohibits a public official from contracting with a body of which an official is a member. Section 1090 applies even where the officer only reviews the contract for the approving body.

## **PROPOSAL CONTENT**

Included in the proposal package shall be the following information:

1. Playground Selection Criteria document, required supporting third party test data, and information requested in the document, including the following:
  - a. List of all complete installed playgrounds with specified product, including those in California. [This list may be limited to the twenty (20) **most recent** completed installations.]
  - b. Proposed Foreman resume, as applicable.
  - c. Company playground warranty for this specific project, including insurer information.
  - d. Corporate financial information.
2. Proposed product and pricing on completed Proposal Form, including California Ordering Instructions and Special Provisions.
3. Proposals must include complete drawings for each design, specifications and pictures for each component in designs and colors available. Proposals must include a bid price for each design presented. Bids must list the cost of the equipment, fall zone material, and labor separately. The City of Merced reserves the right to reject any and all proposals with or without cause, and to accept proposals which it considers most favorable.
4. City of Merced Official Forms: “Terms and Conditions of Purchase”, “Statement of Services”, and “Terms and Conditions for Services and Public Contracts”, shall be reviewed, filled in, and returned with the other requested materials. These forms are attached at the end of this RFP.

# **Proposal Form**

**(due no later than 2:00pm on Friday, February 19, 2021)**

## **City of Merced ~ McNamara Park Playground Equipment Replacement**

At the time of the proposal, the following form needs to be filled in and returned with other requested materials. A unit price for the various pieces of equipment shall be used to determine final price. Proposal shall be all inclusive of all product, taxes, delivery, installation, fees, etc. All work shall include new playground installation and new playground surface, and all work shall carry worker's compensation and prevailing wage rates.

DIR Registration. City will not accept Proposals from or enter into any contract with a bidder without proof that the bidder and its Subcontractors are registered with the Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

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

The contract with the Playground Company shall be direct with the City of Merced.

**Submitted Playground Product Name:** \_\_\_\_\_

**Submitted Surfacing Product Name:** \_\_\_\_\_

**Proposed Amount of Playground Equipment Product:**

(Total price including products, sales taxes, delivery, installation, warranty, and maintenance program):  
\$ \_\_\_\_\_

**Unit Price (Lump Sum):** \$ \_\_\_\_\_

**Proposed Amount of Playground Surfacing Product:**

(Total price including product, sales taxes, delivery, installation, warranty, and maintenance program):  
\$ \_\_\_\_\_

**Unit Price (per cubic yard):** \$ \_\_\_\_\_



## Playground Selection Criteria

At time of the proposal, the following form needs to be completely filled in and returned with other requested materials. Playground Company shall provide values based on the units shown below and based on ASTM/Standard testing procedures, if applicable.

Property	Model #	Value (Fill in the Blank)	Units	ASTM/Standard
<b>Demolition of Existing Play Structure</b>			LS	
Custom Round 3.5 Steel Play System (1)			EA	
Inclusive Merry-Go-Round w/ Speed Limiter (1)			EA	
Age 2-12 Safety Sign (1)			EA	
Vandal Proof Commercial Swing Seat (2)			EA	
Enclosed Infant Swing Seat (2)			EA	
7ft Safety Swing Chain (8)			EA	
3.5" Swing Hangar and Shackle (8)			EA	
Engineered Wood Fiber			CY	

**In addition to the above forms, the Playground Company shall provide the following information as part of the proposal package:**

1. Contractor shall submit a list identifying the installed playgrounds with similar playground product as identified in its proposal. List of installations submitted and proposed sites, installation shall include project site, location, and current owner contact name and phone number.
2. In addition, playground company shall submit list of completed playground installations in California (of similar specified playground product). All required information noted above shall be provided.
3. Playground Company is to describe their field maintenance and warranty repair capabilities and their approach to this work. This includes the location of crews that can respond to City requests, equipment used, etc.

### WARRANTY

At time of proposal submission, the Playground Company shall submit its Manufacturer's Warranty which guarantees the usability and playability of the playground system for its intended uses commencing with the date of Notice of Completion. The warranty submitted must have the following characteristics:

1. Submit Manufacturer Warranty and ensure that forms have been completed in Owner's name and registered with Manufacturer and Insurance Carrier.
2. Insurance carrier must confirm that the policy is in force and premiums paid. The manufacturer's warranty shall include general wear and damage caused from UV degradation.
3. Upon completion of the playground, the playground manufacturer will supply evidence that the policy is in effect, fully funded, and that the installation is added to the policy.
4. Policy must be in force at time of bid. Insurance carrier must confirm that the policy is in force and premiums paid for entire warranty duration in full.
5. Warranty shall have no restrictions on hourly use limitations as long as the primary use on the equipment is as anticipated in the original design.
6. Must be a warranty from a single source covering workmanship and all self- manufactured or procured materials.
7. Guarantee the availability of replacement material for the playground system installed for the full warranty period.
8. The playground company must verify that its onsite representative has inspected the installation and that the work conforms to the Manufacturer's requirements.
9. The warranty shall be made out to the City of Merced.

## CORPORATE FINANCIAL INFORMATION

At time of proposal submission, the Playground Company shall submit the following corporate information:

1. Audited Financial Statement.
2. Proof of Liability insurance including the amount of coverage and expiration date. Information shall be provided directly from the Playground Company's insurance company.
3. List of Majority Directors (if privately owned) and Board of Directors.
4. Provide proof of Employment Practices Liability Insurance.

# TECHNICAL SPECIFICATIONS

## SECTION 101 PLAYGROUND SYSTEM

### PART 1 - GENERAL

#### SUMMARY

Furnish all labor, materials, tools, and equipment necessary to install, in place, all playground equipment, material and concrete base layer including base rock subbase, as indicated on the plans and as specified herein, including components and accessories required for a complete installation, including but not limited to: subgrade preparation, and timely installation: aggregate base course, grading and compacting, any piping and drain components as necessary. The work shall include any incidentals to provide a finished job.

- A. The installation of all new materials shall be performed in strict accordance with the manufacturer's written installation instruction, and in accordance with all approved shop drawings as applicable.

#### DEFINITIONS

Use Zone: According to ASTM F1487, the "area beneath and immediately adjacent to a play structure or equipment that is designed for unrestricted circulation around the equipment and on whose surface it is predicted that a user would land when falling from or exiting the equipment."

IPEMA: International Play Equipment Manufacturers Association.

Fall Height: According to ASTM F 1487, "the vertical distance between a designated play surface and the protective surfacing beneath it."

#### DESIGN REQUIREMENTS

Compliance with current guidelines, standards, laws and building codes for safety and accessibility: ASTM F1487-11 – Standard Consumer Safety Performance Specifications for Playgrounds for Public Use. U.S. Consumer Products Safety Commission (CPSC) Guidelines (No. 325) – Handbook for Public Playground Safety ADA Accessibility Guidelines (ADAAG).

Site specificity of design – Equipment design/component selection is based on specific needs of the City of Merced, physical constraints of the site. Design requirements include: Play value; Capacity; Footprint; Color availability; Visual density and appearance; Age appropriateness; Height/Size; Sensory stimulation; Accessibility/usability for those with special needs.

Products selected are durable and proven to withstand very high use environment.

#### SUBMITTALS

Product Data: For each type of product indicated.

LEED Submittals: Percentage of recycled materials used; percentage of post-consumer recycled materials used.

Shop Drawings: For playground equipment and structures. Include plans, color renderings, elevations, and installation details.

Samples: Provide color charts. Provide material samples upon request or as required.

Qualifications: For qualified installer, manufacturer, and testing agency.

Test Reports: Provide evidence of IPEMA certification for playground products.

Certifications:

- IPEMA (International Play Equipment Manufacturers Association) third party certification for conformance to ASTM F1487.
- Statement from manufacturer that products meet current safety and accessibility requirements.
- Any other applicable certifications.

Closeout Submittals:

Maintenance Kit: An order-specific maintenance kit shall be provided for each structure order. The kit will include a notebook or packet with a second set of installation documents and order-specific maintenance documentation with recommendations on how often to inspect, what to look for, and what to do to keep the equipment in like-new condition. The kit also includes touch-up primer, appropriate color touch-up paint, sandpaper, appropriate color touch-up PVC, graffiti remover and additional installation tools for the tamperproof fasteners.

Warranty Information:

Statement from manufacturer's representative identifying that installation has been performed in accordance with installation instructions.

## QUALITY ASSURANCE

Manufacturer Qualifications:

- Standard products are IPEMA (International Play Equipment Manufacturers Association) third party certified for conformance to ASTM F1487.

Installer Qualifications: The Contractor installing the equipment must be experienced in the installation of play equipment with personnel, facilities, and equipment adequate for the work specified and shall, within 48 hours of a request, produce written proof of such.

Sample Installations: Contractor shall upon request produce a list of at least 20 other projects where similar work, from same manufacturer, has been performed and could be reviewed.

Pre-installation Conference: Conduct conference at Project site prior to the start of the playground equipment installation work, coordinate a conference at the Site to review the construction schedule, availability of materials, installers personnel qualifications, equipment and facilities needed to make progress and avoid delays, installation procedures, testing, inspecting, and certification procedures, and coordination with other work. Meeting shall include the Contractor, City's Representative, installer, and any other subcontractors or material technical service representatives whose work, or products, must be coordinated with the playground equipment installation work.

**SECTION 201**  
**Engineered Wood Fiber**

**PLAYGROUND SURFACING SPECIFICATIONS**

Engineered wood fiber (EWF) shall meet the standard specifications for EWF in ASTM F2075 and comply with all applicable safety and ADA requirements. Contractor shall provide a copy of ASTM F1292 testing from the EWF manufacturer prior to placement. EWF shall meet accessibility guidelines for firmness and stability based on ASTM F1951. Any existing EWF material at the site still in acceptable condition shall be relocated and leveled outside of the playground equipment use zones. After construction ensure that ground is level and graded toward existing drainage prior to placing new EWF. Place new EWF material in uniform, level manner around playground equipment use zones to a depth that ensures impact attenuation for the fall height value appropriate for the highest accessible part of the equipment.

# City of Merced

## Statement of Services

Dept. Head Sig.: \_\_\_\_\_  
Due Date: \_\_\_\_\_  
Return to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name of City Contact

\_\_\_\_\_  
Phone Ext.

### Description of Services to be Provided:

*Official Use Only*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Check Box If Applicable To Project:

- ☐ License (1)\* Type \_\_\_\_\_ ☐ Business License (2)\* ☐ Bonds (6)\*  
☐ Insurance (13)\* ☐ Workers' Compensation (14)\* ☐ Prevailing Wages (15)\*

*\* Numbers correspond to paragraph numbers on the Terms and Conditions attached hereto.*

### Consultant:

### Proposal/Quote

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_

Total Amount \$ \_\_\_\_\_

By completing and executing this document, Consultant agrees to be bound to the Terms and Conditions attached hereto and incorporated by reference, any additional terms and conditions found on the Purchase Order, and any other terms and conditions imposed by the City and attached hereto or in the Merced Municipal Code, and makes the City an offer for the above-mentioned services at the above-mentioned price. This agreement is not binding on the City until executed by the City Manager, or his/her designee, and a Purchase Order is issued to Consultant. Any terms and conditions proposed by Consultant shall not be binding upon the City unless expressly agreed to in writing by the designated representative of the City.

The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

### Consultants

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Name of Business Entity

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone No.

\_\_\_\_\_  
License No.:

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
(If Applicable)

Accepted by City of Merced

*Official Use Only*

\_\_\_\_\_  
City Manager or Designee

\_\_\_\_\_  
Date

## **TERMS AND CONDITIONS FOR SERVICES AND PUBLIC WORKS CONTRACTS**

THESE TERMS AND CONDITIONS, (“Terms and Conditions”) are made and entered into on the date shown on the attached Statement of Services, by and between the City of Merced, a California Charter Municipal Corporation, (“City”) and the Vendor, Consultant, or Person, (“Consultant”) shown on the Statement of Services. These Terms and Conditions, Statement of Services, and Purchase Order shall herein be collectively referred to as the “Agreement.” Any words that Consultant adds to the Agreement or any form that Consultant uses in the course of business will not change or supersede these Terms and Conditions. The City must agree, in writing, to any change in terms and conditions. The City’s acceptance of any work or services is not an acceptance of Consultant’s conflicting terms and conditions should such exist.

1. **CONSULTANT QUALIFICATIONS AND STANDARD OF WORK.** Consultant warrants that it is fully qualified to perform the work, and holds all applicable licenses, permits, and other necessary qualifications. Consultant shall perform and complete in a good and workmanlike manner all the work described in this Agreement to the plans and specifications provided to the Consultant by City, and shall do everything required by these Terms and Conditions and other contract documents attached hereto.

Consultant shall possess a valid \_\_\_\_\_ Special California Consultant’s license at the time of bid submission for the duration of the Agreement. (Applies only if marked on the Statement of Services Form).

2. **CITY BUSINESS LICENSE – (Applies only if marked on the Statement of Services Form).** Consultant agrees that if its business is based within the City limits or it enters into the City to conduct business then a current City of Merced business license is required. Failure to comply with this requirement could result in criminal penalties.

3. **CONSULTANT’S SERVICES.** Consultant shall, at its own cost and expense and as authorized and directed by the City, provide the personnel, supervision, equipment, supplies, services, administration, transportation, and other needs to complete the work described in the Statement of Services and the City’s Purchase Order, which is hereby incorporated and made a part of these Terms and Conditions, within the agreed upon time schedule and budget. The Consultant is



responsible for obtaining and administering the employment of personnel having the training, experience, licenses, and other qualifications necessary for the work assigned. All project-related costs shall be assumed and paid by the Consultant. These Terms and Conditions and Purchase Order provide the exclusive means of payment and reimbursement of costs to the Consultant by the City.

Such work shall include the following:

- a. The Consultant shall perform the services as described in the Statement of Services and Purchase Order in full compliance with these Terms and Conditions and adopted City policies and guidelines as provided to the Consultant, and in compliance with all other applicable laws and regulations.
- b. The Consultant shall perform all services and prepare all documents in professional form, exercising the special experience, skill, and education required for such service.
- c. The Consultant shall provide finished documents of presentation quality that evidence the highest standards of investigation, professional review, public participation, and presentation.

4. SCHEDULE OF PERFORMANCE AND BUDGET. The Consultant shall satisfactorily perform the services described in the Statement of Services and Purchase Order within the Time Schedule stated or agreed to between the Consultant and the City. The Consultant shall review the remaining work and remaining budget at least monthly (or at such other interval as directed by City staff) and shall confirm that completion may be expected within the budget approved or, in the alternative, give immediate notice when it shall first appear that the approved budget will not be sufficient, together with an explanation for any projected insufficiency.

The Consultant shall immediately inform the City of any problems, obstructions, or deviations of which the Consultant becomes aware affecting Consultant's ability to complete the project in a timely, efficient, and competent manner.

5. RISK OF LOSS PRIOR TO FINAL ACCEPTANCE. Risk of loss from total or partial destruction of the work, prior to final acceptance, shall be borne by Consultant regardless of the cause. Consultant shall repair or replace such damages or destroyed work to its prior undamaged condition before being

entitled to additional progress payments or final payment. Total or partial destruction or damage shall not excuse Consultant from completion of work.

6. **BONDS – (Applies only if marked on the Statement of Services Form).**

a. Consultant shall, within fifteen (15) days of contract award and before performance of the work, file a Performance Bond, with and approved by the City, in the amount of 100 percent (100%) of the contract price. The Performance Bond shall remain in effect until recordation of the Notice of Completion, or if a Notice of Completion is not recorded by the City, for sixty (60) days after completion of the work.

b. All Bonds shall be furnished by the Consultant at its own cost and expense. All bonds shall be executed by such sureties as are admitted to transact surety insurance in the State of California. Should an objection as to the sufficiency of an admitted surety on a bond be made, California Code of Civil Procedure Section 995.660 shall apply.

7. **INDEPENDENT CONSULTANT.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

8. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered shall be made upon presentation of an invoice detailing services performed.

9. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate the Agreement any time by mailing via certified U.S. Mail a notice in writing to Consultant that the Agreement is terminated. Alternatively, City may send said notice by facsimile with confirming notice provided via U.S. Mail. Said Agreement shall be deemed terminated as of Consultant's receipt of said notice, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

10. ASSIGNABILITY OF AGREEMENT. The Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under the Agreement will be permitted only with the express written consent of the City.

11. RECORDS. It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by the Agreement shall be the property of the City, and Consultant shall deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including, but not limited to, those set forth hereinabove, prepared pursuant to the Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

12. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of 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 willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. 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. Acceptance by City 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 survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

13. **INSURANCE – (Applies only if marked on the Statement of Services Form)**. During the term of the Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

- a. General Liability.
  - (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
  - (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
  - (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
  - (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
  - (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual

renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

b. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

c. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

d. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

e. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in the Agreement, certificates of insurance evidencing coverage as set forth above and which shall

provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

14. **WORKERS COMPENSATION INSURANCE – (Applies Only If Marked On The Statement Of Services Form)**. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

15. **PREVAILING WAGES – (Applies only if marked on the Statement of Services Form)**.

a. A determination of the general prevailing rates per diem wages and holiday and overtime work where the work is performed is available for review upon request at the City of Merced, located at 678 West 18<sup>th</sup> Street, Merced, California 95340. Consultant and subcontractors will not pay less than the prevailing rates of wages. Consultant will post one copy of the prevailing rates of wages at the job site.

b. Consultant shall forfeit as penalty to City the sum of Fifty Dollars (\$50.00) for each calendar day or portion thereof, and for each worker paid less than the prevailing rates under the Agreement.

16. **TRAVEL AND SUBSISTENCE PAYMENTS – (Applies only if Prevailing Wages is marked on the Statement of Services Form)**. Travel and subsistence payments shall be paid to each worker as defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations for the particular craft, classification or type of work.

17. **HOURS OF WORK.**

a. Eight (8) hours of labor constitutes a legal day's work. Workers shall be paid at a rate of one and one-half times (1 ½) the basic rate of pay for work in excess of eight (8) hours during a calendar day or forty (40) hours during a calendar week for the foregoing hours.

b. Consultant shall keep and make available an accurate record showing the name of each worker, and hours worked each day and each week by each worker.

c. As a penalty to the City, Consultant shall forfeit Twenty Five Dollars (\$25.00) for each worker, including subcontractor's workers, for each calendar day during which the worker is required or permitted to work more than eight (8) hours in one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of Labor Code Sections 1810 through 1815.

18. NOTICES. Notice may be given by personal delivery or by placing the notice in a properly addressed envelope and depositing that envelope in the United States mail with first-class postage paid.

19. PROHIBITION AGAINST DISCRIMINATION. In the performance of the Agreement the Consultant will not refuse or fail to hire or employ any qualified person, or bar or discharge from employment any person, or discriminate against any person with respect to the compensation, terms, conditions or privileges of employment, because of such person's race, color, creed, national origin, ancestry, sex or age.

20. PERMITS AND LICENSES.

a. Consultant shall apply for and procure permits and licenses necessary for the work.

b. Consultant shall give notices necessary and incidental to the due and lawful prosecution of the work and shall comply duly with the terms and conditions of permits and licenses.

c. Consultant shall pay charges and fees in connection with permits and licenses.

21. VENUE. The Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to the Agreement shall be held exclusively in a state court in the County of Merced.

22. WAIVER. In the event that either City or Consultant shall at any time or times waive any breach of the Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of the Agreement, whether of

the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

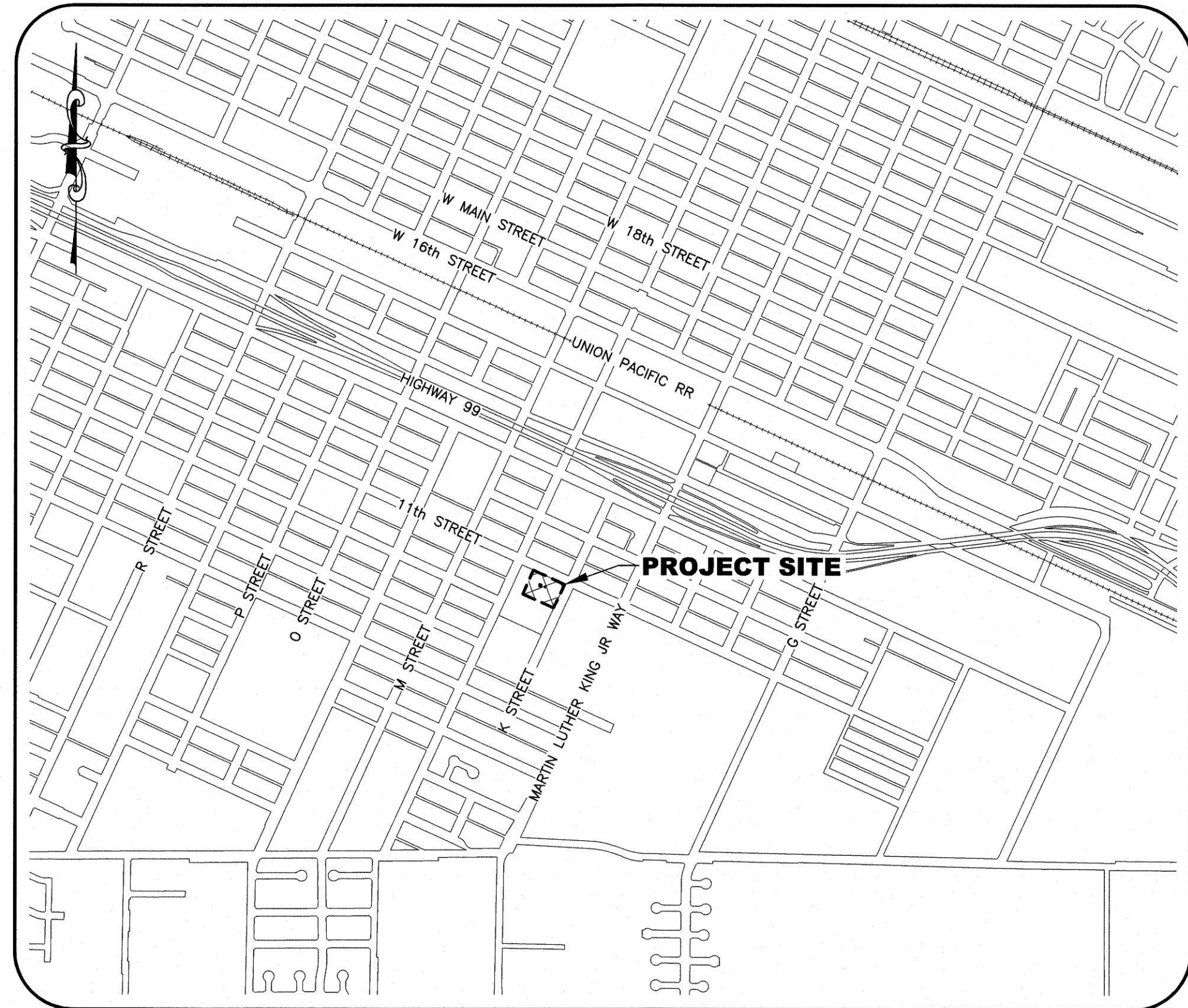
23. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under the Agreement because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by the Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.



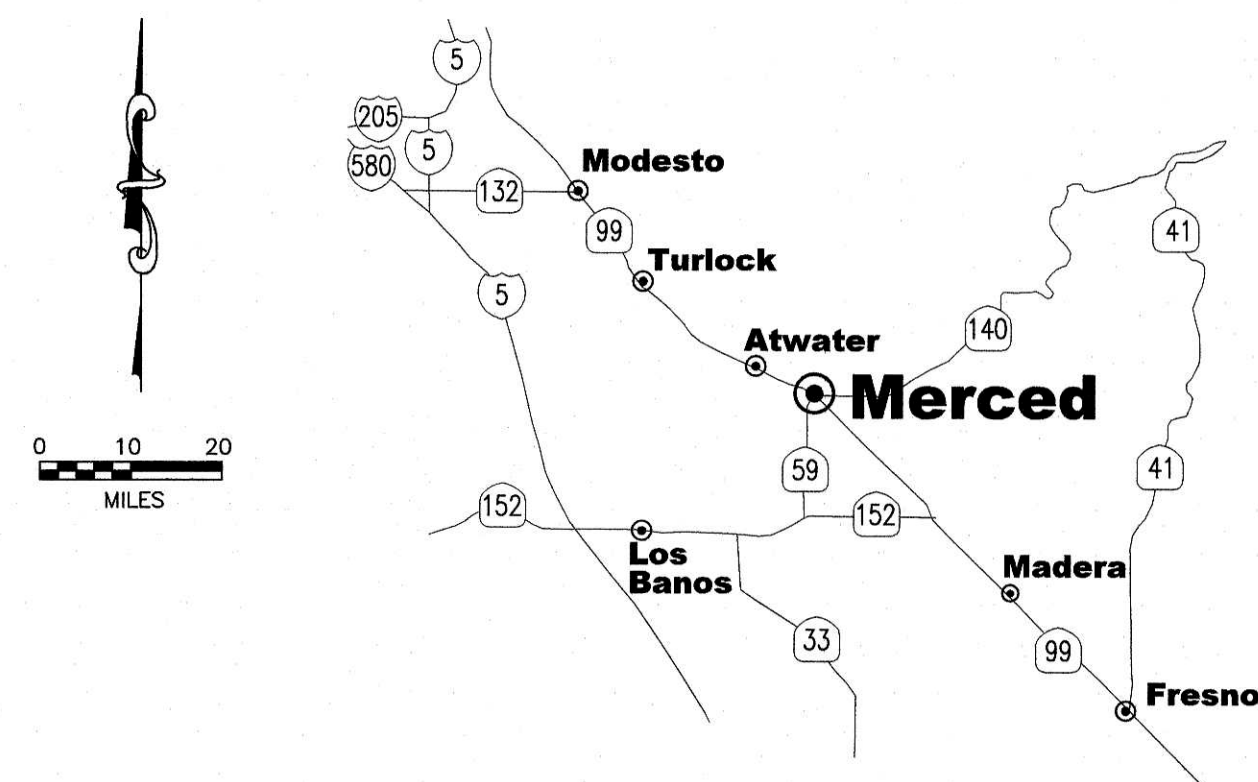
## CITY OF MERCED TERMS AND CONDITIONS OF PURCHASE

1. **Contract:** Unless a separate written agreement covering this purchase has been signed by both parties, this purchase order constitutes purchaser's offer to seller and it shall become a binding contract upon the terms and conditions set forth herein upon acceptance by seller either by acknowledgment or commencement of performance. Any terms or conditions (including price and delivery dates) proposed by seller which are inconsistent with or in addition to these terms shall be void and of no effect unless and to the extent expressly accepted by purchaser in writing.
2. **Invoices:** Submit fully itemized invoice to the Accounts Payable address listed on the face of the purchase order. Submit a SEPARATE invoice for each order or shipment. Mark each package, invoice, shipping memorandum, and bill of lading with the purchase order number.
3. **Delivery:** Deliver all items to the "Ship To" address listed on the face of the purchase order. Attach an itemized delivery ticket, bearing the purchase order number, to the shipment to ensure timely payment. Report delays in shipment immediately to purchaser. Goods and materials must be properly packaged. Inspection of goods and materials will be made at the delivery point, unless otherwise specified. Damaged goods and materials will not be accepted, and it will be the seller's responsibility to pick up the goods and materials, make the necessary corrections and redeliver for acceptance.
4. **Shipping Charges:** Unless otherwise agreed to, all shipments must be F.O.B. destination. Delivery costs not set forth in the purchase order will not be paid.
5. **Payment:** Payment will be issued to seller approximately thirty days after receipt of the merchandise or service and the correct original invoice. Purchaser is a municipality, and invoices are processed for payment once each week. Seller understands and agrees that the net payment period and cash discount period will extend to the date the invoices are paid.
6. **Warranty:** Seller warrants that all articles will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material and free from defect. Unless manufactured pursuant to detailed design furnished by purchaser, seller assumes design responsibility and warrants the articles to be free from design defect and suitable for the purpose intended by the purchaser. Seller's warranties together with its service guarantees shall run to purchaser and its users of the articles and shall not be deemed to be exclusive. Purchaser's inspection, approval, acceptance, use of or payment for all or any part of the articles shall in no way affect its warranty rights whether or not a breach of warranty has become or should have become evident at the time. No waiver of a breach or of any provision of this order shall constitute a waiver of any other breach or provision.
7. **City Liability:** If an article sold or delivered to purchaser is protected by a patent or copyright, seller agrees to indemnify, defend, save, and hold harmless purchaser from and against any and all suits, claims, judgments, and costs instituted or recovered against it on account of the use or sale of such article by the purchaser in violation of rights under such patent or copyright.
8. **Cancellations:** Purchaser reserves the right to cancel any order where goods are not received within ninety days of the purchase order date, unless a longer or shorter delivery period is specified in the request for bids or on the face of the purchase order.
9. **Insurance:** When applicable, seller must provide satisfactory proof of general liability coverage at least as broad as ISO Form CG 0001 and automobile insurance both in the amount of not less than \$1,000,000 per occurrence/accident. The City of Merced must be named as an additional insured and receive 30 day notice of cancellation. Additionally, seller shall maintain workers' compensation coverage as required by state law and the policy shall be endorsed to waive the insurer's subrogation rights against purchaser. Applicability of insurance requirement is the sole determination of the City.
10. **Indemnity:** Seller agrees to indemnify, defend, save, and hold harmless the City, its officers, agents and employees, from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from seller's intentional or negligent acts, errors or omissions in the performance of this purchase order.
11. **Licensing Requirements:** Seller warrants that it has complied with any and all state and local licensing requirements and agrees to provide proof of a current City of Merced Business Tax Certificate if seller's company is located in or provides services in the City of Merced.
12. **Nondiscrimination:** Seller shall ensure equal employment opportunity for all persons, regardless of race, color, religion, sex, creed, national origin, ancestry, age, medical condition, physical or mental disability, Vietnam-era veteran or special disabled veteran status, marital status or citizenship, within the limits imposed by law. These principles are to be applied by seller in all employment practices including recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations. Seller agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans With Disabilities Act of 1990, and any other applicable federal and state laws and regulations pertaining to nondiscrimination.
13. **Laws:** The Laws of California shall govern this order, and the venue of any action brought hereunder must be laid in or transferred to the County of Merced, State of California.



**LOCATION MAP**  
SCALE: 1"=1,000'

# CITY OF MERCED PROJECT NO. 121034 McNAMARA PARK PLAYGROUND REPLACEMENT



**VICINITY MAP**

SHEET INDEX	
SHEET NUMBER	DESCRIPTION
1	COVER SHEET
2	DEMOLITION
3	PLAYGROUND LAYOUT



UTILITY COMPANY CONTACTS	
PACIFIC GAS AND ELECTRIC:	
PAUL SYTMA (ELECTRIC).....(209) 726-6338	
LYNN McCULLICK (GAS).....(209) 726-6338	
AT&T (TELEPHONE):	
TROY BRANIFF.....(209) 726-7137	
COMCAST (CABLE):	
FRANK CASTRO.....(559) 455-4202	
MERCED IRRIGATION DISTRICT:	
JASON GRACE.....(209) 354-2814	
CITY OF MERCED:	
JOHNNIE BAPTISTA (WATER).....(209) 384-4180	
JOE PADILLA (SEWER).....(209) 385-4715	
JUAN OLMOS (STREETS).....(209) 385-6806	

APPROVALS	
CITY OF MERCED PUBLIC WORKS ENGINEERING PROJECTS AND STANDARDS 678 W. 18th St., Merced CA. 95340 (209) 385-6846	
 MICHAEL R. BELTRAN II, P.E. CITY ENGINEER	02/19/2021 DATE
 FRANK QUINTERO PROJECT CHAMPION	2/10/2021 DATE

NO.	DATE	BY	REVISION MADE

**Underground Service Alert**

TWO DAYS BEFORE YOU DIG

Call : TOLL FREE 1 (800) 227-2600

NOTE:  
ALL REFERENCES AND WRITTEN DIMENSIONS SHALL TAKE PREFERENCE OVER SCALED DIMENSIONS AND SHALL BE VERIFIED ON THE SITE. ANY DISCREPANCY SHALL BE BROUGHT TO NOTICE OF THE ENGINEER PRIOR TO THE COMMENCEMENT OF ANY WORK.

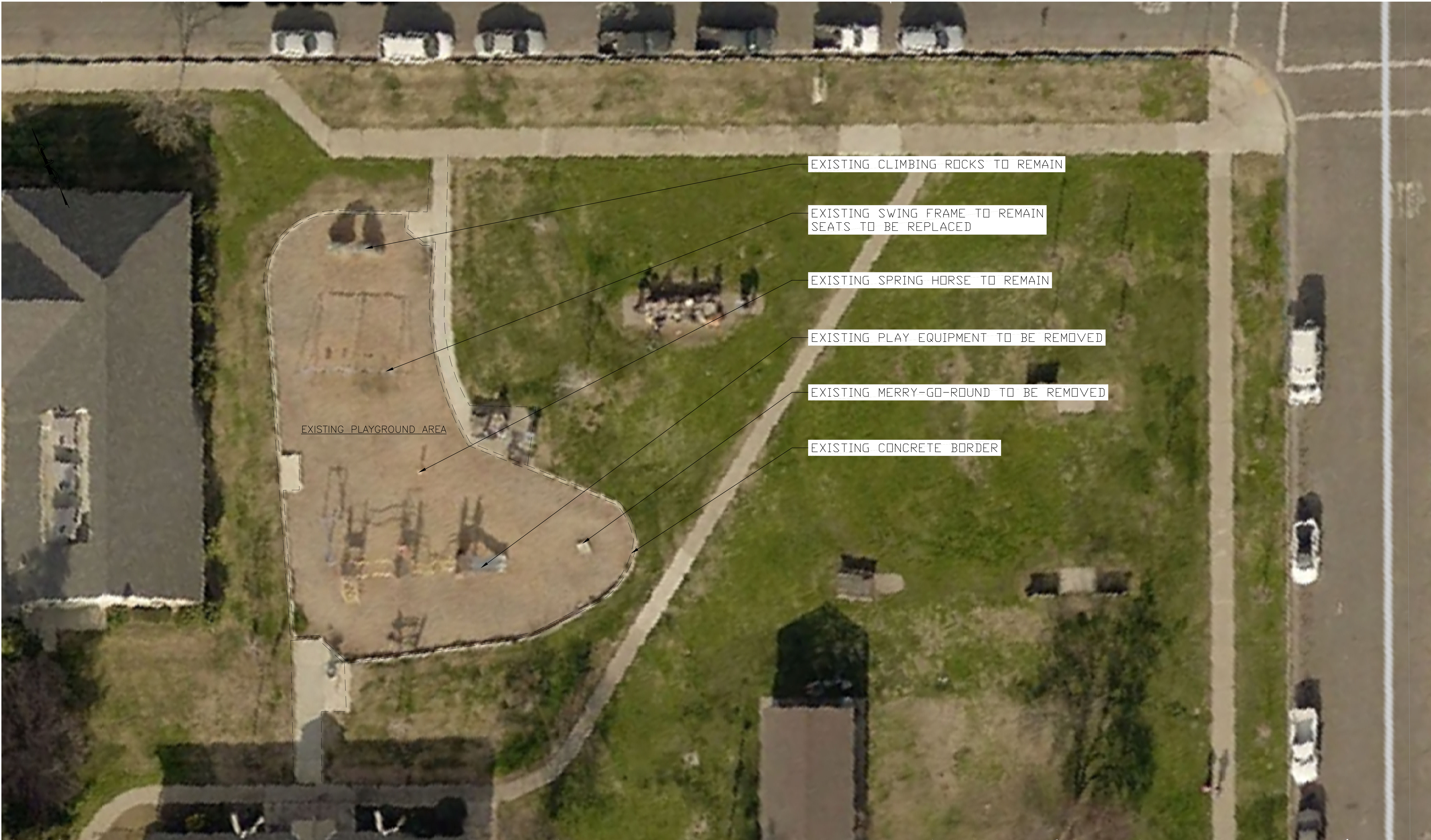
**City of Merced**  
"Gateway to Yosemite"  
**DEVELOPMENT SERVICES**  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

**COVER SHEET**

**PROJECT NO. 121034**  
**McNAMARA PARK**  
**PLAYGROUND REPLACEMENT**

DR. BY: ES	File No. 1001
DATE: 1/19/21	Sheet
CH. BY: ES	<b>1</b>
DATE: 1/19/21	of 3
SCALE: AS SHOWN	

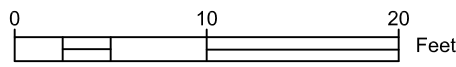




**SURVEY TOPO**  
SCALE 1"=10'

- NOTES:
1. PROTECT EXISTING UTILITY BOXES AND SPRINKLERS. RAISE, LOWER, AND/OR ADJUST THESE ITEMS TO BE FLUSH WITH NEW GRADES.
  2. PROTECT EXISTING TREES AS NECESSARY.
  3. RE-SEED ALL GRADED AREAS (INCLUDING SWALES).
  4. ALL ITEMS SHOWN TO BE REMOVED SHALL BECOME PROPERTY OF THE CONTRACTOR AND SHALL BE DISPOSED OF PROPERLY OFF-SITE.

ABBREVIATIONS  
OG - ORIGINAL GRADE  
NG - NEW GRADE  
INV - INVERT  
TYP - TYPICAL  
LF - LINEAL FEET  
DIA - DIAMETER  
(E) - EXISTING



NO.	DATE	BY	REVISION MADE

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**TWO DAYS BEFORE YOU DIG**  
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**City of Merced**  
"Gateway to Yosemite"  
**DEVELOPMENT SERVICES**  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

**DEMOLITION**

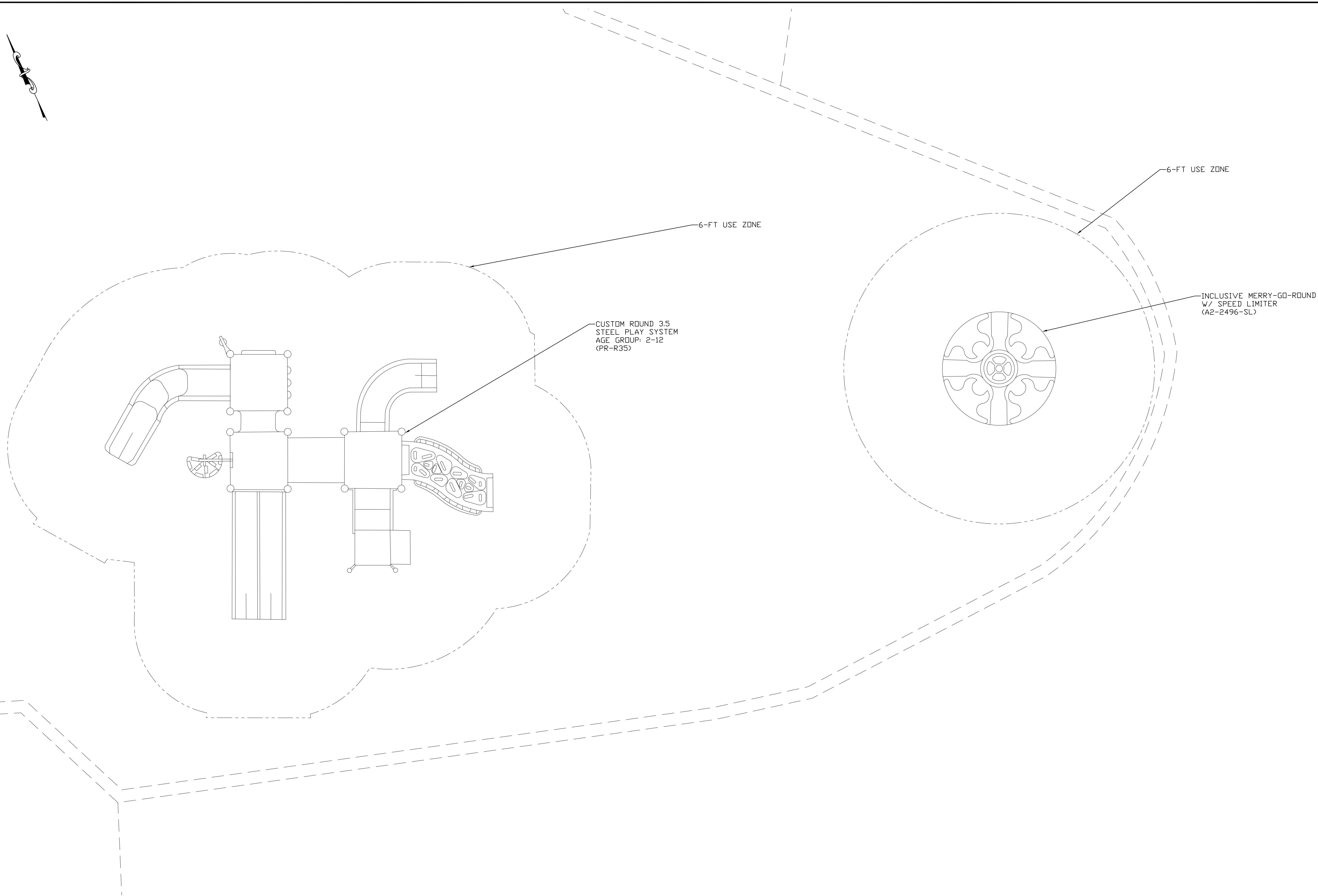
**PROJECT NO. 121034**  
**McNAMARA PARK**  
**PLAYGROUND REPLACEMENT**

DR. BY: ES
DATE: 1/19/21
CH. BY: ES
DATE: 1/19/21
SCALE: AS SHOWN

N:\Current Projects\121034 - McNamara Park Playground\Draw\1001.dwg



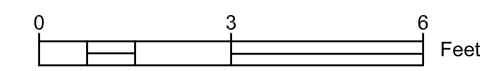
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**PLAYGROUND LAYOUT**  
SCALE 1"= 5'

- NOTES:
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SW - SIDEWALK  
(E) - EXISTING  
W/ - WITH  
CONC - CONCRETE



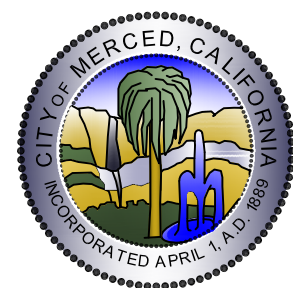
NO.	DATE	BY	REVISION MADE

**Underground Service Alert**

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*City of Merced*  
"Gateway to Yosemite"

**DEVELOPMENT SERVICES**  
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**PLAYGROUND LAYOUT**

**PROJECT NO. 121034**  
**McNAMARA PARK**  
**PLAYGROUND REPLACEMENT**

DR. BY: ES  
DATE: 1/19/21  
CH. BY: ES  
DATE: 1/19/21  
SCALE: AS SHOWN

File No. 1001  
Sheet  
**3**  
of 3