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**REQUEST FOR QUALIFICATIONS (RFQ) NO. 25-007**  
**FOR**  
**SAFETY MANAGEMENT SERVICES (REBID)**

**RFQ ISSUED:** 4/9/25  
**BIDS DUE:** 5/7/2025 3:00 PM

**BID SUBMITALS TO:**

CITY OF TURLOCK  
ATT: PURCHASING  
156 S. BROADWAY, SUITE 270  
TURLOCK, CA 95380

## INTRODUCTION

The City of Turlock (hereinafter referred to as the “City”) is requesting bids for qualified vendors to provide professional safety services for the Municipal Services Department.

## BACKGROUND

In the heart of California’s Central Valley, Turlock is the second largest city in Stanislaus County located 100 miles south of Sacramento, CA covering an area just over 16 square miles with a population of over 73,000. Turlock is a General Law City that operates under the Council/Manager form of government.

Municipal Services manages a variety of areas which are vital in maintaining a healthy, safe, clean, and thriving community. The divisions requesting safety services are as follows: Water Quality Control, Utility Maintenance, Electrical Mechanical Maintenance, Fleet Maintenance located at 901 S. Walnut, Turlock and Stanislaus Regional Water Authority (SRWA)’s Surface Water Treatment Plant located at 1235 Aldrich Road, Hughson. The department is currently staffed with 170 full-time employees who implement, deliver, operate, and maintain the City's infrastructure systems and facilities.

The Water Quality Control Division is responsible for the treatment of wastewater through a 20 MGD regional wastewater treatment facility, which includes primary, secondary and tertiary treatment. The Utility Maintenance Division is responsible for the water, wastewater and storm distribution systems. This division maintains more than 300 miles of water lines, over 300 miles of sewer lines and more than 70 miles of storm line. The division also operates and maintains 44 storm lift stations, 22 sewer lift stations and 24 active water wells. The Electrical Mechanical Maintenance Division provides electrical mechanical and electronic instrumentation maintenance of the City's Regional Water Quality Control Facility, sewer lift stations, storm stations, water wells, street lighting and traffic signal systems. The SRWA’s Surface Water Treatment Plant is responsible for the treatment of raw water through a conventional treatment process which includes chemical application, laboratory processes, distribution, and maintenance. The City will enter into an agreement with the individuals or firms selected to provide professional safety services.

## RFP TIMELINE

This RFQ will be governed by the following schedule:

- ❖ RFQ Issued: 4/9/2025
- ❖ Proposals Due: 5/7/2025
- ❖ Approval of Contract: 6/10/2025

\*All dates are subject to change at the discretion of the City

## QUESTIONS

Request for Information (RFI) should be directed to:

[purchasing@turlock.ca.us](mailto:purchasing@turlock.ca.us)

All questions must be in writing and received at least five (5) working days prior to the closing date for submittal of this Request for Qualifications (RFQ), to provide time for issuing and forwarding answers. The City will not be responsible for oral interpretations of the Request for Qualifications (RFQ).

## SCOPE OF SERVICE

The City invites you to submit a proposal for safety management services. The scope of services shall include but is not limited to the items noted below. If the vendor feels that additional tasks are warranted, they should be clearly identified in the vendor's proposal.

The proposed scope of services would include, but would not be limited to the following:

### Task No. 1 Safety Program Development and Management

Review, develop and implement the City's safety policies, programs, procedures, and provide employee training as requested. The policies, programs and procedures may include but is not limited to:

- Aerosol Transmissible Diseases
- Asbestos and Lead
- Bloodborne Pathogen and Exposure Control Plan
- Chemical Hygiene Plan and Respiratory Protection
- Codes of Safe Practices
- Confined Space
- Contractor Safety
- Electrical Safety
- Emergency Action Plan
- Excavation/Trenching/Shoring
- Fall Protection and Ladder Safety
- Powered Industrial Trucks
- Hand/Power Tools
- Hazard Communication
- Hazardous Materials
- Hazardous Waste Management
- Hearing Conservation
- Heat Illness Prevention
- Heavy Equipment Operation

- Hot work
- Injury & Illness Prevention
- Lockout/Tagout
- Personal Protective Equipment
- Caltrans approved Traffic Control and Flagger Safety
- Welding, Cutting and Brazing
- Work Zone Safety

#### Task No. 2 Training

Prepare, coordinate, and/or assist in facilitating training as needed, including, but not limited to the list above. In addition, the vendor will provide safety “tailgate/toolbox” safety meeting resources for field employees upon request.

#### Task No. 3 Safety Inspections

Establish an appropriate inspection schedule to evaluate practices, procedures, and facilities to assess risk and compliance with federal, state, and local regulations. Upon request, conduct periodic site inspections. Meet with city staff to provide safety inspections, hazard identification, and counseling and coaching on best practices. Prepare a written report consistent with the divisions' operations on all assessments conducted, including corrective action(s) that have been completed.

#### Task No. 4 Safety Meetings

Provide monthly progress report to the Municipal Services Department. Attend quarterly meetings to provide progress and/or status of the City’s Safety Program. Upon request, the vendor shall make presentations before various groups, including City Council, City Management and Public Meetings, as needed.

#### Task No. 5 Confined Space

Complete and/or assist staff in confined space entries and provide emergency rescue services as requested.

Proposers are encouraged to recommend any additional options, recommended services, or tasks.

## REQUEST FOR QUALIFICATIONS GUIDELINES

Suppliers bid must adhere to the following order and content of sections.

1. Cover Letter

- a. Identification of firm, including name, address, and telephone number of contact person during period of proposed evaluation.
  - b. Signature of a person authorized to bind the firm to the terms of the proposal
2. Executive Summary

In a brief narrative, describe the proposed solution by setting forth the overall approach and plans to meet the requirements of the RFQ. The intent of this narrative is to convey to the City that the firm understands the objective of the requested service, the nature of the work, and the level of effort necessary to successfully provide the defined services. The narrative should stipulate how the firm's approach and plans to provide the services are appropriate to the tasks involved.
3. Scope of Work/Methodology

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFQ. The methodology should include:

  - a. Describe the firm's approach to Safety Vendor Services, including an implementation plan that describes in detail the specific plans to manage and control tasks in order to ensure satisfactory provision of services.
  - b. Provide a description of the implementation plan considerations of each task outlined in Section Scope of Work
  - c. Detailed description of the specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
  - d. Provide a detailed description and at minimum one example of your work product to exemplify creating and implementing written Safety Policies.
4. References

Provide at least three (3) references, past and present, using the same service being proposed and indicate the scope of work, date, and the name, email address, and telephone number of the client contact. Also, provide a complete list of other municipalities in California utilizing your Safety Vendor services over the past five (5) years.

## PROCESS FOR SUBMITTING PROPOSALS

Sealed bids for this RFQ shall be filed with the Purchasing Division at 156 S. Broadway, Suite 270, Turlock, California, 95380, on or before 3:00 PM on Wednesday, May 7, 2025. No late bids will be accepted. Proposers shall submit one original and one electronic copy via USB of requested documents.

The City reserves the right, without limitation and at its sole discretion, to accept or reject any or all proposals and/or terminate this RFQ process at any time, for any reason, without notice and with no obligations.

## EVALUATION OF PROPOSALS AND SELECTION PROCESS

The City will screen and review all proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

The criteria are as follows:

Criteria Categories	Points Possible	Points Awarded
<b>Qualifications of Key Personnel:</b>  Include ability to provide the requested scope of services, recent experience conducting work of similar scope, complexity, and magnitude for other public agencies of similar size, references.	25	
<b>Approach to Providing the Requested Scope of Services:</b>  Includes an understanding of the RFQ and of the project's scope of services, knowledge of applicable laws and regulations related to the scope of services.	10	
<b>Price Proposal</b>	25	
<b>Innovation/Creative Approach:</b>  Innovative and/or creative approaches to providing the services that provide additional efficiencies, expedited timing or increased performance capabilities.	25	
<b>References</b>	15	
<b>Total Points</b>	<b>100</b>	

Please note that this RFQ pertains to professional services, and the above referenced scoring rubric will be used as guidance only. Given the nature of the services, the City reserves the right to utilize its discretion in awarding the project. The City also reserves the right to negotiate pricing and contract terms. After reviewing the proposals, City Staff may conduct interviews with the top firms. Staff will forward a recommendation to the City Council for final selection.

The City reserves the right to reject all proposers and/or to invite other individuals and/or firms to respond to this RFQ if the proposals received are inadequate.

### A. Responsiveness Screening

Proposals will first be screened to ensure responsiveness to the RFQ. The City may reject as non-responsive any proposal that does not include the documents required to be

submitted by this RFQ. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their proposals.

## B. Proposal Review

The Committee will review and score all responsive written proposals based upon the Evaluation Criteria set forth above. The City may contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source concerning any aspect of a proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of the evaluation process, the Committee will rank all Proposers according to the evaluation criteria set forth above. The Committee will conclude the evaluation process at this point, and make a recommendation for award.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFQ.

## EXPARTE COMMUNICATIONS

Proposers and Proposers' representatives cannot communicate with the City Council members about this RFQ. In addition, Proposers and Proposers' representatives cannot communicate outside the procedures set forth in this RFQ with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFQ Facilitator, regarding this RFQ until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, suppliers and agents, any subcontractors or suppliers listed in the Proposer's bid, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf.

## CONFLICT OF INTEREST

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any

person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

## STANDARD TERMS AND CONDITIONS

### A. Amendments

The City reserves the right to amend or supplement this RFQ prior to the bid due date.

### B. Cost for Preparing Bid

The cost for developing the bid is the sole responsibility of the Proposer. All bids submitted become the property of the City.

### C. Agreement

The City will require an agreement from the vendor found most qualified. A copy of the City's standard agreement is attached hereto. Please be advised the following provisions of the City's agreement are non-negotiable:

- ❖ Indemnification
- ❖ All insurance terms
- ❖ Termination
- ❖ Ownership/Use of Contract Materials and Products
- ❖ Disputes
- ❖ Governing Law

If an agreement cannot be reached, negotiations with an alternate vendor may commence.





**SERVICE PROVIDER AGREEMENT BETWEEN THE CITY OF TURLOCK  
and**

**for  
Safety Management Services**

**City Contract No. \_\_\_\_\_**

**THIS SERVICE PROVIDER AGREEMENT** (the “Agreement”) is entered into by and between the CITY OF TURLOCK, a California municipal corporation (“City”), and \_\_\_\_\_, a \_\_\_\_\_ (“Service Provider”), on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the “Effective Date”). City and Service Provider may be collectively referred to herein as the “Parties” or individually as “Party.” There are no other parties to this Agreement.

**RECITALS**

**A.** City seeks to hire an independent contractor to perform Service Provider services to assist City with Safety Management Services (the “Project”).

**B.** Service Provider has made a proposal to City to provide such Service Provider services. A description of the services Service Provider proposes to provide is included in the Scope of Services in **Exhibit A** attached hereto and incorporated herein by reference (“Services”). City desires to retain Service Provider to perform the Services, subject to the terms and conditions set forth in this Agreement.

**C.** The Parties have outlined the schedule or timeline for providing the Services (“Completion Schedule”), which shall be included in the Scope of Services in **Exhibit A**.

**D.** The Parties have outlined the rates and method of payment to Service Provider for its performance of the Services under this Agreement (“Compensation Schedule”), which shall be included in the Scope of Services in **Exhibit A**.

**NOW, THEREFORE**, in consideration of the promises and covenants set forth below, the Parties agree as follows:

## AGREEMENT

**1. Recitals.** The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 52 of this Agreement, Sections 1 through 52 shall prevail

**2. Term.** The term of this Agreement shall be one (1) year and will commence on the Effective Date and terminate on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Term”) unless the Parties mutually agree in writing to terminate the Agreement earlier or extend the Term pursuant to this Agreement.

**3. Extension of Agreement.** City may elect to extend this Agreement for two (2) additional one (1) year term, on the same terms and conditions, upon issuing an “Election to Extend Agreement” letter executed by the City Manager and Service Provider thirty (30) days prior to the expiration of this Agreement.

**4. Effective Date.** This Agreement shall only become effective once all of the Parties have executed the Agreement (the “Effective Date”).

### **5. Work.**

**5.1. Services.** Subject to the terms and conditions set forth in this Agreement, Service Provider shall provide City the Services described in **Exhibit A**. Any request for Services not included in **Exhibit A** will be considered a request for additional or modified Services (“Modification” or “Modifications”). Service Provider shall not receive additional compensation for any Modification of the Services unless the Parties agree otherwise in a writing executed by both Parties.

**5.2. City Requested Modification of Services.** City may, by written order, authorize Modifications to the Services described in **Exhibit A**. If such Modifications cause an increase in the cost or time required for performance of Service Provider’s Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the compensation to be paid to Service Provider and, if necessary, amend the Completion Schedule or Compensation Schedule. The Services, Completion Schedule, or Compensation Schedule shall not be revised unless City and Service Provider mutually agree to a written amendment to this Agreement reflecting such revisions, additional compensation, time for performance or such other terms or conditions mutually agreed upon by the Parties.

**5.3. Service Provider Requested Modification in Services.** Service Provider shall not be compensated for work outside the Services described in this Agreement, unless, prior to the commencement of the Services:

(a) Service Provider provides City with written notice that specific work requested by City or required to complete the Project is outside the agreed upon Services. Such notice shall: (1) be supported by substantial evidence that the work is outside the Services; (2) set

forth the Service Provider's proposed course of action for completing the work and a specific request for City to approve the Modification to the Services; (3) set forth the Service Provider's proposed revisions, if any, to the Completion Schedule; and (4) set forth the Service Provider's proposed revisions, if any, to the Compensation Schedule; and

(b) City agrees that the work requires a Modification;

(c) City approves all adjustments, if any, to the Completion Schedule and Compensation Schedule.

## **6. Compensation.**

**6.1. Amount, Time and Manner of Payment for Service Provider Services.** City shall pay Service Provider according to the rates and timing set forth in the Compensation Schedule. On each anniversary date of the Effective Date, Service Provider will be allowed to increase prices with thirty (30) days' written notice to City. Increases may not exceed increases in the San Francisco-Oakland Consumer Price Index for all urban consumers or percentage increases in Service Provider's published prices, whichever is lower. In all cases, City may cancel this Agreement if a requested price increase is not acceptable. City's annual compensation to Service Provider shall not exceed \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_) and total compensation to Service Provider shall not exceed \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_) ("Maximum Payment"), unless the Parties mutually agree in writing otherwise.

### **6.2. Deposit. [Intentionally Omitted]**

**6.3. Subsequent Payments.** City shall make monthly payments in the amount invoiced by Service Provider within thirty (30) calendar days of receiving such invoice. In the event that an amount of an invoice is in dispute, City shall inform Service Provider of the amount and basis for the dispute and may withhold the amount which is in dispute until the dispute has been resolved.

**6.4. Invoices.** Service Provider shall provide City with monthly invoices sufficiently evidencing Service Provider's expenses and completion of the Services. All invoices furnished to City by Service Provider shall be in a form approved by City. The payments specified shall be the only payments made to Service Provider for performance of the Services, including compensation for any Modification. Service Provider shall submit all billings for Services to City within forty-five (45) days of the performance of such Services. City shall issue payment according to City's customary procedures and practices for issuing payments to independent contractors.

**7. Notice to Proceed.** Service Provider shall not commence the performance of the Services until it has been given notice by City ("Notice to Proceed").

**8. Time of Performance.** Service Provider warrants that it will commence performance of the Services within \_\_\_\_\_ (\_\_\_\_) calendar day(s) of the date the agreement was executed and shall conform to the Completion Schedule. The time of performance is a material term of this Agreement relied on by City in entering into this Agreement.

**9. City Assistance to Service Provider. [Intentionally Omitted]**

**10. Time and Personnel Devoted to Services.** Service Provider shall devote such time and personnel to the performance of this Agreement, as is necessary to perform the Services in compliance with the Completion Schedule, Compensation Schedule, and this Agreement.

**11. Performance by Qualified Personnel; No Subcontracting.** Services under this Agreement shall be performed only by competent personnel under the supervision and direct employment of Service Provider. Service Provider will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Service Provider. Service Provider is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by City in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void.

**12. Representations of Service Provider.** City relies upon the following representations by Service Provider in entering into this Agreement:

**12.1. Qualifications.** Service Provider represents that it is qualified to perform the Services provided in **Exhibit A** and that it possesses the necessary licenses and permits required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Service Provider shall also ensure that all subcontractors are similarly licensed and qualified. Service Provider and all subcontractors shall also obtain a business license from City before they commence performance of the Services. Service Provider represents and warrants to City that Service Provider shall, at Service Provider's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and approvals which are legally required for Service Provider to practice Service Provider's profession at the time the Services are rendered.

**12.2. Service Provider Performance.** Service Provider represents that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by providers of the Services to be provided. Service Provider shall adhere to accepted Service Provider standards as set forth by relevant Service Provider associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted Service Provider customs, procedures and standards for such Services. Service Provider agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Service Provider shall re-perform or replace unsatisfactory Service at no additional expense to City.

**12.3. No Waiver of Claims.** The granting of any progress payment by City, or the receipt thereof by Service Provider, or any inspection, review, approval or oral statement by any representative of City, or state certification shall not, in any way, waive, limit, or replace any certification or approval procedures normally required or lessen the liability of Service Provider to re-perform or replace unsatisfactory Service, including, but not limited to, cases where the

unsatisfactory character of such Service may not have been apparent or detected at the time of such payment, inspection, review or approval.

**12.4. City's Remedies are Cumulative.** Nothing in this Section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which City or Service Provider may have under this Agreement or any applicable law. All rights and remedies of City, whether under this Agreement or applicable law, shall be cumulative.

**12.5. No Conflict of Interest.** Service Provider represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement.

**13. Conformity with Law and Safety.** Service Provider shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the Americans with Disabilities Act, any copyright, patent, or trademark law, and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All Services performed by Service Provider must be in accordance with these laws, ordinances, codes and regulations. Service Provider's failure to comply with any laws, ordinances, codes, or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Service Provider shall immediately notify City's risk manager by telephone. If any accident occurs in connection with this Agreement, Service Provider shall promptly submit a written report to City, in such form as City may require. This report shall include the following information: (a) name and address of the injured or deceased person(s); (b) name and address of Service Provider's subcontractor, if any; (c) name and address of Service Provider's liability insurance carrier; and (d) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Service Provider shall immediately notify City. Service Provider shall not store hazardous materials or hazardous waste within City limits without a proper permit from City.

**14. Confidentiality.** Service Provider understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Service Provider may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information").

Service Provider shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Service Provider

written authorization to make any such disclosure, Service Provider shall do so only within the limits and to the extent of that authorization. Service Provider may be directed or advised by the City Attorney on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project and, in such event, Service Provider agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

Notwithstanding the foregoing, Service Provider may disclose Confidential Information required to be disclosed under law, provided that, prior to disclosure, Service Provider shall first give notice to City and make a reasonable effort to obtain a protective order requiring that City's Confidential Information not be disclosed. This exception is limited to the extent disclosure is required under law.

**15. Excusable Delays; Notice to Other Party of Delay.** Service Provider shall not be in breach of this Agreement in the event that performance of Services is temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Service Provider. Force Majeure does not include: (a) Service Provider's financial inability to perform; (b) Service Provider's failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Service Provider's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Service Provider.

**16. Assignment Prohibited.** No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

**17. Suspension of Services by City.** City reserves the right to suspend Service Provider's Services under this Agreement when City determines that it is necessary to do so. When possible, City shall give Service Provider notice of such suspension and Service Provider shall, upon receipt of said notice, suspend all Services except any Services, the completion of which is authorized by the notice given by City. If the Services are suspended by City for more than sixty (60) consecutive days, for reasons other than the fault of the Service Provider, the Service Provider shall be compensated for Services performed prior to notice of such suspension. When the Project is resumed, the Service Provider's compensation shall be equitably adjusted by City to provide for expenses incurred by the interruption of the Services. In this regard, Service Provider shall furnish to City such financial information that, in the judgment of the City Manager, is necessary to determine the reasonable value of the Services rendered by Service Provider during the period when Services were suspended.

If the Parties are unable to agree upon the amount of extra compensation which is due to Service Provider within thirty (30) days of Service Provider resuming Services, the amount of such additional compensation, if any, that is required to appropriately compensate the Service Provider for its expenses incurred by the interruption of Services may, upon the request of either Party, be determined by arbitration conducted in accordance with the "Arbitration of Disputes" section of

this Agreement. Such arbitration shall be commenced by the Service Provider no later than sixty (60) calendar days following the event which entitles the Parties to pursue arbitration unless the Parties agree in writing to an extended time period for commencement of arbitration. Unless otherwise agreed in writing, all Parties shall carry on the Services and perform their duties during any arbitration proceedings, and City shall continue to make payments for the Services in progress as required by this Agreement.

**18. Ownership of Work Product.** Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, Service Provider or technical information or data, photographs, notes, letters, emails or any original works of authorship created by Service Provider or its subcontractors or subcontractors in connection with Services performed under this Agreement (“Products”) shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event it is ever determined that any Product created by Service Provider or its subcontractors, or subcontractors under this Agreement, are not works for hire under U.S. law, Service Provider hereby assigns all copyrights to such Products to City. With the prior written approval of City's point of contact for the Project, Service Provider may retain and use copies of such Products for reference and as documentation of its experience and capabilities.

All Products shall become the property of City irrespective of where located or stored, and Service Provider agrees to deliver all such documents and information to City, without charge and in whatever form it exists, on the completion of the Service Provider's Services hereunder. Service Provider shall have no ownership interest in such Products.

All work product of Service Provider under this Agreement, including written information which City will cause to be distributed for either internal or public circulation, including both preliminary and final drafts, shall be delivered to City in both printed and electronic form, or as may be specified in **Exhibit A**.

When this Agreement is terminated, Service Provider agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its Services under this Agreement. All materials shall be returned in the same condition as received.

**19. Termination of Work by City for Its Convenience.** City shall have the right to terminate this Agreement at any time for its convenience by giving notice of such termination to Service Provider. In the event City shall give such notice of termination, Service Provider shall cease rendering Services upon receipt of said notice given as required in this Agreement. If City terminates this Agreement:

(a) Service Provider shall deliver copies of all Products prepared by it pursuant to this Agreement.

(b) If City terminates this Agreement for convenience before City issues the Notice to Proceed to Service Provider or before Service Provider commences any Services hereunder,

whichever last occurs, City shall not be obligated to make any payment to Service Provider. If City terminates this Agreement after City has issued the Notice to Proceed to Service Provider and after Service Provider has commenced performance under this Agreement, City shall pay Service Provider the reasonable value of the Services rendered by Service Provider pursuant to this Agreement prior to termination of this Agreement. City shall not in any manner be liable for Service Provider's actual or projected lost profits had Service Provider completed the Services. Service Provider shall furnish to City such financial information that, in the judgment of the City Manager, is necessary to determine the reasonable value of the Services rendered by Service Provider prior to termination. In the event of a dispute as to the reasonable value of the Services rendered by Service Provider prior to termination and the Parties are unable to agree upon said amount within sixty (60) calendar days following the date of the notice of termination by City, such dispute may, upon the request of either Party, be resolved by arbitration conducted in accordance with the "Arbitration of Disputes" section of this Agreement.

(c) Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Service Provider after the date of the notice of termination.

**20. Assurance of Performance.** If, at any time, City believes Service Provider may not be adequately performing its obligations under this Agreement or may fail to complete the Services as required by this Agreement, City may submit a written request to Service Provider for written assurances of performance and a plan to correct observed deficiencies in Service Provider's performance. Failure to provide written assurances subsequent to such written request, constitutes grounds to declare a breach under this Agreement.

**21. Cancellation for Breach by Either Party.** Should either Party fail to substantially perform its obligations in accordance with the provisions of this Agreement, the other Party shall thereupon have the right to cancel the Agreement by giving written notice and specifying the effective date of such cancellation. If City cancels this Agreement for breach and it is subsequently determined that Service Provider did not fail to substantially perform its obligations in accordance with this Agreement, then cancellation for breach by City shall be deemed, and treated, as termination for convenience.

Neither Party waives the right to recover damages against the other for breach of this Agreement, including any amount necessary to compensate City for all detriment proximately caused by Service Provider's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. City reserves the right to offset such damages against any payments owed to Service Provider.

City shall not in any manner be liable for Service Provider's actual or projected lost profits had Service Provider completed the Services required by this Agreement.

**22. Non-Discrimination.** In its performance of the Services, Service Provider shall adhere to City's EEO Policy which states, "The City is committed to ensuring that all qualified individuals have a full and fair opportunity to compete in all phase of the hiring process and promotion, and to enjoy the benefits of employment with the City. All employees and applicants shall receive equal consideration and treatment in employment without regard to race, color, religion, gender,



sexual orientation, national origin, age, disability, genetic information, marital status, amnesty, or status as a covered veteran in accordance with applicable federal or state statutes, the City's ordinances, resolutions, rules or regulations."

In addition, all agreements with sub-contractors will include language as required by the Office of Federal Contract Compliance Programs (OFCCP) that requires sub-contractors to maintain equal employment opportunity policies, and, as necessary, affirmative action policies.

**23. Arbitration of Disputes.** All claims, disputes, and other matters in question between City and Service Provider arising out of or relating to this Agreement or the breach thereof, including claims of Service Provider for extra compensation for Services related to the Project, shall be decided by arbitration before a single arbitrator in accordance with the provisions of Sections 1281 to 1284.2 of the California Code of Civil Procedure (the "Arbitration Laws") unless the Parties mutually agree otherwise. The provisions of Section 1283.05 of the Arbitration Laws apply to any arbitration proceeding except as otherwise provided in this Agreement. The arbitrator shall have authority to decide all issues between the Parties including, but not limited to, claims for extras, delay and liquidated damages, if any, provided for in this Agreement, matters involving defects in the work product of the Service Provider, rights to payment, and whether the necessary procedures for arbitration have been followed. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other Party. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitation.

The Parties shall jointly appoint an arbitrator within fifteen (15) calendar days of the date of giving of the notice of the demand for arbitration. If the Parties are unable to jointly agree upon the appointment of an arbitrator within said fifteen (15) calendar day period, and do not agree in writing to extend said period for a fixed period, then either Party may seek to have the arbitrator appointed by the Superior Court of Stanislaus County in accordance with the Arbitration Laws.

If any proceeding is brought to contest the right to arbitrate and it is determined that such right exists, the losing Party shall pay all costs and attorneys' fees incurred by the prevailing party.

In addition to the other rules of law which may be applicable to any arbitration hereunder, the following shall apply:

(a) Promptly upon the filing of the arbitration, each Party shall be required to set forth in writing and to serve upon each other Party a detailed statement of its contentions of fact and law.

(b) All parties to the arbitration shall be entitled to the discovery procedures as provided in Section 1283.05 of the California Code of Civil Procedure.

(c) The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.

(d) These additional rules shall be implemented and applied by the arbitrator.

The costs of arbitration shall be borne by the Parties as determined by the arbitrator, but each Party shall bear its own attorney's fees associated with the dispute with the other Party and to the arbitration.

**24. Insurance Coverage.** During the Term, the Service Provider, at its own cost and expense, shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A-:VII and will provide City with written proof of said insurance. Service Provider shall maintain coverage as follows:

**24.1 Commercial General Liability.** Service Provider shall carry commercial general liability insurance with coverage at least as broad as Insurance Services Office (ISO) form CG 00 01, in the amount of no less than Two Million Dollars (\$2,000,000.00) per occurrence, Four Million Dollars (\$4,000,000.00) general aggregate, and Two Million Dollars (\$2,000,000.00) products and completed operations for bodily injury, personal injury, and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate shall be Four Million Dollars (\$4,000,000.00).

**24.2 Workers' Compensation Insurance and Employer's Liability.** Service Provider shall carry workers' compensation insurance as required by the State of California under the Labor Code. Service Provider shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollars (\$1,000,000.00) limit for each employee's bodily injury by disease.

**24.3 Professional Liability.** Service Provider shall carry professional liability insurance that insures against professional errors and omissions that may be made in performing services in the amount of no less than Two Million Dollars (\$2,000,000.00) per claim and in the aggregate or greater if appropriate for the Service Provider's profession. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City, its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents"); or the Service Provider shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claims administration and defense expenses.

**24.4 Commercial Automobile Liability.** Service Provider shall carry commercial automobile liability insurance using ISO Business Auto Coverage form CA 00 01 (or equivalent) in the amount of no less than Two Million Dollars (\$2,000,000.00) or greater per accident for owned, leased, hired, and non-owned or borrowed automobiles.

**24.5 Umbrella or Excess Policy.** Service Provider may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required. The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability and automobile Liability insurance. No coverage or policies maintained by the City (“Additional Insureds”), whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Service Provider’s primary and excess liability policies are exhausted.

**24.6 Waiver of Subrogation.** With the exception of professional liability, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. The commercial general liability policy, automobile liability policy, and workers’ compensation policy shall be endorsed to contain a waiver of subrogation in favor of City for all work performed by Contractor, its agents, employees, independent contractors and subcontractors. Contractor shall provide written proof of waiver of subrogation in the Certificate of Insurance. Additionally, Contractor agrees to obtain any available endorsements that may be necessary to effectuate this waiver of subrogation.

**25. Additional Insurance Requirements.** Within five (5) days of the Effective Date, Service Provider shall provide City with certificates of insurance and amendatory endorsements for all of the policies required under this Agreement (“Certificates and Endorsements”). Such Certificates and Endorsements shall be kept current for the Term of the Agreement and Service Provider shall be responsible for providing updated copies. With the exception of the workers’ compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days’ prior written notice to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name City, and City’s Agents as additional insureds with respect to liability arising out of Services, work or operations performed by or on behalf of Service Provider and shall be endorsed to state such; (c) cover products and completed operations of Service Provider, premises owned, occupied, or used by the Service Provider, or automobiles owned, leased, or hired or borrowed by the Service Provider; contain no special limitations on the scope of protection afforded to City; (d) allow and be endorsed primary with respect to any insurance or self-insurance programs covering City or City’s Agents and any insurance or self-insurance maintained by City or City’s Agents shall be in excess of Service Provider’s insurance and shall not contribute to it; (e) contain standard separation of insured provisions; and (f) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to City.

**26. Indemnifications.**

**26.1 Indemnification for Professional Liability.** When the law establishes a professional standard of care for any portion of the Services provided under this Agreement, to the fullest extent permitted by law. Service Provider shall defend with legal counsel reasonably acceptable to City, indemnify and hold harmless City and City’s Agents from and against any and all claims,

loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Service Provider or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to, or relate to acts or omissions of Service Provider, or any direct or indirect subcontractor, employee, contractor, representative or agent of Service Provider, or anyone that Service Provider controls (collectively “Liabilities”). Such obligations to defend, hold harmless, and indemnify City and City’s Agents shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of City or City’s Agents, but shall apply to all other Liabilities. With respect to third party claims against the Service Provider, the Service Provider waives any and all rights of any type of express or implied indemnity against City and City’s Agents.

**26.2 Indemnification for Other Than Professional Liability.** Other than in the performance of professional services and to the full extent permitted by law, Service Provider shall indemnify, defend, and hold harmless City and any and all of its elective and appointive boards, officers, officials, agents, employees or volunteers from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel’s fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Service Provider or by any individual or agency for which Service Provider is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of Service Provider.

**27. Liability of City.** Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

**28. Independent Contractor.** At all times during the Term, Service Provider shall be deemed to be an independent contractor and shall be wholly responsible for the manner in which Service Provider performs the Services required under this Agreement. Service Provider shall be liable for its acts and omissions and those of its employees, contractors, subcontractors, representatives, volunteers, and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Service Provider. City shall have the right to control Service Provider only insofar as the result of Service Provider’s Services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Service Provider accomplishes Services rendered pursuant to this Agreement.

**29. Service Provider Not Agent.** Except as City may specify in writing, Service Provider shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Service Provider shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**30. Payment of Taxes and Other Expenses.** Payment of any taxes, including California sales

and use taxes, levied upon this Agreement, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Service Provider.

**31. Notices.** All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below.

If to City:

**City of Turlock  
Attn: Chris Fisher  
156 S. Broadway, Suite 270  
Turlock, California 95380**

With courtesy copies to:

**City of Turlock, City Attorney's Office  
Attn: George A. Petrulakis, City Attorney  
156 S. Broadway, Suite 230  
Turlock, California 95380-5456**

If to Service Provider:

\_\_\_\_\_  
**Attn:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**32. City Contract Administrator.** City's Contract Administrator and contact person for this Agreement is:

\_\_\_\_\_  
\_\_\_\_\_  
156 S. Broadway, Suite \_\_\_\_\_  
Turlock, California 95380  
Telephone: (209) \_\_\_\_\_  
E-mail: \_\_\_\_\_@turlock.ca.us

**33. Interpretation.** As used herein, any gender includes each other gender, the singular includes the plural and vice versa.

**34. Use of City Project Number. [Intentionally Omitted]**

**35. Modification.** No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

**36. Waiver.** No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

**37. Assignment.** No Party to this Agreement shall assign, transfer, or otherwise dispose of this Agreement, in whole or in part, to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties hereto.

**38. Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by state or federal law in order to enter into the Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

**39. Drafting and Ambiguities.** Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting Party does not apply in interpreting this Agreement.

**40. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of California.

**41. Venue.** Venue for all legal proceedings shall be in the Superior Court of the State of California, in and for the County of Stanislaus.

**42. Severability.** If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

**43. Execution and Counterparts.** This Agreement may be executed simultaneously, and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The Parties agree that this Agreement and any other documents to be delivered in connection herewith may be electronically signed utilizing services such as DocuSign and Nitro Sign, or by transmitting signatures in pdf or similar format, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**44. Audit.** City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Service Provider's charges to City under this Agreement.

**45. Entire Agreement.** This Agreement, together with its specific references, attachments, and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof and supersedes any and all prior negotiations, understanding, and agreements with respect hereto, whether oral or written. Should any conflict exist between the terms and conditions of the Agreement and any and all exhibits attached hereto, the terms and conditions of the Agreement shall prevail.

**46. Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, whether written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

**47. Mandatory and Permissive.** “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

**48. Successors and Assigns.** All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of, any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

**49. Headings.** Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

**50. Attorney’s Fees and Costs.** If any action at law or in equity not resolved pursuant to the “Arbitration of Disputes” section of this Agreement, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney’s fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

**51. Necessary Acts and Further Assurances.** The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

**52. Time is of the Essence.** Time is of the essence in this Agreement for each covenant and term of a condition herein.

***[Signatures on Following Page]***

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by and through their respective officers thereunto duly authorized.

**CITY OF TURLOCK, a California  
municipal corporation**

**SERVICE PROVIDER**

By: \_\_\_\_\_  
Susan Borrego, Interim City Manager

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

APPROVED AS TO SUFFICIENCY:

By: \_\_\_\_\_  
Chris Fisher, Municipal Services Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
George A. Petrulakis, City Attorney

ATTEST:

By: \_\_\_\_\_  
Nichole Fiez, City Clerk

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date \_\_\_\_\_