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ADMINISTRATIVE SERVICES
PURCHASING DIVISION

156 S. BROADWAY, SUITE 270 | TURLOCK, CALIFORNIA 95380 | PHONE 209-668-5402 | FAX 209-668-5695

REQUEST FOR INFORMATION

BID NO. 22-019

FOR

DESIGN-BUILD ENERGY SERVICES

INFORMATIONAL ADDENDUM NO. 1

DATED ISSUED: AUGUST 4, 2022

- 1. It is stated on page 9 that a copy of the City's standard Professional Services Agreement is attached to the RFQ. Will the City provide that attachment??**

Please see the below sample Professional Service Agreement.

Finance Department - Purchasing Division
156 S. Broadway, Suite 270
Turlock, CA 95380-5454
Email: purchasing@turlock.ca.us



**AGREEMENT BETWEEN THE CITY OF TURLOCK
and**

for

_____ **SERVICES**

City Project No. XXXX-XX

THIS SERVICE AGREEMENT (the “Agreement”) is entered into by and between the CITY OF TURLOCK, a California municipal corporation (“City”), and _____, a _____ (“Professional”), on this _____ day of _____ 20__ (the “Effective Date”). City and Professional 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 professional services to assist City with the _____ (the “Project”).

B. Professional has made a proposal to City to provide such professional services. A description of the services Professional 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 Professional 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 Professional 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 Section 1 through 53 of this Agreement, Sections 1 through 53 shall prevail

2. Term. The term of this Agreement shall be ____ years 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 ____ (__) additional ____ year (__) terms, on the same terms and conditions, upon issuing an “Election to Extend Agreement” letter executed by the City Manager to Professional 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, Professional 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”). Professional 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 Professional’s Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the compensation to be paid to Professional and, if necessary, amend the Completion Schedule or Compensation Schedule. The Services, Completion Schedule, or Compensation Schedule shall not be revised unless City and Professional 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. Professional Requested Modification in Services. Professional shall not be compensated for work outside the Services described in this Agreement, unless, prior to the commencement of the Services:

(a) Professional 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

Professional'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 Professional's proposed revisions, if any, to the Completion Schedule; and (4) set forth the Professional'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; and

(d) The Parties execute a written amendment to this Agreement describing any Modification, together with any adjustment in the Completion Schedule and Compensation Schedule for Professional's work. Compensation for any additional Services shall not exceed _____ Dollars (\$_____) per hour.

6. Compensation.

6.1. Amount, Time and Manner of Payment for Professional Services. City shall pay Professional according to the rates and timing set forth in the Compensation Schedule. On each anniversary date of the Effective Date, Professional 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 Professional's published prices, whichever is lower. In all cases, City may cancel this Agreement if a requested price increase is not acceptable. City's total compensation to Professional shall not exceed _____ Dollars (\$_____) ("Maximum Payment"), unless the Parties mutually agree in writing otherwise.

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

6.3. Invoices. Professional shall provide City with monthly invoices sufficiently evidencing Professional's expenses and completion of the Services. All invoices furnished to City by Professional shall be in a form approved by City. The payments specified shall be the only payments made to Professional for performance of the Services, including compensation for any Modification. Professional 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. Professional shall not commence the performance of the Services until it has been given notice by City ("Notice to Proceed"), with which City shall also deliver the Deposit.

8. Time of Performance. Professional warrants that it will commence performance of the Services within _____ () calendar days 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. Intentionally Omitted

10. Time and Personnel Devoted to Services. Professional 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 Professional. Professional 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 Professional. Professional 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 Professional. City relies upon the following representations by Professional in entering into this Agreement:

12.1. Qualifications. Professional 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. Professional shall also ensure that all subcontractors are similarly licensed and qualified. Professional and all subcontractors shall also obtain a business license from City before they commence performance of the Services. Professional represents and warrants to City that Professional shall, at Professional'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 Professional to practice Professional's profession at the time the Services are rendered.

12.2. Professional Performance. Professional 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 specialists in the Services to be provided. Professional shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted professional customs, procedures and standards for such Services. All work or products completed by Professional shall be completed using the best practices available for the profession. Professional agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Professional 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 Professional, 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 Professional 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 Professional 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. Professional 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. Professional 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 Professional must be in accordance with these laws, ordinances, codes and regulations. Professional'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, Professional shall immediately notify City's risk manager by telephone. If any accident occurs in connection with this Agreement, Professional 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 Professional's subcontractor, if any; (c) name and address of Professional'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, Professional shall immediately notify City. Professional shall not store hazardous materials or hazardous waste within City limits without a proper permit from City.

14. Contact by Professional with Project Owner or Project Applicant. Unless otherwise set forth in the Services, neither Professional nor Professional's subcontractors shall directly contact the owner of the property involved in the Project or any party who is the applicant for the Project ("Interested Party"), or an employee or contractor of an Interested Party, on any matter relating to the Project without the prior consent of the Contractor Administrator. In no event shall Professional take any instructions or directions from an Interested Party on any matter pertaining to the Professional's Services to be performed for City under this Agreement.

15. Confidentiality. Professional understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Professional 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").

Professional 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 Professional written authorization to make any such disclosure, Professional shall do so only within the limits and to the extent of that authorization. Professional 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, Professional 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, Professional may disclose Confidential Information required to be disclosed under law, provided that, prior to disclosure, Professional 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.

16. Excusable Delays; Notice to Other Party of Delay. Professional 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 Professional. Force Majeure does not include: (a) Professional's financial inability to perform; (b) Professional's failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Professional'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 Professional.

17. 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.

18. Suspension of Services by City. City reserves the right to suspend Professional's Services under this Agreement when City determines that it is necessary to do so. When possible, City shall give Professional notice of such suspension and Professional 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 Professional, the Professional shall be compensated for Services performed prior to notice of such suspension. When the Project is resumed, the Professional's compensation shall be equitably adjusted by City to provide for expenses incurred by the interruption of the Services. In this regard, Professional 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 Professional during the period when Services were suspended.

If the Parties are unable to agree upon the amount of extra compensation which is due to Professional within thirty (30) days of Professional resuming Services, the amount of such additional compensation, if any, that is required to appropriately compensate the Professional 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 Professional 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.

19. 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, professional or technical information or data, photographs, notes, letters, emails or any original works of authorship created by Professional 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 Professional or its subcontractors, or subcontractors under this Agreement, are not works for hire under U.S. law, Professional hereby assigns all copyrights to such Products to City. With the prior written approval of City's point of contact for the Project, Professional 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 Professional agrees to deliver all such documents and information to City, without charge and in whatever form it exists, on the completion of the Professional's Services hereunder. Professional shall have no ownership interest in such Products.

All work product of Professional 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, Professional 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.

20. 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 Professional.

In the event City shall give such notice of termination, Professional shall cease rendering Services upon receipt of said notice given as required in this Agreement. If City terminates this Agreement:

(a) Professional 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 Professional or before Professional commences any Services hereunder, whichever last occurs, City shall not be obligated to make any payment to Professional. If City terminates this Agreement after City has issued the Notice to Proceed to Professional and after Professional has commenced performance under this Agreement, City shall pay Professional the reasonable value of the Services rendered by Professional pursuant to this Agreement prior to termination of this Agreement. City shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the Services. Professional 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 Professional prior to termination. In the event of a dispute as to the reasonable value of the Services rendered by Professional 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 Professional after the date of the notice of termination.

21. Assurance of Performance. If, at any time, City believes Professional 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 Professional for written assurances of performance and a plan to correct observed deficiencies in Professional's performance. Failure to provide written assurances subsequent to such written request, constitutes grounds to declare a breach under this Agreement.

22. 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 Professional 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 Professional'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 Professional.

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

23. Non-Discrimination. In its performance of the Services, Professional 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.

24. Arbitration of Disputes. All claims, disputes, and other matters in question between City and Professional arising out of or relating to this Agreement or the breach thereof, including claims of Professional 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 Professional, 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.

25. Insurance Coverage. During the Term, the Professional 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. Professional shall maintain coverage as follows:

25.1. General Liability. Professional shall carry general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) per occurrence 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).

25.2. Workers' Compensation Insurance and Employer's Liability. Professional shall carry workers' compensation insurance as required by the State of California under the Labor Code. Professional 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.

25.3. Errors and Omissions Liability. Professional shall carry errors and omissions liability insurance in the amount of no less than Two Million Dollars (\$2,000,000.00) per claim or greater if appropriate for the Professional'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 Professional shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claims administration and defense expenses.

25.4. Commercial Automobile Liability. Professional shall carry commercial automobile liability insurance in the amount of One Million Dollars (\$1,000,000.00) or greater per occurrence for owned, leased, hired, and borrowed automobiles.

25.5. Waiver of Subrogation. With the exception of errors and omissions liability insurance, Professional hereby agrees to waive subrogation which any insurer of Professional may acquire from Professional by virtue of the payment of any loss. The commercial general liability policy and workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of City for all work performed by Professional, its agents, employees, independent contractors, and subcontractors. Professional agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

26. Additional Insurance Requirements. Within five (5) days of the Effective Date, Professional shall provide City with certificates of insurance for all of the policies required under this Agreement ("Certificates"), excluding the required workers' compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Professional shall be responsible for providing updated copies and notifying City if a policy is cancelled, suspended, reduced, or voided. 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 Professional; (c) cover products and completed operations of Professional, premises owned, occupied, or used by the Professional, or automobiles owned, leased, or hired or borrowed by the Professional; contain no special limitations on the scope of protection afforded to City; (d) be 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 Professional'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.

27. Indemnification by Professional. To the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782 and 2782.8), Professional 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 Professional 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 Professional, or any direct or indirect subcontractor, employee, contractor, representative or agent of Professional, or anyone that Professional 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 Professional, the Professional waives any and all rights of any type of express or implied indemnity against City and City's Agents.

28. 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.

29. Independent Contractor. At all times during the Term, Professional shall be deemed to be an independent contractor and shall be wholly responsible for the manner in which Professional performs the Services required under this Agreement. Professional 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 Professional. City shall have the right to control Professional only insofar as the result of Professional's Services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Professional accomplishes Services rendered pursuant to this Agreement.

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

31. 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 Professional.

32. 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: Department Director
156 S. Broadway, Suite XXX
Turlock, CA 95380-5461**

With courtesy copies to:

**Petrulakis Law & Advocacy, APC
Attn: George A. Petrulakis, City Attorney
P.O. Box 92
Modesto, California 95354**

If to Professional:

Attn: _____

33. City Contract Administrator. City's contract administrator and contact person for this Agreement is:

156 S. Broadway, Suite 270
Turlock, California 95380-5456
Telephone: (209) 668-_____
E-mail: _____@turlock.ca.us

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

35. Use of City Project Number. Professional or its subcontractors agree to use the aforementioned City project number on all maps, drawings, submittals, billing, and written correspondence that involve City staff or contracted consultants. Nothing in this Section shall preclude Professional or its subcontractors from using their own project numbers for their own internal use.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

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

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

43. 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.

44. 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.

45. 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 Professional's charges to City under this Agreement.

46. 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.

47. 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.

48. Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" and "can" are permissive.

49. 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.

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

51. 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.

52. 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.

53. 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.

PROFESSIONAL

_____, a

By: _____

Print Name: _____

Title: _____

Date _____

CITY

**City of Turlock, a California
municipal corporation**

By: _____

Reagan M. Wilson, City Manager

Date: _____

APPROVED AS TO SUFFICIENCY:

By: _____

NAME, DIRECTOR

APPROVED AS TO FORM:

By: _____

George A. Petrulakis, City Attorney

ATTEST:

By: _____

Julie Christel, City Clerk