



City of Turlock
Development Services Department
Building Division

Request for Qualifications

Request for Qualifications: Retainer Agreement for Plan Review Services

The purpose of this Request for Qualifications is to obtain an annual retainer agreement for plan review services.

Submit Proposals to:
City of Turlock
Development Services Department
Building Division
Attention: Eric Picciano
156 South Broadway, Suite 130
Turlock, CA 95380

Proposal Submission Deadline
Thursday, May 4, 2017
4:00 p.m. PST

Questions with regard to submissions, process or proposals can be directed to:

Eric A. Picciano, P.E., Chief Building Official
Development Services Department
Building Division
156 South Broadway, Suite 130
Turlock, CA 95380
(209) 668-5560, ext 4422
epicciano@turlock.ca.us

Introduction

The City of Turlock is accepting proposals from qualified firms to provide professional plan review services upon request from the City of Turlock on an “as needed” basis. The City will enter into an agreement with the individuals or firms selected to provide these services. All interested parties are required to submit proposals in accordance with the conditions and dates outlined in this Request for Qualifications (RFQ).

Background

The City of Turlock’s Building Division has permanent staff that performs much of the plan review, permitting and inspections. On the occasion that the plan review demand is in excess of the capacity of the staff, contract services are utilized. Inspection services and permit processing are performed entirely by permanent staff, and are not a part of this RFP.

It is the intent of the City to solicit an RFP for plan review services as a master agreement and award all services to at least one contractor. The retainer agreement allows the City’s Building Division, to request services of the retained Consultant on an individual project basis as the need arises.

Scope of Services

Review and validation of construction documents for commercial and residential plans for conformance with the 2016 California Building, Residential, Plumbing, Mechanical, Fire Electrical, Energy, Green Building Standards Codes and local ordinances.

Review project based structural and truss calculations, soils reports, Title 24, Accessibility and any other locally adopted applicable ordinances.

Based upon the City’s request, plan review of documents could include any or all of the following disciplines.

- Accessibility
- Architectural
- Electrical
- Energy
- Fire
- Life Safety
- Mechanical
- Plumbing
- Structural
- Special Inspection Agreements
- OSHPD requirements for certain projects

Certified Access Specialist Program (CAsp) review and recommendations of plans, properties or facilities on an as needed basis.

Provide to the applicant and the City an electronic correction list of all required items for plan checks or items needing clarification. The City’s Chief Building Official may require that this information be transmitted by any other such means as deemed necessary.

Services shall include initial plan checking and two iterations of revised plans (“re-routes”) at no additional charge.

The City of Turlock is currently transitioning to “Electronic Plan review” services. As such, documents provided the contractor may be in either paper or electronic (PDF) format. Review of documents performed by contractor shall occur in the format received. Comments produced for electronic documents may be in either “red line” style or traditional comment letter formats. Final style of comments is open to negotiation between the contractor and the City of Turlock.

Provide review of deferred submittals and revisions (i.e., change orders) to original plans sets at a stated hourly rate.

Provide review and recommendations of Alternate Means & Methods at a stated hourly rate.

Provide wet signed/stamped approved plans and documents

Deliver plan reviews on a timeline as specified under the “AVAILABILITY” section of this RFP.

Provide quality customer service by providing courteous communication with City staff, design professionals and permit applicants.

Plan review approval shall not be recommended to the City until ALL code compliance issues are resolved to the best of consultant’s knowledge and all permit issuance requirements of the City Building Division are satisfied.

Consultant shall coordinate all communications with the City’s representative. The consultant shall not contact the applicant when plans are approved. The City will notify the applicant when the permit is ready to be issued.

Code interpretations are subject to final review and approval by the Chief Building Official. All plan review comments are subject to the review by the City.

Consultant shall be available within one business day to respond to questions from the City that may be generated during the post review permitting process, and field inspection for each authorized plan check that is subsequently issued a permit for construction

Availability

The contractor is expected to perform the plan review iterations required to obtain approval of each project for the percentage of fee proposed.

Basic Response Time

The basic service expected time for the consultant to return a list of comments to the City or provide approval to the City for all plan review projects from the day of authorization by the City is ten (10) business days on the first review and five (5)

business days on subsequent reviews. If the review is completed and returned to the City in one (1) to five (5) business days in excess of the due date, a 5% reduction in the basis of fee to the City shall be provided. If the review is completed and returned to the City in six (6) to ten (10) business days in excess of the due date, a 10% reduction in the basis of fee to the City shall be provided. If the response time exceeds 10 days in excess of the due date, the plan review shall be completed at no cost to the City. The response time for more complex projects as determined by the City may be negotiable.

Expedited Response Time:

The expected response time for the consultant to return a list of comments to the City or provide approval to the City for all plan review projects from the day of authorization by the City is five (5) business days on the first review and five (5) business days on subsequent reviews. If the review is completed and returned to the City in one (1) to five (5) business days in excess of the due date, a 15% reduction in the basis of fee to the City shall be provided. If the review is completed and returned to the City in six (6) to ten (10) business days in excess of the due date, a 25% reduction in the basis of fee to the City shall be provided. If the response time exceeds 10 days in excess of the due date, the plan review shall be completed at no cost to the City. The response time for more complex projects as determined by the City may be negotiable.

Assumptions

With City Council approval, a successful Consultant shall be awarded a retainer agreement for plan review services. At the discretion of the City, deliverables shall be provided to the City in the form of hard or electronic copies as required to finalize the plan review process.

The Chief Building Official, or his designee, will be the main point of contact to facilitate the various services requested. The selected Consultant shall have or obtain a City of Turlock business license prior to performing any of the work listed in the Agreement.

The City will screen and evaluate proposals primarily on the basis of demonstrated professional expertise. Consultant(s) shall be chosen on the basis of their firm's demonstrated competence, abilities and overall professional qualifications. The City reserves the right to enter into agreements with multiple consultants.

Requests for Information (RFI) must be addressed in writing and directed to the contact person specified on the front page of this RFQ. An RFI sent to any other contact person may be subject to delay or may not be received at all. Each RFI must be received at least (72) hours prior to the stated proposal submission deadline.

If the City determines that a response to an RFI is necessary for clarification, then a response will be issued in writing as an addendum for the benefit of all interested consultants. The City will not respond to an RFI received less than (72) hours prior to the proposal submission deadline, as this does not provide prospective consultants enough time to make modifications to their proposals. The City will not respond to an RFI with verbal clarification; all City responses to an RFI shall be in writing.

Information Requested

The City of Turlock Building Division is seeking a qualified consultant that demonstrates extensive knowledge and experience in dealing with municipalities in general. Each proposal must contain a statement of qualifications that includes the following information:

1. Background – Provide background and history of the company’s consulting experience which specifically addresses the organization’s knowledge and experience.
 - List qualifications/resume of each professional employee that would be assigned to this contract.
 - Within your response, demonstrate your staff’s level of training, the number of Civil and or Structural engineers on staff, as well as ICC/ICBO certified Plans Examiners and your commitment to their continuing education.
2. Services and History– Provide a list of available services as well as a listing and description of work completed.
 - Indicate your willingness to include the City’s Chief Building Official and or City Plan Check staff in discussions with applicants seeking solutions regarding alternate methods and materials or modifications of code requirements. The City’s Chief Building Official reserves the right to make final determinations.
 - Provide examples of plan check reviews performed for all types of construction projects. Include examples for, but not limited to:
 - Big Box Stores
 - Medical offices
 - Multi residential
 - Commercial projects such as shopping centers, light industrial, and parking structures
 - Tenant Improvements to existing facilities.
 - List all special services your firm offers such as pre-permit review or expedited services.
 - Explain your no charge to the City pick-up and delivery method of the plans and materials. Name your parcel delivery carrier and method by which the City will utilize your account at no charge.

Optional:

- Provide an electronic administrative support system for tracking the status of plan check reviews that is accessible to the City and applicants. Enclose with your response either a CD/DVD demonstration or a web address to a demonstration of your tracking system.
3. Fees – Provide a fee schedule. Each proposal shall provide a traditional rate schedule in which fees for services may easily be determined from. This information will not be used as a determining factor as to which firm we will enter

into agreement with. It will be used as an initial point of discussion related to compensation for the Agreement

4. References – Provide three or more references that can supply information on the quality of your services during the past two years. At least two references shall be from a City or City Agency whom with the consultant currently maintains a contractual agreement with.
5. Availability – Respondent is to indicate the availability of staff to discuss projects and technical data via phone or other means with the City staff, design team and/or construction team at no additional cost to the City for project paid on percentage costs.

Proposal Content

The City requires each Consultant to submit a proposal clearly addressing all of the requirements outlined in the RFQ. The proposal shall be limited to 30 pages (not including a cover page and staff resume) and must include a minimum of three recent or current client references, which include the address and telephone number of each reference. Resumes and a company qualification brochure may be added to the 30-page proposal, provided they are located in an Appendix at the back of the proposal. Material contained in appendices will not be used for evaluation purposes in the scoring of proposals. Though the Consultant may submit a proposal organized according to his preference, it must be clear and concise.

Should a consultant have concerns about meeting any requirements of this RFQ they may include a clearly labeled subsection within an appendix with individual statements specifically identifying their concerns and exceptions. If no exceptions are stated the City shall assume the consultant understands all of the requirements of the RFQ, including the professional services agreement, and takes no exceptions to them. The requirements and expectations stated within this RFQ shall be included in the Agreement as an exhibit.

Contractual Requirements / Retainer Agreement

A Retainer Agreement for Building plan check services between the City of Turlock and Respondent will serve as basic document.

The City may elect to extend this Agreement for three (3) additional one-year terms, on the same terms and conditions, upon providing written notice to the consultation thirty days prior to the expiration of this Agreement. On each anniversary date, the consultant will be allowed to increase hourly rates. Increases may not exceed increases in the San Francisco-Oakland Consumer Price Index for all urban consumers or percentage increases in Consultant's published prices, whichever is lower. In all cases, the City of Turlock may cancel the contract if a requested price increase is not acceptable.

For your use in assessing your proposal, please review the attached agreement paying special attention to the City's insurance requirements delineated in Section 7, "Insurance."

Please have your legal counsel review the proposal. Along with your proposal for services, please supply an edited copy of the sample retainer agreement. The edited sample will be a starting point for the City's review of your specific contract requests, and will not influence the consultant selection criteria in any way.

Proposal Submission

The consultant shall provide the information requested within the RFQ. The consultant's proposal to this RFQ consists of the consultant's response to the information requested. Proposals should provide a straight forward and concise presentation adequate to satisfy the requirements of this RFQ. Consultants may attach relevant information and documentation not specifically requested.

The consultant shall hand-deliver or mail their proposal to the City at the address listed on the front page of the RFQ so that the proposal is received no later than the date and time specified. This time and date is fixed and extensions will not be granted. The City does not recognize the U.S. Postal Service, its postmarks or any other organization as its agent for purposes of receiving proposals. All proposals received after the deadline will be rejected.

The consultant shall provide two printed, bound copies of their proposal as well as one electronic copy (in PDF format) of their proposal on CD, DVD, or USB flash drive to be considered responsive. All materials submitted will become property of the City and returned only at the City's option.

Proposal Selection

Proposals will be reviewed by City staff and evaluated to determine which proposal(s) best meet the criteria of the RFQ. The final selection will be based on completeness, experience with agencies, technical merit, cost competitiveness and time to perform. It is the City's intention to select at least one firm that has sufficient expertise to handle the variety of projects the City undertakes thereby minimizing the involvement of other firms. However, the City reserves the right to select and contract with more than a single firm for the specified services.

The City reserves the right, without qualification, to:

1. Reject all proposals.
2. Exercise discretion and apply its judgment with respect to any proposals submitted
3. Select proposals which qualify based on the following factors (50 points max):
 - a. Understanding of the work to be done (12 pts),
 - b. Experience with similar kinds of work (12 pts),
 - c. Quality of staff for work to be done (7 pts),
 - d. Capability of developing innovative or advanced techniques (5 pts),
 - e. Familiarity with state and federal procedures (5 pts),
 - f. Demonstrated technical ability (5 pts),
 - g. Financial responsibility (4 pts),
4. City staff will review and rank all proposals received from consultants and recommend the consultant(s) to receive an annual retainer agreement for the work type specified within this RFQ.

A City contract for annual consultant services will be brought to the City Council for its approval. City staff shall notify the selected Consultant(s) of the final approval of the contract by the City Council. Once submitted, all proposals become public records and subject to disclosure, either in part or in whole, under the California Public Records Act.

Selection Interviews

The City reserves the right to hold selection interviews with any consultant submitting a proposal under this solicitation. These interviews will be held solely at the discretion of the City and after the proposal scoring process. The intent of the City is to hold interviews only with top-scoring consultants based on the proposal selection process. The interviews would be attended by representatives of the City as well as the consultant's representatives. The selection interview will be used to gain further insight into the consultant's capabilities for the purpose of making a selection recommendation.

Anticipated Schedule of Award

Staff anticipates scoring written proposals in mid-May, conducting interviews (if needed) in late May, and providing recommendations to the City Council for consideration of award at the regularly scheduled city council meeting on Tuesday, June 13, 2017.



AGREEMENT FOR SPECIAL SERVICES
between
THE CITY OF TURLOCK
and

for
PLAN REVIEW SERVICES

THIS AGREEMENT is made this ____ day of _____, 20__, by and between the **CITY OF TURLOCK**, a municipal corporation of the State of California hereinafter referred to as "CITY" and _____, a _____, hereinafter referred to as "CONSULTANT."

WITNESSETH:

WHEREAS, in accordance with California Government Code §37103, CITY has a need for plan review services and

WHEREAS, CONSULTANT has represented itself as duly trained, qualified, and experienced to provide such special service, hereinafter referred to as "Services."

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF WORK: CONSULTANT shall furnish all labor, equipment, materials and process, implements, tools, and machinery, except as otherwise specified, which are necessary and required to provide the Services and shall perform such special services in accordance with the standards of its profession and the specifications attached hereto as Exhibit __. CONSULTANT shall provide Services that are acceptable to CITY.

2. PERSONNEL AND EQUIPMENT: CONSULTANT shall provide all personnel needed to accomplish the Services hereunder. CONSULTANT shall additionally acquire, provide, maintain, and repair, at its sole cost and expense, such equipment, materials, and supplies as CONSULTANT shall reasonably require to accomplish said Services.

3. SAFETY REQUIREMENT: All Services and merchandise must comply with California State Division of Industrial Safety orders and O.S.H.A.

4. COMPENSATION: CITY agrees to pay CONSULTANT in accordance with Exhibit __ as full remuneration for performing all Services and furnishing all staffing and materials called for in Exhibit __ and for performance by CONSULTANT of all of its duties and obligations under this Agreement. In no event shall the total amount of this Agreement exceed _____ and No/100^{ths} Dollars (\$_____). CONSULTANT agrees that compensation shall be paid in the manner and at the times set forth below:

(a) Invoices: CONSULTANT shall submit dated invoices to CITY specifying the date, location and service rendered, and the charge therefor.

(b) Payment:

(1) All payments by CITY shall be made in arrears, after satisfactory service, as determined and approved by CITY, has been provided. Payment shall be made by CITY no more than thirty (30) days from CITY's receipt of invoice.

(2) CITY shall normally pay by voucher or check within ten (10) working days after each City Council meeting at which payments can be authorized, provided that CITY receives the invoice at least five (5) working days prior to CITY's meeting date.

(3) If CITY disputes any items on an invoice for a reasonable cause, which includes but is not limited to unsatisfactory service, CITY may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deletions shall be documented to CONSULTANT within fifteen (15) working days after receipt of invoice by CITY. CITY shall assign a sequential reference number to each deletion.

(4) If dispute is settled, payment shall be by voucher or check payable to and mailed to CONSULTANT within five (5) working days of dispute settlement.

(5) CITY reserves the right to only pay for such services rendered to the satisfaction of CITY.

5. TERM OF AGREEMENT: This Agreement shall become effective _____ and end _____, subject to CITY's availability of funds.

6. EXTENSION OF AGREEMENT: CITY may elect to extend this Agreement for three (3) additional one-year terms, on the same terms and conditions, upon providing written notice to CONSULTANT thirty (30) days prior to the expiration of this Agreement. On each anniversary date, CONSULTANT will be allowed to increase prices. Increases may not exceed increases in the San Francisco-Oakland Consumer Price Index for all urban consumers or percentage increases in CONSULTANT's published prices, whichever is lower. In all cases, CITY may cancel the contract if a requested price increase is not acceptable.

7. INSURANCE: CONSULTANT shall not commence work or services under this Agreement until CONSULTANT has obtained CITY's approval regarding all insurance requirements, forms, endorsements, amounts, and carrier ratings, nor shall CONSULTANT allow any subcontractor to commence work or services on a subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved. CONSULTANT shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors. Failure to maintain or renew coverage or to provide evidence of renewal may constitute a material breach of contract.

(a) **Minimum Scope of Insurance:** When applicable, coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage

(occurrence Form CG 00 01) with an additional insured endorsement (form CG 20 10 for ongoing operations and 20 37 for products/completed operations), to be approved by the City of Turlock.

(2) Insurance Services Office Form CA 00 01 covering Automobile Liability, Code 1 (any auto).

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(4) Errors and Omissions/Professional Liability Insurance.

(b) Minimum Limits of Insurance: CONSULTANT shall maintain limits no less than:

(1) General Liability (including operations, products and completed operations): \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: \$1,000,000 per occurrence for bodily injury and property damage.

(3) Workers' Compensation: as statutorily required by the State of California. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

(4) Errors and Omissions/Professional Liability: \$1,000,000 per claim.

(c) Deductibles and Self-Insured Retentions: Upon request of CITY, any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its elective and appointive boards, officers, agents, employees, and volunteers; or (2) CONSULTANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(d) Other Insurance Provisions: The commercial general liability policy shall contain, or be endorsed to contain, the following provisions:

(1) CITY, its elective and appointive boards, officers, agents, employees, and volunteers are to be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations, which coverage shall be maintained in effect for at least three (3) years following the completion of the work specified in the contract. General liability coverage can be provided in the form of an endorsement to CONSULTANT's insurance (at least as broad as CG 20 10 for ongoing operations and CG 20 37 for products/completed operations), or as a separate Owners and Contractors Protective Liability policy providing both ongoing operations and completed operations coverage.

(2) For any claims related to this project, CONSULTANT's insurance coverage shall be primary insurance as respects CITY and any insurance or self-insurance maintained by CITY shall be excess of CONSULTANT's insurance and shall not contribute with it.

(3) In the event of cancellation, non-renewal, or material change that reduces or restricts the insurance coverage afforded to CITY under this Agreement, the insurer, broker/producer, or CONSULTANT shall provide CITY with thirty (30) days' prior written notice of such cancellation, non-renewal, or material change.

(4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

(f) Verification of Coverage: CONSULTANT shall furnish CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONSULTANT'S obligation to provide them. CITY reserves the right, at any time, to require complete, certified copies of all required insurance policies and endorsements.

(g) Waiver of Subrogation: With the exception of professional liability, CONSULTANT hereby agrees to waive subrogation which any insurer of CONSULTANT may acquire from CONSULTANT 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 CONSULTANT, its agents, employees, independent contractors and subcontractors. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

(h) Subcontractors: CONSULTANT shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance coverage for subcontractors shall be subject to all of the requirements stated herein.

8. INDEMNIFICATION: CONSULTANT shall indemnify, defend, and hold harmless CITY and its elective and appointive boards, officers, agents, employees, and volunteers from and against any and all claim, demand, cost, or liability that arises out of, pertains to, or relates to, the negligence, recklessness, or willful misconduct of CONSULTANT and its employees or agents in the performance of services under this contract, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful misconduct of CITY.

9. INDEPENDENT CONTRACTOR RELATIONSHIP: All acts of CONSULTANT, its agents, officers, and employees and all others acting on behalf of CONSULTANT relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of CITY. CONSULTANT, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of CITY. CONSULTANT has no authority or responsibility to exercise any rights or power vested in the CITY. No agent, officer, or employee of the CITY is to be considered an employee of CONSULTANT. It is understood by both CONSULTANT and CITY that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

CONSULTANT, its agents, officers and employees are and, at all times during the terms of this Agreement, shall represent and conduct themselves as independent contractors and

not as employees of CITY.

CONSULTANT shall determine the method, details and means of performing the work and services to be provided by CONSULTANT under this Agreement. CONSULTANT shall be responsible to CITY only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to CITY's control with respect to the physical action or activities of the CONSULTANT in fulfillment of this Agreement. CONSULTANT has control over the manner and means of performing the services under this Agreement. CONSULTANT is permitted to provide services to others during the same period service is provided to CITY under this Agreement. If necessary, CONSULTANT has the responsibility for employing other persons or firms to assist CONSULTANT in fulfilling the terms and obligations under this Agreement.

If in the performance of this Agreement any third persons are employed by CONSULTANT, such persons shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by the CONSULTANT.

It is understood and agreed that as an independent contractor and not an employee of CITY neither the CONSULTANT or CONSULTANT'S assigned personnel shall have any entitlement as a CITY employee, right to act on behalf of the CITY in any capacity whatsoever as an agent, or to bind the CITY to any obligation whatsoever.

It is further understood and agreed that CONSULTANT must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONSULTANT'S personnel.

As an independent contractor, CONSULTANT hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

10. VOLUNTARY TERMINATION: CITY may terminate this Agreement without cause or legal excuse by providing thirty (30) days' written notice to CONSULTANT.

11. TERMINATION OF STATED EVENT:

(a) Termination on Occurrence of Stated Events. This Agreement shall terminate automatically on the date on which any of the following events occur: (1) bankruptcy or insolvency of CONSULTANT, (2) legal dissolution of CONSULTANT, or (3) death of key principal(s) of CONSULTANT.

(b) Termination by CITY for Default of CONSULTANT. Should CONSULTANT default in the performance of this Agreement or materially breach any of its provisions, at its option CITY may terminate this Agreement by giving written notification to CONSULTANT. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to perform required services or duties, willful destruction of CITY's property by CONSULTANT, dishonesty or theft.

(c) Termination by CONSULTANT for Default of CITY. Should CITY default in the performance of this Agreement or materially breach any of its provisions, at its option CONSULTANT may terminate this Agreement by giving written notice to CITY. The termination

date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to cooperate reasonably with CONSULTANT, willful destruction of CONSULTANT's property by CITY, dishonesty or theft.

(d) Termination for Failure to Make Agreed-Upon Payments. Should CITY fail to pay CONSULTANT all or any part of the payments set forth in this Agreement on the date due, at its option CONSULTANT may terminate this Agreement if the failure is not remedied within thirty (30) days after CONSULTANT notifies CITY in writing of such failure to pay. The termination date shall be the effective date of the notice.

(e) Termination by CITY for Change of CONSULTANT'S Tax Status. If CITY determines that CONSULTANT does not meet the requirements of federal and state tax laws for independent contractor status, CITY may terminate this Agreement by giving written notice to CONSULTANT. The termination date shall be the effective date of the notice.

(f) In the Event of Termination. If this Agreement is terminated pursuant to this Paragraph, CONSULTANT shall cease all its work on the project as of the termination date and shall see to it that its employees, subcontractors and agents are notified of such termination and cease their work. If CITY so requests, and at CITY's cost, CONSULTANT shall provide sufficient oral or written status reports to make CITY reasonably aware of the status of CONSULTANT'S work on the project. Further, if CITY so requests, and at CITY's cost, CONSULTANT shall deliver to CITY any work products whether in draft or final form which have been produced to date.

If the Agreement is terminated pursuant to any of the subsections contained in this paragraph, CITY will pay CONSULTANT an amount based on the percentage of work completed on the termination date, this percentage shall be determined by CITY in its sole discretion. If the Agreement is terminated pursuant to the subparagraph entitled Termination by CITY for Default of CONSULTANT, CONSULTANT understands and agrees that CITY may, in CITY's sole discretion, refuse to pay CONSULTANT for that portion of CONSULTANT'S services which were performed by CONSULTANT on the project prior to the termination date and which remain unacceptable and/or not useful to CITY as of the termination date.

12. CONFORMANCE WITH FEDERAL AND STATE LAW: All equipment, supplies and services used by CONSULTANT in the performance of this Agreement shall conform to the laws of the government of the United States and the State of California.

13. NONDISCRIMINATION: In connection with the execution of this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race religion, color, sex, or national origin. CONSULTANT shall take affirmative action to insure that applicants are employed, and the employees are treated during their employment, without regard to their age, race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, promotions, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall also comply with the requirement of Title VII of the Civil Rights Act of 1964 (P.L. 88-352) and with all applicable regulations, statutes, laws, etc., promulgated pursuant to the civil rights acts of the government of the United States and the State of California now in existence or hereafter enacted. Further, CONSULTANT shall comply with the provisions of Section 1735 of the California Labor Code.

14. TIME: Time is of the essence in this Agreement.

15. ENTIRE AGREEMENT AND MODIFICATION: This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. CONSULTANT shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. CONSULTANT specifically acknowledges that in entering into and executing this Agreement, CONSULTANT relies solely upon the provisions contained in this Agreement and no others.

16. OBLIGATIONS OF CONSULTANT: Throughout the term of this Agreement, CONSULTANT shall possess, or secure all licenses, permits, qualifications and approvals legally required to conduct business. CONSULTANT warrants that it has all of the necessary professional capabilities and experience, as well as all tools, instrumentalities, facilities and other resources necessary to provide the CITY with the services contemplated by this Agreement. CONSULTANT further represents that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

17. OWNERSHIP OF DOCUMENTS: All reports, data, drawings, plans, designs, specifications, graphics, calculations, working papers, models, flow diagrams, visual aids, and other incidental work or materials furnished hereunder shall become and remain the property of the CITY, and may be used by CITY as it may require without any additional cost to CITY. No reports shall be used by the CONSULTANT for purposes other than this contract without the express prior written consent of CITY.

18. NEWS AND INFORMATION RELEASE: CONSULTANT agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from CITY through the City Manager.

19. INTEREST OF CONSULTANT: CONSULTANT warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT warrants that, in performance of this Agreement, CONSULTANT shall not employ any person having any such interest. CONSULTANT agrees to file a Statement of Economic Interests with the City Clerk at the start and end of this contract if so required at the option of CITY.

20. AMENDMENTS: Both parties to this Agreement understand that it may become desirable or necessary during the execution of this Agreement, for CITY or CONSULTANT to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with CITY and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work.

Until a change order is so executed, CITY will not be responsible to pay any charges CONSULTANT may incur in performing such additional services, and CONSULTANT shall not be required to perform any such additional services.

21. PATENT/COPYRIGHT MATERIALS: Unless otherwise expressly provided in the contract, CONSULTANT shall be solely responsible for obtaining the right to use any patented or copyrighted materials in the performance of this Agreement. CONSULTANT shall furnish a warranty of such right to use to CITY at the request of CITY.

22. CERTIFIED PAYROLL REQUIREMENT: For CONSULTANTS performing field

work on public works contracts on which prevailing wages are required, CONSULTANT shall comply with the provisions of the California Labor Code including, but not limited to, Section 1776 regarding payroll records, and shall require its subconsultants and subcontractors to comply with that section as may be required by law.

23. PARTIAL INVALIDITY: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

24. WAIVER: The waiver by any party to this Agreement of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

25. AUDIT: CITY's duly authorized representative shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify CONSULTANT'S charges to CITY under this Agreement.

CONSULTANT agrees to retain reports, records, documents, and files related to charges under this Agreement for a period of four (4) years following the date of final payment for CONSULTANT services. CITY's representative shall have the right to reproduce any of the aforesaid documents.

26. GOVERNING LAW: This Agreement shall be governed according to the laws of the State of California.

27. HEADINGS NOT CONTROLLING: Headings used in the Agreement are for reference purposes only and shall not be considered in construing this Agreement.

28. COMPLIANCE WITH LAWS: CONSULTANT shall insure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and county safety and health regulations and laws including, but not limited to, prevailing wage laws, if applicable. CONSULTANT shall fully comply with all applicable federal, state, and local laws, ordinances, regulations and permits.

29. CITY BUSINESS LICENSE: CONSULTANT will have a City of Turlock business license.

30. ASSIGNMENT: This Agreement is binding upon CITY and CONSULTANT and their successors. Except as otherwise provided herein, neither CITY nor CONSULTANT shall assign, sublet, or transfer interest in this Agreement or any part thereof without the prior written consent of the other.

31. RECORD INSPECTION AND AUDIT: CONSULTANT shall maintain adequate records to permit inspection and audit of CONSULTANT's time and material charges under this Agreement. CONSULTANT shall make such records available to CITY during normal business hours upon reasonable notice. Such records shall be turned over to CITY upon request.

32. EXCLUSIVE USE: Services provided within the scope of this Agreement are for the exclusive use of CITY and CONSULTANT agrees that, until final approval by CITY, all data, plans, specifications, reports, and other documents will not be released to third parties by CONSULTANT without the prior written consent of CITY.

33. EMPLOYMENT OF CITY OFFICIAL OR EMPLOYEE: CONSULTANT shall

employ no CITY official or employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of California Government Code Sections 1090 *et seq.*; nor shall CITY violate any provision of its Conflict of Interest Code adopted pursuant to the provisions of California Government Code Sections 87300 *et seq.*

34. NOTICE: Any and all notices permitted or required to be given hereunder shall be deemed duly given and effective (1) upon actual delivery, if delivery is by hand; or (2) five (5) days after delivery into the United States mail, if delivery is by postage paid, registered, or certified (return receipt requested) mail. Each such notice shall be sent to the parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time:

for CONSULTANT: _____

PHONE: _____
FAX: _____

for CITY: **CITY OF TURLOCK**
 ATTN: Eric Picciano
 BUILDING DIVISION
 156 SOUTH BROADWAY, SUITE 130
 TURLOCK, CALIFORNIA 95380-5454
 PHONE: (209) 668-5542 Ext 4422
 FAX: (209) 668-5107

35. CITY CONTRACT ADMINISTRATOR: The City's contract administrator and contact person for this Agreement is:

Eric A. Picciano
Building Division
156 S. Broadway, Suite 130
Turlock, California 95380-5456
Telephone: (209) 668-5542, ext. 4422
E-mail: epicciano@turlock.ca.us

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 municipal corporation _____

By: _____

Gary Soiseth, Mayor

or

Gary R. Hampton, City Manager

Date: _____

By: _____

Title: _____

Print name: _____

Date: _____

APPROVED AS TO SUFFICIENCY:

By: _____

Michael G. Pitcock, PE,
Development Services Director / City Engineer

APPROVED AS TO FORM:

By: _____

Phaedra A. Norton, City Attorney

ATTEST:

By: _____

Jennifer Land, City Clerk